FILED
24-0892
7/11/2025 11:43 PM
tex-103058856
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

**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

## BRIEF FOR APPELLEE

---

ALLISSA POLLARD
State Bar No. 24065915
ARNOLD & PORTER KAYE SCHOLER LLP
700 Louisiana St.
Houston, Texas 77002
(713) 576-2400 – Phone
allissa.pollard@arnoldporter.com

LORI B. LESKIN*
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
(212) 836-8541 – Phone
Lori.Leskin@arnoldporter.com

PAUL CASTILLO
State Bar No. 24049461
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
3500 Oak Lawn Ave, Unit 500
Dallas, Texas 75219
(214) 219-8585
pcastillo@lambalegal.org

KAREN L. LOEWY*
SASHA J. BUCHERT*
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
815 16th Street,
N.W., Suite 4140

Washington, D.C. 20006
(202) 804-6245
kloewy@lambdalegal.org
sbuchert@lambdalegal.org

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

LYNLY S. EGYES*
TRANSGENDER LAW CENTER
lynly@transgenderlawcenter.org
MILO INGLEHART*
milo@transgenderlawcenter.org
594 Dean Street, Suite 11
Brooklyn, NY 11238
Phone: (510) 587-9696 Ext. 353

HARPER SELDIN
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, Floor 18
New York, NY 10004
(212) 549-2500
hseldin@aclu.org

ELIZABETH GILL
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111
(415) 343-1237
egill@aclunc.org

BRIAN KLOSTERBOER
ACLU FOUNDATION OF TEXAS, INC.
Texas State Bar No. 24107833
bklosterboer@aclutx.org
CHLOE KEMPF
Texas State Bar No. 24127325
ckempf@aclutx.org

*Motion for Admission *pro hac vice* forthcoming

*Counsel for Appellee*

# TABLE OF CONTENTS

Page

Statement of the Case ..... xi

Statement of Jurisdiction ..... xiii

Issues Presented ..... xiii

Introduction ..... 1

Statement of Facts ..... 4

A. PFLAG is a private non-profit membership organization that includes thousands of people in Texas. ..... 4

B. PFLAG sues the State of Texas and government officials to protect its members. ..... 5

1. *PFLAG v. Abbott* and *Loe v. Texas* ..... 5

2. PFLAG CEO's affidavit in support of *Loe v. Texas* ..... 7

C. The Texas OAG serves the Demands on PFLAG ..... 9

D. OAG changes its basis for the investigation. ..... 11

E. The Demands are part of a pattern by the OAG to use its powers to target disfavored groups in Texas ..... 11

F. PFLAG petitions for injunctive relief and to set aside the Demands. ..... 14

G. The trial court entered a temporary injunction in PFLAG's favor. ..... 15

H. OAG filed a notice of appeal and counterclaim to enforce the Demands. ..... 17

I. June 10, 2024 Trial ..... 19

J. PFLAG produced documents pursuant to the modified CID ..... 21

Summary of Argument ..... 25

Standard of Review ..... 29

Argument ..... 30

I. The trial court did not abuse its discretion in modifying the CID. ..... 30

A. The Demands sought materials not appropriately discoverable under the Texas Rules of Civil Procedure. ..... 31

1. The trial court appropriately modified the CID to include only information relevant to OAG's investigation. ..... 32

2. The trial court appropriately modified the CID to exclude requests that were overly burdensome to PFLAG as a third party ..... 34

3. The trial court appropriately modified the CID to include protections for privilege and confidentiality recognized by the Texas Rules of Civil Procedure ..... 36

B. The Trial Court Did Not Abuse Its Discretion In Finding Good Cause to Set Aside or Modify the CID that Would Run Afoul of Constitutional Protections. ..... 37

1. Violations of PFLAG and Its Members' Free Speech, Association, Assembly, and Petition Rights Constitute Good Cause for Setting Aside or Modifying the Demands. ..... 38

2. Violations of PFLAG's Freedom from Unreasonable Search and Seizure Constitute Good Cause for Setting Aside or Modifying the Demands. ..... 40

C. The Trial Court Did Not Abuse Its Discretion in Modifying the CID Because the CID Did Not Comply With Other DTPA Requirements. ..... 43

D. The Demands Fall Short of the (Inapplicable) Federal Standards for CIDs ..... 44

II. The Trial Court Followed the Proper Procedure. ..... 46

III. The Trial Court Issued an Appropriate Injunction. ..... 48

Conclusion .....51

Prayer .....51

Certificate of Compliance .....53

## TABLE OF AUTHORITIES

Page(s)

### Cases

*Amstadt v. U.S. Brass Corp.*,
919 S.W.2d 644 (Tex. 1996) .....43

*Brookins v. Mote*,
292 P.3d 347 (Mont. 2012).....34

*Consumer Fin. Prot. Bureau v. Source for Pub. Data, L.P.*,
903 F.3d 456 (5th Cir. 2018) .....33, 44

*Darviris v. Petros*,
812 N.E.2d 1188 (Mass. 2004).....34

*FTC v. Am. Tobacco Co*.,
264 U.S. 298 (1924).....41

*Gen. Tire, Inc. v. Kepple*,
970 S.W.2d 520 (Tex. 1998) .....29

*Haynes v. Yale- New Haven Hosp.*,
699 A.2d 964 (Conn. 1997) .....34

*Henderson v. Gandy*,
623 S.E.2d 465 (Ga. 2005) .....34

*Holder v. State*,
595 S.W.3d 691 (Tex. Crim. App. 2020) .....40

*Hosp. v. Off. of the Att'y Gen.*,
Cause No. GN-23-008855 .....12

*Huynh v. Blanchard*,
694 S.W.3d 648 (Tex. 2024) .....29

*Iancu v. Brunetti*,
139 S. Ct. 2294 (2019).....37

*In re Am. Optical Corp*.,
988 S.W.2d 711 (Tex. 1998) (orig. proceeding) .....34

*In re B.L.D.*,
113 S.W.3d 340 (Tex. 2003) .....37

*In re Bay Area Citizens Against Lawsuit Abuse*,
982 S.W.2d 371 (Tex. 1998) .....38, 40

*In re E.E.O.C.*,
709 F.2d 392 (5th Cir. 1983) .....44

*In re Maurer*,
15 S.W.3d 256 (Tex. App. — Houston [14th Dist.] 2000, no pet.) .....38

*In re McVane*,
44 F.3d 1127 (2d Cir. 1995) .....36

*In re Nat'l Lloyds Ins. Co.*,
507 S.W.3d 219 (Tex. 2016) .....33

*Jaster v. Comet II Const., Inc.*,
438 S.W.3d 556 (Tex. 2014) .....33

*Lion Copolymer Holdings, LLC v. Lion Polymers, LLC*,
614 S.W.3d 729 (Tex. 2020) (per curiam) .....29

*Loe v. Texas*,
Cause No. D-1-GN-23-003616 (201st District Court of Travis County, Texas, issued Aug. 25, 2023).....*passim*

*Major League Baseball v. Crist*.,
331 F.3d 1177 (11th Cir. 2003) .....41

*Muth v. Voe*,
No. 03-22-00420-CV, 2024 WL 1340855 (Tex. App.—Austin Mar. 29, 2024).....6

*Muth v. Voe*,
No. 24-0384 (Tex.—pet. filed May 10, 2024).....6

*NAACP v. Alabama*,
357 U.S. 449 (1958).....38

*Nelson v. Ho*,
564 N.W.2d 482 (Mich. 1997).....34

*Paxton v. Annunciation House, Inc.,*
No. 24-0573, 2025 WL 1536224 (Tex. May 30, 2025) .....49, 50

*Paxton v. Longoria*,
646 S.W.3d 532 (Tex. 2022) .....37

*Perry v. Del Rio*,
67 S.W.3d 85 (Tex. 2001).....29

*PFLAG, Inc. v. Abbott*,
Cause No. D-1-GN-22-002569 (in the 459th District Court of
Travis County, Texas, issued Sept. 16, 2022) .....6, 17, 42

*Phillips v. McNeill*,
635 S.W.3d 620 (Tex. 2021) .....37

*Riverside Nat. Bank v. Lewis*,
603 S.W.2d 169 (Tex. 1980) .....43

*Schade v. Tex. Workers' Comp. Comm'n*,
150 S.W.3d 542 (Tex. App.—Austin 2004, pet. denied) .....40, 42

*Seattle Child.'s Hosp. v. Off. of the Att'y Gen.,* Cause No. GN-23-
008855 (98th District Court of Travis County, Texas) .....12

*See v. City of Seattle*, 387 U.S. 541, 544 (1967);.....41

*Sinclair v. Sav. & Loan Comm'r*,
696 S.W.2d 142 (Tex. App.—Dallas 1985, writ ref'd n.r.e).....42

*Sorokolit v. Rhodes*,
889 S.W.2d 239 (Tex. 1994) .....33

*State v. Loe*,
692 S.W.3d 215 (Tex. 2024) .....7

*TGS-NOPEC Geophysical Co. v. Combs*,
340 S.W.3d 432 (Tex. 2011) .....31

*Tilton v. Moye*,
869 S.W.2d 955 (Tex. 1994) .....39

*United States v. Harrington*,
388 F.2d 520 (2d Cir. 1968) .....41

*United States v. Morton Salt Co*.,
338 U.S. 632 (1950).....41

*United States v. Powell*,
379 U.S. 48 (1964).....44

*Vinson & Elkins v. Moran*,
946 S.W.2d 381 (Tex. App.—Houston 1997, writ dism'd by agr.) .....43

*Zurcher v. Stanford Daily*,
436 U.S. 547 (1978).....42

**Constitutional Provisions, Rules, and Statutes**

U.S. Const. amend. 1.....2, 17, 38

U.S. Constitution amend. 4 .....17, 40, 41

Business Organizations Code §§ 12.151 and 12.152 .....50

Civil Practice & Remedies Code 66.001 .....13

Tex. Bus. & Com. Code § 17.41 et seq. .....*passim*

DTPA section 17.46.....10, 11, 32, 43

Tex. Bus. & Com. Code Ann.
§ 15.10 (d)(1) .....26

Tex. Bus. & Com. Code
§ 17.44.....43
§ 17.60.....1
§ 17.61(i).....46
§ 17.61(b)(1) .....32
§ 17.61(c) .....32
§ 17.61(g).....*passim*

Tex. Bus. Orgs. Code 12.155 .....13

Tex. Health & Safety Code §§ 161.702, 161.706.....6

Texas Civil Practice & Remedies Code §§ 51.014(a)(4), (a)(8) .....6

Texas Deceptive Trade Practices Act .....1

**Other Authorities**

Letter from Greg Abbott to Hon. Jaime Masters, Comm'r, Tex. Dep't of Fam. & Protective Servs. (Feb. 22, 2022), https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf .....5

Tex. R. Civ. P. 192.3(a) .....34

Tex. R. Civ. P.
§176.7.....35
§190-215 .....37
§192.3(a) .....32
§192.4.....36
§197.1.....35
§205.1.....35

Tex. R. Civ. Pro. Rule 22.....27

Tex. R. Prof. Conduct 4.02(a).....9

Texas Constitution .....31

Texas Constitution Art. I, § 8.....38

Texas Constitution Art. I, § 27.....38

Texas Constitution Article I, § 9.....40, 41

Texas Constitution Art. I, § 29.....37

U.S. Constitution amend. 1 .....31

U.S. Constitution Fourth Amendment .....17, 40, 41

## STATEMENT OF THE CASE

***Nature of the Case***: PFLAG is a private, non-profit membership organization with thousands of members in Texas. Twice in the past three years, PFLAG has sued the State of Texas to vindicate the constitutional rights of its members, particularly transgender minors and their parents. Based on an affidavit filed in connection with that constitutionally protected activity, the Office of the Attorney General ("OAG") served PFLAG with a Civil Investigative Demand ("CID") and Demand for Sworn Written Statement ("DSWS") (together, "Demands") seeking information protected from disclosure by the United States and Texas Constitution, including, *inter alia*, the names of PFLAG's members. PFLAG followed the process required by the Deceptive Trade Practices Act ("DTPA"), Tex. Bus. & Com. Code §§ 17.41-.63, to challenge the CID and DSWS by filing a petition to set aside or modify those demands. To protect itself and its membership in the meantime, PFLAG also sought temporary injunctive relief to postpone its obligation to respond to the CID or DSWS until the trial court ruled on their proper scope under the DTPA. OAG countersued to enforce a modified version of the CID that was never served on PFLAG.

***Trial Court***: 261st Judicial District Court, Travis County
The Honorable Amy Clark-Meachum

***Course of Proceedings***: On February 28, 2024, PFLAG filed a verified petition to set aside civil investigative demands, for declaratory judgment, and application for temporary restraining order and temporary and permanent injunctive relief. On March 1, 2024, after a hearing, the district court issued a temporary restraining order and set a temporary injunction hearing. On March 25, 2024, after taking evidence and hearing oral argument, the

trial court issued a temporary injunction and set trial on the merits for June 10, 2024. During that merits trial, the court heard testimony from and cross-examination of PFLAG's CEO and the investigator at the OAG whose affidavit supported the Demands. On September 13, 2024, the trial court ordered PFLAG to produce documents in response to a modified version of the CID. PFLAG produced documents on October 11, 2024. Notwithstanding PFLAG's compliance and the lack of an appealable final order, on October 21, 2024, OAG sought direct review in this Court. On February 7, 2025, this Court abated the appeal, returned the case to the trial court, and directed the trial court to enter final judgment, which it did on March 10, 2025.

***Disposition in the Trial Court:***

On March 10, 2025, the trial court issued a final declaratory judgment and permanent injunction. The trial court found that the Demands exceeded the OAG's authority under the DTPA for several discrete reasons; that PFLAG did not fail to comply with the Demands; that the Demands sought information and documents protected by the right to free expression, assembly, and association under both U.S. Constitution and the Texas Constitution; and that the Demands infringed on the right to be free from unreasonable search and seizure under both the U.S. Constitution and the Texas Constitution. The trial court issued a permanent injunction enjoining the OAG from demanding any information or documents from PFLAG in response to the Demands that would reveal the identities or private communications of PFLAG's officers, members, chapters, agents, servants, employees, attorneys, and associated persons; demanding information or documents from PFLAG relating to the Demands other than those specifically modified by the trial court; and taking any adverse action in relation to the Demands against PFLAG.

## STATEMENT OF JURISDICTION

While Appellee does not object to the Court hearing this case, Appellee notes that Appellants never appealed "[a]ny final order," but rather resumed an appeal of a pre-final order that was abated. Appellants' Br. at xi. Though the Court noted that "the alleged jurisdictional defect may be cured by the trial court's entry of a final order," Appellants failed to do so by neglecting to appeal the order that it claims is at issue. Abatement Order, Off. of the Att'y Gen. of the State of Tex. v. PFLAG, Inc., 24-0892 (Tex. Feb. 7, 2025).

## ISSUES PRESENTED

1. Did the District Court abuse its discretion by following the DTPA's statutorily required procedure for pre-compliance judicial review of a CID?
2. Did the District Court abuse its discretion when it modified the Demands to exclude requests that were overly burdensome and intrusive under the Texas Rules of Civil Procedure to third-party PFLAG?
3. Did the District Court abuse its discretion in finding good cause to set aside or modify Demands that would have otherwise violated PFLAG and its members' constitutional rights and exceeded the scope of the OAG's authority under the DTPA?

**To the Honorable Supreme Court of Texas:**

## INTRODUCTION

This case arises out of the OAG's issuance of two investigative demands, a Civil Investigative Demand ("CID") and a Demand for Sworn Written Statement ("DSWS")[1] (together, the "Demands"), purportedly authorized by the Texas Deceptive Trade Practices Act ("DTPA"), Tex. Bus. & Com. Code §§ 17.41 et seq. The DTPA provides only one statutory method for challenging such requests: "a petition to extend the return date for, or to modify or set aside the demand, stating good cause, may be filed in the district court in the county where the parties reside, or a district court of Travis County." Tex. Bus. & Com. Code § 17.61(g). On February 28, 2024, PFLAG followed the process set out in the DTPA and filed its Original Verified Petition to Set Aside Civil Investigative Demands, for Declaratory

[1] Since Appellants clarified that it is investigating alleged violations by third parties and that PFLAG is not the target of the investigation, PFLAG has maintained that it is not the proper recipient of a DSWS. The DTPA authorizes the issuance of a DSWS only to a person who is the target of an investigation. Tex. Bus. & Com. Code § 17.60(1). Under the DTPA, when the Consumer Protection Division either has reason to believe a person is engaging in a deceptive trade practice or reasonably believes it is in the public interest to ascertain whether a person is doing so, "the division may: (1) require *the person* to file on the prescribed forms a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged violation and such other data and information as the consumer protection division deems necessary." Tex. Bus. & Com. Code § 17.60(1) (emphasis added). Unlike CIDs, which can be sent to "any person" believed to have relevant information, demands for sworn written statements may only be sent to "the person" suspected of violating the DTPA. *Id.* §§ 17.60(1) and 17.61. In their opening brief, Appellants abandoned the DSWS. Accordingly, this brief focuses on the remaining demand, the CID.

Judgment, and Application for Temporary Restraining Order and Permanent Injunction.

From that point on, the trial court and parties moved expeditiously to resolve what amounted to a discovery dispute under the DTPA, culminating in PFLAG's production of documents under a modified CID a few short months later. As the proceedings before the district court revealed, PFLAG was not the target of any OAG investigation, but rather a third party.

As commonly happens in a discovery dispute, OAG and PFLAG modified their positions: OAG abandoned certain requests from the original CID, while PFLAG proposed modifications to the CID that would shield constitutionally protected membership information and communications. Armed with the parties' modified positions, set forth in cross-motions for summary judgment,[2] as well as evidence elicited at the merits trial, the trial court ordered PFLAG to comply with a modified version of the CID, which PFLAG did on October 11, 2024. The trial court also set a hearing for the week of October 14, 2024, during which OAG could raise any concerns about that production and the trial court could address any outstanding matters related to the Demands. That hearing did not take place because OAG elected to appeal a non-final order to this Court, thereby delaying the conclusion of the trial court's proceedings by five months.

[2] These cross-motions were never set for hearing in light of the imminent trial date. *See* CR.590.

Even though the parties and the trial court followed the DTPA's procedures for resolving a dispute over the Demands and OAG received documents from PFLAG in accordance with a modified CID, OAG remains unsatisfied. The essence of OAG's petition is that it took longer than OAG wanted to ultimately prevail in getting documents from a third party. But the requisite time that it takes the district court to examine the Demands and the parties' positions does not demonstrate an abuse of discretion or constitute legal error. While OAG is itself responsible for delaying the trial court's final judgment, the DTPA does not grant OAG the authority to commandeer a court's calendar or prioritize this proceeding ahead of other pressing matters. The district court here acted expeditiously to ensure that both OAG and PFLAG complied with their obligations under the DTPA, and it ultimately granted OAG all of the relief to which they are entitled. To the extent that OAG is dissatisfied that the DTPA itself provides for pre-compliance judicial review of a CID and an attendant delay, that is for the Texas Legislature, not this Court, to resolve. And the relief OAG requests—remand to the trial court for additional proceedings—would compound its purported harm, not alleviate it.

The scope of the permanent injunction entered by the trial court is also a narrow and appropriate end to these proceedings. All the injunction does is require OAG not to retaliate or take punitive action against PFLAG "*in relation to the Demands.*" Appellants' App'x Tab A at 19 (emphasis added). The injunction

explicitly grants OAG the authority to seek information to which it is entitled under the modified court order, and it leaves open the door for OAG to use other lawful mechanisms in the future to seek information unrelated to these particular Demands. *Id.* This narrow injunction is thus the proper way to resolve this particular dispute and does not constitute an abuse of discretion by the district court.

## STATEMENT OF FACTS

### A. PFLAG is a private non-profit membership organization that includes thousands of people in Texas.

Founded in 1973, PFLAG has served as a resource for LGBTQ+ people, families, and allies in their pursuit of justice and affirmation for over fifty years. PFLAG is a national, nonprofit membership organization that provides support, education, and advocacy for LGBTQ+ people and their families in furtherance of its mission to create a more caring, just, and affirming world for LGBTQ+ people and those who love them. Appellants' App'x Tab A at 4. The core of the support PFLAG provides to its members is peer-to-peer support groups, run by volunteer chapter leaders, in which members are supported in sharing deeply personal information about themselves and their families. These meetings have an expectation of confidentiality. *Id.* Because promoting the wellbeing of LGBTQ+ youth through encouraging and supporting love and affirmation by their families is a core part of PFLAG's mission and because PFLAG's members in Texas include families with transgender youth who need access to medically necessary gender-affirming medical

care, *see id.*, PFLAG has been actively involved in supporting transgender youth and their families in the State of Texas over the last few years. This includes PFLAG joining litigation on behalf of its members. *Id.* at 4-5.

### B. PFLAG sues the State of Texas and government officials to protect its members.

PFLAG has twice sued the State of Texas or its officials on behalf of its members to vindicate their constitutional rights, specifically transgender youth and their parents. *See id.* at 4. The Demands at issue in this appeal are based on OAG's review of an affidavit filed in one of those cases.

#### 1. *PFLAG v. Abbott* and *Loe v. Texas*

On February 22, 2022, Governor Abbott issued a directive to the Texas Department of Family and Protective Services ("DFPS") "to conduct a prompt and thorough investigation of any reported instances" of "sex-change procedures."[3] DFPS then issued a rule implementing that directive (the "DFPS Rule") and began investigating families suspected of providing gender-affirming medical care to transgender youth, which was then still fully legal in the state of Texas. PFLAG sued, and the trial court issued a temporary injunction enjoining and restraining the DFPS Commissioner and DFPS from implementing or enforcing the DFPS Rule

[3] Letter from Greg Abbott to Hon. Jaime Masters, Comm'r, Tex. Dep't of Fam. & Protective Servs. (Feb. 22, 2022), https://gov.texas.gov/uploads/files/press/o-mastersjaime202202221358.pdf.

against PFLAG members. *See* Order Granting PFLAG, Inc.'s and the Briggle Plaintiffs' Application for Temporary Injunction, *PFLAG, Inc. v. Abbott*, Cause No. D-1-GN-22-002569 (in the 459th District Court of Travis County, Texas, issued Sept. 16, 2022). On March 29, 2024, the Court of Appeals affirmed the trial court's temporary injunction. *Muth v. Voe*, No. 03-22-00420-CV, 2024 WL 1340855 (Tex. App.—Austin Mar. 29, 2024). The State's petition for review of this temporary injunction is presently pending before this Court. *Muth v. Voe*, No. 24-0384 (Tex.—pet. filed May 10, 2024).

On May 19, 2023, the Texas Legislature passed SB14, which prohibits physicians and other healthcare providers from providing, prescribing, administering, or dispensing gender-affirming medical care to transgender minors in Texas. SB14 § 2 (Tex. Health & Safety Code §§ 161.702, 161.706). Seeking to prevent harm to its members in Texas, PFLAG sought and obtained a temporary injunction against the implementation or enforcement of SB14. *See* Temporary Injunction Order, *Loe v. Texas*, Cause No. D-1-GN-23-003616 (in the 201st District Court of Travis County, Texas, issued Aug. 25, 2023); Order on Defendants' Plea to the Jurisdiction, *Loe v. Texas*, Cause No. D-1-GN-23-003616 (in the 201st District Court of Travis County, Texas, issued Aug. 25, 2023). That same day, the defendants filed a notice of accelerated interlocutory appeal pursuant to Texas Civil Practice & Remedies Code §§ 51.014(a)(4), (a)(8). *See* Defendants' Notice of

Accelerated Interlocutory Appeal, *Loe v. Texas*, Cause No. D-1-GN-23-003616 (in the 201st District Court of Travis County, Texas, filed Aug. 25, 2023). On June 28, 2024, the Texas Supreme Court reversed and vacated the District Court's order. *State v. Loe*, 692 S.W.3d 215 (Tex. 2024).

### 2. PFLAG CEO's affidavit in support of *Loe v. Texas*

Most relevant to these proceedings, PFLAG CEO Brian Bond submitted an affidavit in support of Plaintiffs' Verified Original Petition in *Loe v. Texas*. Appellants' App'x Tab A at 5. That affidavit described members' anxiety about losing access to still-legal medical care, explaining that although the statute's effective date was months away, some families began feeling the effects of SB14 immediately following its passage, as doctors left Texas or wound down the provision of gender-affirming medical care in advance of SB14's effective date. CR.69-70, 85-86. The affidavit explained that this imminent loss of care was a part of the reason that PFLAG decided to bring a lawsuit to try to stop the law from taking effect. *Id.*

Mr. Bond made those statements in his affidavit when describing how PFLAG members with transgender adolescents have been repeatedly targeted in Texas and how PFLAG decided to represent its members in a lawsuit attempting to block SB14 from going into effect. At the time of Mr. Bond's July 11, 2023 affidavit, the provision of gender-affirming medical care for adolescents was still lawful in Texas.

Appellants' App'x Tab A at 5. After describing the relief PFLAG obtained in an injunction against the DFPS Rule, Mr. Bond continued:

> This brief sigh of relief we felt from the DFPS Rule being enjoined ended when SB 14 was signed into law on June 2, 2023. PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposition regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming medical care or leave the state as a result of SB14. Requests for mental health care providers have skyrocketed, as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents' existing mental health issues connected to their gender dysphoria. Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date. And chapter leaders have heard concerns about the impacts on transgender and non-binary youth in the foster care system, who receive health care coverage through Medicaid and will lose coverage for their medical care for gender dysphoria if SB14 goes into effect.

CR.69-70, 85-86.

### C. The Texas OAG serves the Demands on PFLAG

On February 9, 2024, PFLAG received the Demands, both dated February 5, 2024, from OAG. *See* Appellants' App'x Tab A at 6; CR.60-90.[4] The Demands sought a broad range of information and documents from March 8, 2023—the date on which SB14 was introduced in the Texas legislature—through the date of production. While the Demands focused on assertions in Mr. Bond's affidavit in *Loe v. Texas*, they also extended beyond them. Five of the eight requests in the CID and seven of the nine requests in the DSWS related specifically to Mr. Bond's affidavit, and OAG attached Mr. Bond's affidavit to the Demands. The Demands also sought documents and communications between "any PFLAG representative regarding, relating to, or referencing" a list of medical providers set forth in Exhibit B2 to the Demands, some of whom provide or have provided gender-affirming medical care to transgender adolescents, including medical providers outside of Texas. *See* Appellants' App'x Tab A at 6.

Among the documents covered by the Demands were documents that would reveal the identities and private communications of PFLAG members in Texas. *Id.* For example, the Demands sought documents, communications, and statements

[4] The Demands were sent directly to PFLAG without copying or alerting PFLAG's counsel in either prior case, notwithstanding that the OAG is counsel for defendants in both cases and a defendant in *Loe v. Texas*. *Cf.* Tex. R. Prof. Conduct 4.02(a).

pertaining to Mr. Bond's basis for all statements in his *Loe v. Texas* affidavit, but particularly the statements that "PFLAG families with transgender and nonbinary adolescents shared their contingency plans" or sought "alternative avenues to maintain care in Texas." *See* CR.69-70, 85-86. The Demands also explicitly prohibited PFLAG from redacting information from any of the requested documents. *See* CR.62.

The Demands provided almost no context. They stated only that they sought information or statements in relation to the OAG's purported "investigation of actual or possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law." *See* CR.62. The Demands did not state what misrepresentations were being investigated or even whether PFLAG was a target of that investigation. *See id.* They made no reference to medical billing or insurance fraud, which OAG would later rely on as the basis for its investigation.

The Demands required PFLAG to provide information, documents, communications, and statements in response on or before Monday, February 26, 2024. CR.60. On February 20, 2024, OAG granted a one-week extension for PFLAG to provide information, documents, communications, and statements in response to the Demands up to and including Monday, March 4, 2024. *See* CR.91-96.

### D. OAG changes its basis for the investigation.

OAG's position on why it issued the Demands and the basis of its investigation changed over the course of the litigation. The Demands described the "an investigation of actual or possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law." CR.60. But in public statements, OAG claimed it was holding PFLAG "accountable" for its "effort to hide incriminating documents" related to fraud by Texas entities or violations of SB14. *See* 3.RR.79-80. Then, at the merits trial, OAG admitted that Mr. Bond's affidavit related to activity before SB14 went into effect, and so instead claimed that PFLAG might have knowledge of "a potential of future fraudulent activity." 2.RR.37. The trial court determined, and OAG now represents to this Court, that OAG's investigation was about "billing practices" and out-of-state providers. Appellants' App'x Tab A at 7; Appellant Br. at 4, 29, 32-33.

### E. The Demands are part of a pattern by the OAG to use its powers to target disfavored groups in Texas.

OAG did not issue the Demands to PFLAG on a blank slate, but rather as part of an intense focus on organizations who support people or causes opposed by the Attorney General and his office, including both transgender people and immigrants. OAG has specifically identified PFLAG as "[a] 'transgender' advocacy group," 3.RR.79-80, and OAG has consistently sought identifying information about any

person who is transgender in Texas or minors seeking access to gender-affirming medical care, even in jurisdictions where it remains legal. For example, in 2022, the OAG asked the Texas Department of Public Safety to compile a list of individuals who had changed their gender on their Texas driver's licenses and other department records during the past two years. *See* 3.RR.79-80. OAG has also issued CIDs and DSWS to entities that provide gender-affirming medical care, including entities outside of Texas. *See, e.g.*, *Seattle Child.'s Hosp. v. Off. of the Att'y Gen.*, Cause No. GN-23-008855 (in the 98th District Court of Travis County, Texas); *see also* 3.RR.812-14; 3.RR.816-19; 3.RR.821-23.

Indeed, OAG is increasingly relying on novel legal theories and tools to prevent disfavored organizations from operating in Texas. OAG has argued in multiple cases that an organization's exercise of its right to judicial review of requests from the OAG disqualifies that organization from doing business in Texas. In *Seattle Children's Hospital*, the plaintiff brought suit for judicial review of a CID and DSWS that sought information related to the provision of gender-affirming medical care. 3.RR.722-46. The suit was filed before the compliance date listed on the demands and asserted a number of facially plausible challenges to the validity of the CID, including that because it did not provide care in Texas, Seattle Children's was not subject to the jurisdiction of the OAG, that production of the requested information would have violated a Washington law and a court order on based on

that law, and that the investigation was not a proper exercise of the Attorney General's authority to protect Texas consumers under the DTPA. *Id.*

In response, on February 8, 2024, OAG sought leave to file a quo warranto counterclaim to revoke Seattle Children's registration to do business in Texas, alleging that by seeking judicial review of the demands, as explicitly permitted under the DTPA, Seattle Children's had performed an act that "forfeited its rights to transact business in Texas," citing the Civil Practice & Remedies Code 66.001 and Tex. Bus. Orgs. Code 12.155. 3.RR.774, 784-85 ("Seattle Children's initiated this proceeding … on December 7, 2023. In taking this action, Seattle Children's categorically refused to provide [a] single document or piece of information lawfully sought by the Attorney General in the Demands."). OAG also boldly asserted that exercising the right to judicial review of the demands was a termination-worthy offense, regardless of whether or not the demands were proper: "This conclusion holds true even if the Court sustains Seattle Children's special appearance or determines that the Demands suffer from substantive flaws. The law does not afford foreign corporations registered in Texas, such as Seattle Children's, the right to avoid compliance with and obstruct valid investigatory demands based on challenge to jurisdiction or premature dispute over the investigation's subject matter." 3.RR.785.

Both the specifics of the Demands at issue in this case and this broader context informed PFLAG's decision to bring the instant challenge.

**F. PFLAG petitions for injunctive relief and to set aside the Demands.**

On February 28, 2024, PFLAG filed an Original Verified Petition to Set Aside Civil Investigative Demands, for Declaratory Judgment, and Application for a Temporary Restraining Order and Temporary and Permanent Injunctive Relief. CR.6-55. On March 1, 2024, District Court Judge Maria Cantú Hexsel entered an Order Granting Plaintiff's Application for a Temporary Restraining Order ("TRO"), finding that it "clearly appear[ed] to the Court that unless the Defendants [were] immediately restrained from abusing the Deceptive Trade Practices Act by enforcing or otherwise requiring PFLAG to respond" to the Demands, PFLAG and its members would face "immediate and irreparable injury, loss, or damage." CR.121-22. The Court's Order set a hearing to show cause for March 25, 2024. Because the TRO originally expired on March 14, 2024, two weeks from the date it was issued, PFLAG received an extension of the TRO until March 29, 2024. CR.138-39.

As stated in OAG's brief, Appellants' Br. at 8-9, Appellants drafted modified demands that were attached to multiple filings. However, OAG never served the modified Demands on PFLAG, nor did they set a hearing or receive a ruling on a request for leave to do so. Appellants filed a Motion to Modify and Clarify the TRO on March 19, 2024. CR.140. That motion was not set or ruled on by the trial court.

Shortly thereafter, OAG filed a Plea to the Jurisdiction on March 22, 2024. CR.224. The Plea to the Jurisdiction likewise attached as exhibits the modified Demands. *See* CR.245-328. OAG never set the plea to the jurisdiction for a hearing and affirmatively represented to the court at trial that they were no longer pursuing the arguments in that motion. *See* CR.749-750; 2.RR.16:5-17:10; Appellants' App'x Tab A at 9.

### G. The trial court entered a temporary injunction in PFLAG's favor.

The trial court held a hearing to show cause on PFLAG's application for a temporary injunction on March 25, 2024. OAG attempted to have the Court address its Motion to Modify and Clarify the TRO, raising the proposed modified Demands as part of its opening argument. CR.745-50. The Court directed OAG to address the proposed modifications as part of its response to PFLAG's application for a temporary injunction. CR.749.[5]

The trial court then heard testimony from Aaron Ridings, Executive Vice President of PFLAG, addressing the nature of PFLAG's work and underscoring the impact the Demands have had on PFLAG and its members. Mx. Ridings testified that PFLAG's efforts center on support, education, and advocacy, with the core of

[5] Appellants also brought to the trial court's attention that it had filed a plea to the jurisdiction, but acknowledged that it had not been properly set. Appellants raised no objection when the trial court informed it that the plea to the jurisdiction would not be heard as a separate motion during the hearing. CR. 749-50.

those services and programs being "peer-to-peer support groups for parents and families of LGBTQ+ children." CR.760. Mx. Ridings described chapter meetings as safe, confidential spaces where parents and family members share deeply personal information as they endeavor to understand and support their children's LGBTQ+ identities. CR.760, 766. They addressed the ways receiving the Demands had already chilled the activities of PFLAG members, with members expressing fear that anything they said would be turned over to OAG, chapter leaders changing the ways they conducted meetings and what forms of communication they used, reluctance to take on new initiatives or partnerships that might put other vulnerable people on OAG's radar, and a decrease in participation in meetings. CR.773-75. The OAG did not present any evidence at the hearing as to the subject matter of the investigation in connection with which the Demands were issued or the relationship between the investigation and the information sought from PFLAG.

Having considered this testimony and the parties' arguments, the trial court entered an Order Granting Plaintiff's Application for a Temporary Injunction ("TI"). CR.337-41. The Court found that unless OAG was "immediately restrained from enforcing the DTPA against PFLAG or otherwise requiring PFLAG to provide the information and documents listed in" the Demands, "immediate and irreparable injury, loss, or damage will result to PFLAG and its members." CR.338-39. The Court found that the injuries to PFLAG and its members included "being subjected

to unlawful and *ultra vires* requests for information and documents that exceed the Defendants' authority under the DTPA; harm to the ability of PFLAG and its members to exercise their rights of free speech and association under the First Amendment; harm to the ability of PFLAG and its members to be secure against unreasonable searches under the Fourth Amendment; harm to the ability of PFLAG and its members to avail themselves of the courts when their constitutional rights are threatened; and gross invasions of both PFLAG's and its members' privacy in an attempt to bypass discovery stays entered in both *Loe v. Texas* and *PFLAG v. Abbott.*" CR.339.

The Court further found that these injuries could not be remedied by an adequate remedy at law, particularly in light of OAG's efforts to "continue seeking much of the same information, even if through modified demands." CR.339. Therefore, the TI extended the return dates for the Demands until the conclusion of the litigation and enjoined and restrained OAG from taking any adverse action in relation to the Demands, including demanding information or documents from PFLAG "that would reveal the identities or private communications of PFLAG." CR.340. The Court scheduled a trial on the merits for June 10, 2024. CR.340.

### H. OAG filed a notice of appeal and counterclaim to enforce the Demands.

On April 12, 2024, OAG filed a Notice of Accelerated Appeal, notifying the trial court of its accelerated interlocutory appeal to the Third Court of Appeals,

seeking reversal of the temporary injunction. CR.374-78. Less than two hours later, OAG filed a Counterclaim for Enforcement of Demand for Sworn Written Statement and Civil Investigative Demand ("Counterclaim"). *See* CR.381-392.[6] OAG attached to its Counterclaim modified Demands. These modified Demands did not seek additional information from PFLAG, but rather narrowed the information sought in the original Demands. While OAG claims that the temporary injunction blocked them from serving the modified Demands on PFLAG, the TI's admonishment against "taking any adverse action in relation to the Civil Investigative Demand" would not have barred them from narrowing the existing requests. OAG then attempted to set their Counterclaim for hearing on May, 8, 2024. Concluding that the court had no actual motion before it and recognizing OAG's attempt to obtain a merits ruling without any consideration of PFLAG's underlying petition, the District Court declined to grant any relief, reiterating that the case was set for trial on the merits on June 10, 2024. Appellee's App'x Ex. A at 14:18-17:14; CR.590.

On May 17, 2024, OAG filed a "Protective Motion for Summary Judgment," seeking judgment granting its Counterclaim. CR.591-96. However, OAG failed to set the motion for hearing and opposed PFLAG's efforts to do so, despite its

[6] Though initially filed as a "motion to enforce," Appellant corrected the styling of this filing to reflect its intended purpose as a counterclaim on Apr. 15, 2024. *See* CR.381-92.

insistence that the case should be dealt with quickly and summarily. PFLAG also filed a motion for summary judgment on May 20, 2024. *See* CR.651-91. OAG resisted any efforts to have the case decided by either summary judgement or trial, insisting that an "expedited proceeding" was more appropriate. Despite their claimed entitlement to such a proceeding, OAG never described what that proceeding looked like, nor did they identify any basis for such a proceeding in either the Texas Rules of Civil Procedure or the DTPA.

Unable to set a hearing on the Motions for Summary Judgment filed by each side, the case proceeded to trial.

### I. June 10, 2024 Trial

A bench trial before District Judge Amy Clark Meachum was held on June 10, 2024. At that trial, the Court heard testimony from Mr. Bond for PFLAG and Mr. Samuel Weeks, a former investigator for OAG. Mr. Bond testified that his statements in the *Loe* affidavit did not refer to any illegal gender-affirming medical care for transgender minors, and that his statements, made before the effective date of SB14, related to medical care while it was legal but increasingly difficult to find and to PFLAG's attempt to keep the law from going into effect so that care could continue to be provided legally in Texas. 2.RR.62:18-67:14; Appellants' App'x Tab A at 9. Mr. Bond explicitly stated that he has never discussed with anyone, let alone any PFLAG member, how to continue to obtain gender-affirming medical care for

minors in Texas after SB14's effective date and was not aware of any healthcare providers that would provide gender-affirming medical care to minors in Texas after SB14's effective date. 2.RR.65:2-67:14. Indeed, the Court found that "Mr. Bond's references to 'contingency plans,' 'alternative avenues to maintain care,' and 'affirming general practitioners' referred solely to families moving out of state either entirely or partially, accessing medically necessary care outside of the state of Texas, or to primary care doctors continuing to provide gender-affirming medical care after the passage of SB14, but before its effective date." Appellants' App'x Tab A at 7-8. Therefore, his statements did not "describe efforts to use deception to obtain or offer care." *Id.* at 8. Mr. Bond also testified that PFLAG does not provide medical care, does not bill insurance providers, and does not provide guidance or resources for medical professionals or anyone else as to how they should bill insurance providers. 2.RR.47:19-48:18. PFLAG is not a medical provider and does not provide goods or services related to medical care. *Id.*

The testimony of Mr. Weeks, a former investigator in the Consumer Protection Division of the OAG who signed the affidavit in support of the Demands, failed to justify the legitimacy of OAG's investigation. *See* Appellants' App'x Tab A at 8-9. He did not have knowledge of the Demands, of *Loe* or Mr. Bond's affidavit in that case, or even that his own affidavit was used to support OAG's response to PFLAG's petition. *See id.*; 2.RR.105:7-106:7, 134:7-135:23, 139:1-140:7, 142:1-15.

Further, his knowledge of the investigation upon which his affidavit was based was "administrative" and "rudimentary." 2.RR.136:11-23. The Court concluded that OAG failed to produce evidence, "through Mr. Weeks or otherwise," to suggest that PFLAG "likely possessed information relevant to [OAG's] investigation into potential fraud related to insurance billing practices," or as to why OAG "sought the relevant information from third-party PFLAG rather than through another source." Appellants' App'x Tab A at 8-9. OAG's purported evidence that providers might be illegally prescribing hormones to minors in Texas—online statements from two providers that did not relate to PFLAG or Texas—also did not establish an adequate basis for the Demands. *Id.* at 8.

At the June 10, 2024 trial, all parties acknowledged that they were given a full opportunity to make their record. *Id.* at 7; 2.RR.158:10-16. OAG's record included the modified Civil Investigative Demand; though the modified CID was never served on PFLAG, the Court fully considered OAG's proposed modifications. *See* Appellants' App'x Tab A at 12-17; 2.RR.85:17-86:8; 3.RR.960-992.

### J. PFLAG produced documents pursuant to the modified CID.

On September 13, 2024, the trial court issued a letter ruling modifying the CID in accordance with the modifications set forth in PFLAG's Proposed Final Judgment and ordered PFLAG to produce documents responsive to the modified CID by October 11, 2024. *See* CR.1555-556; *see* Appellants' App'x Tab A at 12-

17.[7] Specifically, PFLAG was required to produce: (1) non-privileged documents sent to/from Brian Bond between March 8, 2023–July 11, 2023 explaining "contingency plans" or "alternative avenues to maintain care" as the phrases were used in his affidavit; (2) any list of providers offering gender-affirming care to minors after September 1, 2023 that PFLAG created, maintained, or distributed; and (3) governing documents and bylaws of PFLAG and PFLAG Texas chapters in PFLAG's possession. *Id.*

PFLAG was not required to produce documents responsive to other requests, including requests for all documents and communications forming the basis of any statement in the affidavit and contractual and charter agreements between PFLAG's Texas and national chapters. The table below summarizes the trial court's holdings regarding specific requests contained in the CID:

| Request No. | Request | Court's Finding | Court's Order |
|---|---|---|---|
| Request 1 | All documents/ communications forming the basis of Brian K. Bond's affidavit. | Overbroad, vague and ambiguous, irrelevant, harassing, and a fishing expedition. | PFLAG is not required to respond. |
| Request 2 | Communications about "contingency plans" or "alternative | Overbroad, vague and ambiguous, irrelevant, and harassing. | PFLAG ordered to provide non-privileged documents sent to/from Brian Bond between |

[7] The trial court's rulings on the CID requests in its March 10, 2025 Final Declaratory Judgment and Order mirror the modifications set forth in PFLAG's Proposed Final Judgment. *See* Appellants' App'x Tab A at 1.

| | | | |
|---|---|---|---|
| | avenues to maintain care." | | March 8, 2023 – July 11, 2023 explaining "contingency plans" or "alternative avenues to maintain care." |
| Request 3 | Lists or referrals of pediatric/adolescent healthcare providers in Texas. | Overbroad, vague, irrelevant, and a fishing expedition. | PFLAG ordered to provide any list of providers offering gender-affirming care to minors after September 1, 2023 that it created, maintained, or distributed. |
| Request 4 | Communications involving Brian K. Bond about the affidavit. | Irrelevant, harassing, and a fishing expedition. | PFLAG is not required to respond. |
| Request 5 | Documents supporting Bond's statement about families seeking alternative care. | Irrelevant, harassing, and a fishing expedition. | PFLAG is not required to respond. |
| Request 6 | Communications referencing individuals/entities in EXHIBIT B2. | Overbroad, irrelevant, and a fishing expedition. | PFLAG is not required to respond.[8] |
| Request 7 | Contractual and charter agreements between PFLAG's Texas and national chapters. | Irrelevant and a fishing expedition. | PFLAG is not required to respond. |
| Request 8 | Governing documents and bylaws of PFLAG's Texas and national chapters. | Irrelevant and a fishing expedition. | PFLAG was ordered to provide governing documents and bylaws in its possession. |

[8] Mr. Bond testified at trial that PFLAG did not have any such communications. 2.RR.72:7-73:4.

*See* Appellants' App'x Tab A at 12-16.

The trial court's order also incorporated the modifications OAG sought to make in its proposed second CID—including by allowing PFLAG to redact certain documents, anonymize identifying information, and avoid producing membership information. The trial court also scheduled a hearing during the week of October 14, 2024, presumably to address outstanding issues not resolved by the Letter Ruling, including with regard to the DSWS and OAG's counterclaim, and to give the OAG an opportunity to identify any deficiencies in PFLAG's production. CR.1555.

PFLAG produced documents responsive to the modified CID on October 11, 2024, Appellants' App'x Tab A at 9, and OAG never complained of any deficiency in PFLAG's production of documents responsive to the modified Demands per the trial court's order.

Instead, OAG appealed the Letter Ruling directly to this Court on October 10, 2024, despite the fact that the Letter Ruling was not final and addressed only a portion of the claims and issues before the court. Appellee's App'x Ex. B; *see* Appellants' App'x Tab A at 3. PFLAG disputed this Court's jurisdiction. Appellee's App'x Ex. C. On February 7, 2025, this Court abated the appeal, noting that "the alleged jurisdictional defect may be cured by the trial court's entry of a final order" and ordered the trial court to enter a final order on OAG's Counterclaim by March 10, 2025. Appellee's App'x Ex. D. The trial court then entered its Final Declaratory

Judgment and Order on March 10, 2025, which ordered the modifications to the requests as described above, extended the return date for the CID, set aside the DSWS, and denied OAG's counterclaim, finding that PFLAG was "required to comply with the modified CID and has not failed to comply." Appellants' App'x Tab A at 1, 12-17. Because PFLAG's obligation to respond to the Demands had been temporarily suspended by the District Court and Court of Appeals, the only ruling that obligated it to respond was the District Court's September 13, 2024 Letter Ruling. *Id.* at 9, 11. By producing responsive documents in accordance with that ruling, a response with which OAG never took issue, PFLAG fulfilled its obligation to respond to the Demands. *Id.* Upon notice that the District Court had entered final judgment, this Court subsequently lifted the abatement order and reinstated OAG's direct appeal on April 4, 2025. Apr. 4, 2025 Letter Requesting Briefing on Merits, Appellee's App'x Ex. E.

## SUMMARY OF ARGUMENT

There is nothing left in this case for this Court to adjudicate on the substance of PFLAG's compliance with the modified CID. As to the procedure by which OAG obtained PFLAG's compliance, OAG's dissatisfaction with the DTPA's statutory dispute mechanism is a complaint for the Texas Legislature, not this Court. And the permanent injunction entered by the trial court does nothing more than ensure the finality of the proceedings with respect to these specific Demands.

**First,** on the substance of the CID, PFLAG has already complied with the modified CID by producing all documents responsive to the modified requests. OAG does not take issue with PFLAG's production or with the trial court's finding that PFLAG complied with the CID as modified. Nor do they argue that any of the specific requests that the trial court omitted from the modified CID were in fact proper or that the trial court committed an abuse of discretion when it ruled that those requests were not relevant to the OAG's investigation or that they were overly burdensome in this context.

Nor was there any abuse of the trial court's discretion. The trial court's findings regarding the discoverability of each of the requests contained within the CID did not constitute an abuse of discretion because the trial court properly found good cause to modify the Demands. The DTPA limits the proper scope of CIDs to information that is discoverable under the Texas Rules of Civil Procedure. Tex. Bus. & Com. Code Ann. § 15.10 (d)(1). Requests that exceed that authority do not meet the statutory requirements and are not authorized by the statute. The trial court's findings regarding the constitutional and statutory constraints on the CIDs similarly provided good cause for their modification.

Even though there was no abuse of discretion and OAG does not argue that it failed to receive information to which it was entitled under the DTPA, OAG urges this Court to adopt, for the first time, standards used in federal courts for assessing

good cause—including the "reasonable relevance" test employed by the Fifth Circuit to evaluate the propriety of CIDs from the Consumer Financial Protection Division or the requirements established by the U.S. Supreme Court for considering whether to enforce a federal administrative subpoena. But the relevance of federal law to the application of the DTPA is unnecessary to resolve this case. Under any standard that OAG urges, it is not entitled to any information beyond what the district court already granted. Regardless of the standard for good cause in this context, OAG did not meet the statutory requirements for each of the Demands, which established good cause for the district court to modify them. Appellants' Br. at 24.

**Second,** Appellants' complaint that the process by which the Demands were assessed—that is, the procedure required by the DTPA itself—was too long and too slow is a grievance for the Texas Legislature, not this Court. OAG argues, without a single citation, that the procedure by which this case was decided "violated OAG's right to a quick adjudication on its pre-investigative administrative subpoena." Appellants' Br. at 19. Attempting to dispense entirely with the Texas Rules of Civil Procedure, OAG claims that the DTPA authorizes CID recipients only "to challenge [a CID] via 'a petition to … modify or set aside the demand,' *not* to initiate a traditional lawsuit." *Id.* at 15. This argument contravenes the plain text of the statute, since a "petition" is the same document that initiates a "traditional lawsuit." Tex. R. Civ. Pro. Rule 22 ("A civil suit in the district or county court shall be commenced

by a petition filed in the office of the clerk."). The OAG refers favorably to other jurisdictions that have implemented different procedures for evaluating CIDs issued in different contexts. There are perhaps good reasons for establishing expedited mechanisms for judicial review of CIDs. But neither the DTPA nor the Texas Rules of Civil Procedure provide for such proceedings, and, as such, litigants and trial courts must do their best with the tools they have, as was done here. Even if this Court were to adopt a new procedure for evaluating these instruments and required trial courts to prioritize DTPA claims over other cases, it would not support remand here. More process cannot cure the OAG's complaint that the process that has occurred so far has already taken too long.

**Third,** there is no abuse of discretion in the trial court's permanent injunction, which merely enjoins OAG from attempting to seek a quo warranto action for PFLAG's alleged noncompliance with the Demands or otherwise retaliating against PFLAG for seeking pre-compliance judicial review of the Demands themselves. OAG's assertion that it is enjoined "from pursuing legitimate other investigatory avenues against PFLAG and its Texas chapters in perpetuity," Appellant Br. at 36, is based on an overblown and erroneous reading of the injunction, which prohibits **only** adverse action against PFLAG "*relating to the Demands.*" Appellants' App'x Tab A at 19 (emphasis added). The trial court's injunction is thus narrowly drawn to provide relief to PFLAG only for its specific claims in this case. And, given

OAG's aggressive actions seeking to strip other nonprofits of their ability to operate in Texas, PFLAG's request for modest protection from retaliation relating to these specific Demands is well-founded.

## STANDARD OF REVIEW

The "forward-looking decision" to grant or deny a permanent injunction is ordinarily within the "sound discretion" of the trial court, and its action will be reversed "only when a clear abuse of that discretion is shown." *Huynh v. Blanchard*, 694 S.W.3d 648, 673 (Tex. 2024). A trial court has not abused its discretion unless it has acted arbitrarily or unreasonably or has misapplied the law to the established facts of the case. *Huynh*, 282 S.W.3d at 674.

This Court's jurisdiction on direct appeal is "constitutionally limited to questions of law." *Perry v. Del Rio*, 67 S.W.3d 85, 95 (Tex. 2001). A trial court's rulings on relevance and discoverability are reviewed for abuse of discretion. *Lion Copolymer Holdings, LLC v. Lion Polymers, LLC*, 614 S.W.3d 729, 735 (Tex. 2020) (per curiam) (concluding that trial court's admission of deposition testimony, including relevancy determination, was not an abuse of discretion). Discovery rulings are reviewed under the abuse of discretion standard. *See Gen. Tire, Inc. v. Kepple*, 970 S.W.2d 520, 526 (Tex. 1998).

## ARGUMENT

### I. The trial court did not abuse its discretion in modifying the CID.

The trial court did not abuse its discretion in modifying the CID and then denying OAG's petition to enforce once PFLAG complied with the modified CID. The DTPA allows for a recipient of a CID to file "a petition to extend the return date for, or to modify or set aside the demand, stating good cause[.]" Tex. Bus. & Com. Code § 17.61(g). The DTPA does not define the term "good cause." The term good cause does not have a universal definition, but generally implies a certain amount of discretion for the reviewing court. It is certainly not consistent with the deferential standards advocated by Appellants. "'Good cause' depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer or court to which the decision is committed." *Wilson v. Morris*, 369 S.W.2d 402, 407 (Mo. 1963) (citation omitted); *see also Buttinger v. Ely & Walker Dry Goods Co.*, 42 S.W.2d 982, 984 (Mo. App. 1931) ("The term 'good cause' has no fixed meaning, but must depend upon the circumstances of each case to be determined by the sound discretion of the court." Citing Words and Phrases First Series, vol. 4, page 3113 (additional citations omitted). In other circumstances, this Court has acknowledged that good cause is a standard easily met: when discussing the meaning of the near-limitations exception for applicable to the deadline for filing a certificate of merit under Tex. Civ. Prac. Rem. C. § 150.002(c), this Court noted

that if the exception were read to have no limitations "other than a court's determination of good cause, allowing extensions 'as justice requires,'" a near-limitations filing would always meet the standard. *Crosstex Energy Services, L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 391 (Tex. 2014)

At a minimum, however, given the broader context of the DTPA, good cause includes avoiding statutory or constitutional infirmities, or violations of the Texas Rules of Civil Procedure. *See TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011) ("Undefined terms in a statute are typically given their ordinary meaning, but if a different or more precise definition is apparent from the term's use in the context of the statute, we apply that meaning."). That is precisely the balance struck by the trial court, which required PFLAG to produce relevant, non-privileged information pertinent to OAG's investigation into alleged insurance fraud, but not information that was protected from discovery or otherwise non-discoverable under the DTPA, the Texas Rules of Civil Procedure, the U.S. Constitution, or the Texas Constitution. *See* Appellants' App'x Tab A at 11-16.

### A. The Demands sought materials not appropriately discoverable under the Texas Rules of Civil Procedure.

The trial court did not abuse its discretion by modifying the CID to exclude materials that were not discoverable. The DTPA sets out certain requirements about the form of the CID, including that it must "state the statute and section under which the alleged violation is being investigated, and the general subject matter of the

investigation" and must also describe the documents to be produced with "reasonable specificity." Tex. Bus. & Com. Code § 17.61(b)(1)-(2). It must also list a return date and identify the person authorized by the consumer protection division to receive the documents. *Id.* § 17.61(b)(3)-(4). The DTPA also limits the permissible scope of CIDs to requiring the production of documents "which would be discoverable under the Texas Rules of Civil Procedure." *Id.* § 17.61(c).

### 1. The trial court appropriately modified the CID to include only information relevant to OAG's investigation.

Because the DTPA limits the information that can be sought by CIDs to "documentary material which would be discoverable under the Texas Rules of Civil Procedure," Tex. Bus. & Com. Code § 17.61(c), the information sought must be relevant. Tex. R. Civ. P. 192.3(a). To that end, CIDs must identify "the statute and section of the DTPA under which the alleged violation is being investigated," along with "the general subject matter of the investigation." Tex. Bus. & Com. Code § 17.61(b)(1). The original Demands stated only that they were "relevant to the subject matter of an investigation regarding possible violations of DTPA § 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures" or "relevant to the subject matter of an investigation of actual or possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law." *See* CR.60, 77. These general references did not

suffice to apprise PFLAG of the nature of the investigations or enable PFLAG to assess the relevance of the Demands to those investigations, and the trial court could have set aside the Demands on that basis alone.[9] Though "[w]hat is relevant to the subject matter is to be broadly construed," "[t]hese liberal bounds, however, have limits." *In re Nat'l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016) (quotation omitted). OAG's authority to issue the Demands "is a creature of statute," *id.* at 458, and it is obligated to comply with those statutes "as written" and "refrain from rewriting text that lawmakers chose," *Jaster v. Comet II Const., Inc.*, 438 S.W.3d 556, 562 (Tex. 2014) (quotation omitted). Nor did OAG cure that deficiency in its proposed modifications. *Compare* CR.394-430 *with* CR.432-63.

Nonetheless, OAG eventually clarified during the course of the proceedings below that its investigation pertained to medical providers allegedly engaging in insurance fraud.[10] *See* CR.741; 2.RR.39:16-20. Relying on that refinement, the trial

---

[9] That would be so even under the federal standards the OAG proposes. A CID recipient must be able to assess or challenge Defendants' authority to have issued the Demands in the first instance and to determine whether the information and documents they seek can meet a relevance standard. *See Consumer Fin. Prot. Bureau v. Source for Pub. Data, L.P.*, 903 F.3d 456, 459 (5th Cir. 2018). ("Because the CID…fails to identify the conduct under investigation the provision of law at issue, we cannot review it under our 'reasonable relevance' standard. And if a court cannot exercise meaningful judicial review, a CID recipient has no opportunity to challenge an agency's investigatory authority."). Because the Demands' validity is measured by the purposes stated therein, the sufficiency of the statement of their purpose "is an important statutory requirement." *Id.* at 459-60 (quotation omitted).

[10] While Appellants have since stated that the Demands related to investigating insurance fraud, on their face, the Demands are broadly worded to pertain to "issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures." But as the Texas Supreme Court clarified over 30 years ago, the DTPA does not authorize claims based "on a breach of the accepted standard of medical care." *Sorokolit v. Rhodes*, 889 S.W.2d 239, 242 (Tex. 1994).

court did not err in modifying the CID to exclude requests that had no connection to an investigation of "misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures," as set forth in the text of the Demands, or regarding medical providers allegedly engaging in insurance fraud. Requests that went outside those bounds were not reasonably calculated to lead to admissible evidence and would have constituted an impermissible "fishing expedition." *See* Tex. R. Civ. P. 192.3(a); *In re Am. Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998) (orig. proceeding) (denying the enforceability of overbroad discovery requests and emphasizing that discovery must be particularized).

The trial court did not abuse its discretion when it modified the CIDs to require PFLAG to produce only information relevant to the subject of the OAG's purported investigation.

### 2. The trial court appropriately modified the CID to exclude requests that were overly burdensome to PFLAG as a third party

The trial court did not abuse its discretion in modifying the CID to exclude overbroad and burdensome requests, especially in light of the fact that PFLAG was

---

Multiple state courts have similarly interpreted their consumer protection laws like the DTPA. *See*, *e.g.*, *Brookins v. Mote*, 292 P.3d 347, 360 (Mont. 2012); *Henderson v. Gandy*, 623 S.E.2d 465, 468 (Ga. 2005); *Darviris v. Petros*, 812 N.E.2d 1188, 1193 (Mass. 2004); *Haynes v. Yale-New Haven Hosp.*, 699 A.2d 964, 973 (Conn. 1997); *Nelson v. Ho*, 564 N.W.2d 482, 486 (Mich. 1997). As such, the original Demands exceeded the scope of the DTPA.

not the subject of OAG's investigation, but rather a third party.[11] Under the Texas Rules of Civil Procedure, discovery from third parties is more limited than that available from the parties themselves. *See, e.g.*, Tex. R. Civ. P. 197.1; Tex. R. Civ. P. 205.1; Tex. R. Civ. P. 176.7.

The OAG sent PFLAG the Demands based on Brian Bond's affidavit in *Loe v. Texas*, *see* CR.100, 383, 2.RR.37:9-21, but not because OAG thought PFLAG had done anything wrong. Rather, OAG hypothesized that the affidavit's mentions of PFLAG members making "contingency plans" and seeking "alternative avenues to maintain care" or "affirming general practitioners" after the passage of SB14 meant that PFLAG "almost certainly has knowledge" about fraud allegedly being perpetrated by medical providers, CR.742, or that they constitute an admission that PFLAG "has knowledge about this insurance fraud business [Defendants are] looking into." CR.747. OAG alleged that the use of these words "strongly suggests of actions to obtain or offer gender-transition care using deception." CR.383. Mr. Bond's testimony at the evidentiary hearing, which the trial court credited, revealed that none of those hypotheses were accurate. *See* 2.RR.62:18-67:14. Rather, those phrases referred to families' plans to "move or seek care out of state," the desire for "affirming general practitioners" in the event their primary specialists wind down

[11] Although OAG represented that PFLAG was not the target of the investigation, CR.99-101, 741-42, its public statements suggested the opposite. *See* 3.RR.79-80 ("The Attorney General will fight to hold this organization accountable.").

care or leave the state, and the realities of providers "cancell[ing] appointments" and "winding down medical care for gender dysphoria" in advance of SB14's effective date. *Id.*

In light of the evidence that the Demands were burdening a third party with discovery requests about insurance fraud that were better directed to actual medical providers, the trial court would have been on solid footing to set aside the Demands entirely. *See* Tex. R. Civ. P. 192.4; *see also In re McVane*, 44 F.3d 1127, 1138 (2d Cir. 1995) (where documents are sought from third parties, "the agency must make some showing of need for the material sought beyond its mere relevance to a proper investigation"). Instead, however, the trial court modified the CID to relevant, non-privileged information. The trial court did not abuse its discretion by taking into account PFLAG's status as a third party and the OAG's stated purpose of rooting out purported insurance fraud when modifying the Demands.

### 3. The trial court appropriately modified the CID to include protections for privilege and confidentiality recognized by the Texas Rules of Civil Procedure

The trial court did not abuse its discretion in modifying the Demands to allow for the kinds of protections that the Texas Rules of Civil Procedure provide, including the ability to challenge requests for privileged information, specific times to respond, the ability to seek protective orders, and the framework necessary to facilitate the assertion of and ruling on these protections and other objections. *See*

Tex. R. Civ. P. 190-215. The Demands included no such restraints and sought privileged and confidential materials with no ability to make redactions or objections. Such materials would have revealed the identities of PFLAG members, as well as attorney-client privileged communications regarding the preparation of Mr. Bond's affidavit in the *Loe v. Texas* case.

### B. The Trial Court Did Not Abuse Its Discretion In Finding Good Cause to Set Aside or Modify the CID that Would Run Afoul of Constitutional Protections.

Just as "good cause" to set aside or modify a CID under Tex. Bus. & Com. Code § 17.61(g) must include failing to abide by the DTPA itself or the Texas Rules of Civil Procedure, so too must it include instances where the requests run afoul of constitutional protections. Indeed, Art. I, § 29 of the Texas Constitution carves out of Appellants' broad authority to conduct investigations any action that would violate the Texas Bill of Rights. The trial court did not abuse its discretion when, in the interest of avoiding an unconstitutional result, it modified the Demands to exclude requests that would infringe PFLAG or its members' constitutional rights.[12]

[12] The canon of constitutional avoidance requires that, if a question can be resolved "on nonconstitutional grounds," it must be. *In re B.L.D.*, 113 S.W.3d 340, 349 (Tex. 2003). "This rule is not optional." *Phillips v. McNeill*, 635 S.W.3d 620, 630 (Tex. 2021). "[T]his canon of construction applies only when the statutory language is ambiguous." *Paxton v. Longoria*, 646 S.W.3d 532, 539 (Tex. 2022) (citing *Iancu v. Brunetti*, 139 S. Ct. 2294, 2301 (2019)).

### 1. Violations of PFLAG and Its Members' Free Speech, Association, Assembly, and Petition Rights Constitute Good Cause for Setting Aside or Modifying the Demands.

The original Demands would have required PFLAG to disclose member identities and chilled participation in PFLAG itself, in clear violation of longstanding First Amendment protections for private membership organizations, as well as those arising under Art. I, §§ 8 and 27 of the Texas Constitution. *See* Appellants' App'x Tab A at 11.[13] Constitutional freedoms of speech, association, and assembly include "immunity from state scrutiny of membership lists" because of their close relation to the "right of the members to pursue their lawful private interests privately and to associate freely with others." *NAACP v. Alabama*, 357 U.S. 449, 466 (1958). "[I]t is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters[.]" *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 375-76 (Tex. 1998) ("*BACALA*") (quoting *NAACP*, 357 U.S. at 460-61); *see also In re Maurer*, 15 S.W.3d 256, 260 (Tex. App.—Houston [14th Dist.] 2000, no pet.). The protection against disclosure of member

[13] Appellants implicitly acknowledged that the original CID was inconsistent with the protections of the First Amendment when they argue that "[n]one of the requested documents in the revised CID implicate the First Amendment." Appellants' Br. at 33. And while Appellants subsequently disclaimed seeking information that would reveal the identities of PFLAG members, CR.388, and agreed to permit redactions or anonymizations to the extent documents or information requested include information identifying members, CR.432-37, 450-54, their proposed modifications did not allow for withholding or redacting deeply personal communications or other information shared as part of PFLAG's core expressive activities.

information precludes even production requests that seek information about a particularized subset of members. *See Tilton v. Moye*, 869 S.W.2d 955, 956-58 (Tex. 1994) (reversing trial court order that church produce information about the subset of its congregation who "claim[ed] to have been healed of medical illnesses"). Compelled disclosure of a person's affiliation with groups engaged in advocacy or in speech the government disfavors is a restraint on that person's speech, association, and assembly rights.

Similarly, by seeking to expose the contents of communications shared among PFLAG members and participants in PFLAG programs, the Demands targeted the expressive purposes of PFLAG as an association. PFLAG chapters provide parents of transgender adolescents a safe space to share their experiences, ask questions, seek support, vent their frustrations, and figure out how to help their children navigate an increasingly hostile environment. CR.760-61, 766-769. Compelling disclosure of the deeply personal, sensitive topics shared in a space that is supposed to be safe and confidential has had, and would continue to have, a dramatic chilling effect on PFLAG and its members' ability to engage in expression freely and to assemble for their common good.

Indeed, PFLAG offered evidence that its members were already quite literally speaking and associating less freely after learning of the Demands. There was a marked decrease in physical participation in PFLAG meetings in Texas. CR.774-

75. Additionally, members in Texas were not communicating with each other or with PFLAG as they typically would, for fear of Appellant eventually being able to access their emails or text messages. CR.773. Since the Demands were issued, PFLAG members have also been reluctant to sign into meetings or bring new volunteers, and meeting locations are being changed to private locations rather than public ones, impeding people's ability to access meetings. CR.773-740. This is precisely the type of chilling effect the Texas Supreme Court recognized as cognizable harm in *BACALA*, 982 S.W.2d at 377.

### 2. Violations of PFLAG's Freedom from Unreasonable Search and Seizure Constitute Good Cause for Setting Aside or Modifying the Demands.

The original Demands and Appellants' proposed modifications also ran afoul of Article I, Section 9 of the Texas Constitution and the Fourth Amendment to the U.S. Constitution because they were an unreasonably broad fishing expedition and outside OAG's authority.

Article I, Section 9 and the Fourth Amendment protect against unreasonable searches and seizures. These parallel clauses "protect the same right to the same degree[.]" *Holder v. State*, 595 S.W.3d 691, 698 (Tex. Crim. App. 2020); *see also Schade v. Tex. Workers' Comp. Comm'n*, 150 S.W.3d 542, 550 (Tex. App.—Austin 2004, pet. denied) ("A plain reading and comparison of the language of the Fourth Amendment of the United States Constitution and our constitutional provision

reveals no substantive difference between the two."). Article I, Section 9 and the Fourth Amendment protect PFLAG and its members from law enforcement fishing expeditions, especially those predicated on legal activity. *See, e.g.*, *See v. City of Seattle*, 387 U.S. 541, 544 (1967); *United States v. Morton Salt Co*., 338 U.S. 632, 652-53 (1950); *FTC v. Am. Tobacco Co*., 264 U.S. 298, 305-06 (1924); *Major League Baseball v. Crist*., 331 F.3d 1177, 1187-88 (11th Cir. 2003).

The OAG "may not exercise its investigative and inquisitorial power without limit—the examination is 'unreasonable' and impermissible if it is overbroad, 'out of proportion to the end sought,' or if it is 'so unrelated to the matter properly under inquiry as to exceed the investigatory power.'" *United States v. Harrington*, 388 F.2d 520, 523 (2d Cir. 1968) (citations omitted) (cleaned up). Indeed, "judicial protection against the sweeping or irrelevant order is particularly appropriate in matters where the demand for records is directed not to the [target] but to a third party who may have had some dealing with the person under investigation." *Id*.

The Demands ran afoul of these constraints by exceeding Appellants' statutory authority under the DTPA, including by failing to describe the investigation with sufficient specificity, by investigating PFLAG despite it not providing goods and services, and by requesting materials that were not appropriately discoverable under the Texas Rules of Civil Procedure. Tex. Bus. & Com. Code §§ 17.46, 17.61. For example, they were not limited to information related to knowledge of medical

billing practices—as one might expect in an insurance fraud investigation—or knowledge of specific providers planning to evade SB14. Nor were they limited to information about the particular providers Appellants claimed to be investigating. CR.99. Rather, the Demands sought the identities and private communications of Texas families discussing their children's healthcare and other legal activities *months before SB14's effective date*. And they sought documents the State already had, including PFLAG's governing documents and bylaws, which have been introduced in both this litigation, *see* 3.RR.39-77, and in prior litigation in which Defendants have served as counsel. *See PFLAG v. Abbott*, D-1-GN-22-002569, TI Exs. P22, P23 (Jul. 6, 2022). Each of these aspects of the Demands raises constitutional concerns. *See Schade*, 150 S.W.3d at 551 (citing *Sinclair v. Sav. & Loan Comm'r*, 696 S.W.2d 142 (Tex. App.—Dallas 1985, writ ref'd n.r.e)). This is particularly the case given the overlap of these constitutional safeguards against unreasonable searches and seizures with free speech protections. *See Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978).

The DTPA is clear that CIDs may be set aside for "good cause." Tex. Bus. & Com. Code § 17.61(g). The trial court did not abuse its discretion by modifying the CID to comport with the DTPA, the Texas Rules of Civil Procedure, or constitutional protections.

### C. The Trial Court Did Not Abuse Its Discretion in Modifying the CID Because the CID Did Not Comply With Other DTPA Requirements.

The trial court did not err when it modified the CID based on its failure to comply with other DTPA requirements, including who is the appropriate recipient of such investigative process.[14] PFLAG was not an appropriate recipient of the Demands because it does not engage in trade or commerce or sell or lease goods or services that relate in any way to the Demands. PFLAG is not a medical provider, does not provide goods or services related to medical care, has never billed an insurance company, and does not offer resources to medical providers about billing. 2.RR.47-48. PFLAG's lack of transaction in goods or services takes it outside of the DTPA. *See Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644, 649-50 (Tex. 1996). The DTPA is a consumer protection law, and both its articulated purpose and the scope of its explicit prohibitions make clear that it is not intended to regulate organizations like PFLAG that engage in advocacy and support for their members. *See* Tex. Bus. & Com. Code § 17.44 (purpose); § 17.46 (prohibitions); *see also Riverside Nat. Bank v. Lewis*, 603 S.W.2d 169, 173 (Tex. 1980) ("the scope of 'trade' and 'commerce' defines the acts that are illegal" under the DTPA); *Vinson & Elkins v. Moran*, 946 S.W.2d 381, 407 (Tex. App.—Houston 1997, writ dism'd by agr.). The trial court would not have abused its discretion if, as with the DSWS, it had set aside the CID

[14] As set forth in footnote 1, PFLAG was not the proper recipient of the DSWS, either.

for this statutory failure. Certainly, it did not abuse its discretion when modifying the CID itself to avoid intruding on PFLAG's advocacy and support for its members, which is not regulated by the DTPA.

### D. The Demands Fall Short of the (Inapplicable) Federal Standards for CIDs

There is no basis in Texas law for applying the federal standards advocated by OAG to assess the enforceability of a Civil Investigative Demand. *See* Appellants' App'x Tab A at 10. As acknowledged in one of the cases on which the OAG relies, "[a]n administrative agency's authority to issue subpoenas is a creature of statute." *CFPB v. Source for Pub. Data, L.P.*, 903 F.3d 456, 458 (5th Cir. 2018). The authority to issue administrative subpoenas and CIDs varies by statute, as do the requirements for their issuance.

But even if the Court were to apply the frameworks articulated in the federal administrative subpoena cases cited by OAG, Appellants still failed to meet their burden to show that the CIDs were conducted pursuant to a legitimate purpose; that the inquiry is relevant to the purpose; that the administrative steps required by the DTPA have been followed; or that the information sought is not already within the agency's possession. *See In re E.E.O.C.*, 709 F.2d 392, 400 (5th Cir. 1983) (citing *United States v. Powell*, 379 U.S. 48, 57-58 (1964)). Under the standard advocated by Appellants, they must first provide evidence sufficient to make this prima facia

showing before the burden shifts to PFLAG to show why the CID must be set aside or modified.

The OAG's only evidence for the basis of its investigation and the CIDs issued to PFLAG came through the affidavit of Mr. Weeks attached to the OAG's response to Appellee's Petition for a TRO, CR.1465-67, and Mr. Weeks's testimony at the merits trial. Mr. Weeks testified that he did not have a hand in writing the CID, that his knowledge was rudimentary and administrative, and that he reviewed Secretary of State filings and had not seen the exhibits attached to his affidavit until the day his affidavit was placed in front of him to sign. Mr. Weeks had no idea what the genesis of this investigation was. He had never seen the affidavit from Mr. Bond that formed the basis of OAG's investigation and had no idea what the *Loe v. Texas* litigation was. He had never seen the paragraph from that affidavit with the words on which the Attorney General's office hangs its hat to suggest that PFLAG had actual knowledge of insurance fraud. *See* § H, *supra*.

Under any standard, Appellants have not carried their burden to establish the propriety of the Demands or that they are entitled to enforce any of them beyond what the district court modified. *See* Tex. R. Civ. P. 192.4; *see also In re McVane*, 44 F.3d 1127, 1138 (2d Cir. 1995).

## II. The Trial Court Followed the Proper Procedure.

OAG complains that the trial court should have implemented a different, more expedited procedure to evaluate the Demands, ignoring that such an expedited procedure does not exist under the DTPA or Texas Rules of Civil Procedure. PFLAG did not drag OAG into some convoluted proceeding of its own creation, nor did the trial court prolong the case. Rather, the DTPA dictates the mechanism by which PFLAG may seek relief from the Demands—by filing a petition in Travis County—and the OAG's aggressive position regarding the availability of a quo warranto action in the event that PFLAG failed to respond to the Demands without the protection of a court order necessitated emergency, interim injunctive relief, which required multiple hearings before the trial court.

The DTPA requires that a party seeking relief from civil investigative demands file a petition in court on an expedited basis. When a party receives a civil investigative demand under the DTPA, it "shall comply with the terms of the demand unless otherwise provided by a court order." Tex. Bus. & Com. Code § 17.61(h). A party who wishes to "modify or set aside the demand, stating good cause" must do so "[a]t any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter" by filing "a petition . . . in the district court in the county where the parties reside, or a district court of Travis County." Tex. Bus. & Com. Code § 17.61(g).

PFLAG complied with the DTPA's procedure by timely filing a petition in Travis County seeking an order setting aside or modifying the Demand. Once the petition is filed, the DTPA does not provide for it to be prioritized or expedited more than any other petition filed before the district court. While parties may file a motion to seek temporary relief on an expedited basis—as PFLAG did here—there is no rule that the entire DTPA petition must be resolved in a certain amount of time. In truth, OAG's quarrel seems to be with the DTPA having granted demand recipients any form of pre-compliance judicial review, as they demonstrated by attempting to have their Counterclaim heard independent of PFLAG's petition a month before the scheduled trial on the merits—an effort the District Court properly rejected.

Even so, the parties and the trial court moved expeditiously to resolve the dispute between PFLAG and the OAG over the Demands, with a full merits trial less than four months after PFLAG filed its petition. Although OAG repeatedly insisted that it was entitled to some different, more expedited process, they provided no statutory basis for another procedure, and so the trial court proceeded in the usual course, albeit very briskly: hearings on emergency and temporary relief, followed by a trial on the merits. And even though OAG obtained relief—in the form of an order to PFLAG to comply with a modified CID—the single longest delay in this litigation arose from OAG's decision, even after it won affirmative relief, to try to appeal a non-final order to this Court.

It is not for this Court to rewrite the DTPA to provide OAG with a unique procedural mechanism to have DTPA cases prioritized or expedited. There is also no remedy for the OAG's perceived aggrievement with a delay largely of its own making. Even if this Court were to agree with OAG that it should set forth new rules for future DTPA cases, it is unnecessary to relitigate this case because OAG has obtained the information it sought relevant to its investigation and is not entitled to any further relief. Similarly, even if this Court determines that the trial court should have allowed Appellants to serve the modified Demands, this does not constitute reversible error. The modified Demands proposed by Appellants do not seek any information beyond what the initial Demands requested. Therefore, each request included in the modified Demands was before the trial court as part of the initial Demands, and the trial court adequately considered and modified the requests to conform to statutory and constitutional requirements in accordance with the DTPA.

## III. The Trial Court Issued an Appropriate Injunction.

The trial court did not abuse its discretion when entering a permanent injunction necessary to bring these proceedings to a full and final resolution. The permanent injunction is necessary for the same reason the temporary injunction during the pendency of trial was necessary: to enjoin OAG from seeking a quo warranto action or taking other punitive measures for PFLAG's alleged noncompliance with the Demands. PFLAG followed the proper procedure and

fulfilled its statutory obligations under the DTPA when it complied with the modified CID and produced documents on October 11, 2024.

PFLAG's concern that OAG will nonetheless take punitive action against it is not hypothetical. After receiving the original Demands, PFLAG filed a petition and received a ruling from the trial court within the time period specified by the DTPA; at that point, a temporary injunction was needed to suspend PFLAG's obligation to respond to the Demands while the court considered their propriety. Appellants' App'x Tab A at 11, 18. During that time, OAG agreed with PFLAG's request not to take adverse action based on the Demands during the pendency of litigation, but specifically did *not* agree not to take adverse action after the disposition of the instant case. *See* CR.1538; Appellee's App'x Ex. F at 9-11. The permanent injunction enjoining Appellants from taking adverse action in relation to the Demands is necessary to stop such adverse action and is closely tailored to the needs of the case.

The permanent injunction below is not like the stricken injunction from *Paxton v. Annunciation House, Inc.*, in which this Court struck down a permanent injunction enjoining the OAG from submitting records requests to Annunciation House, a charitable organization that operates shelters in El Paso, Texas. No. 24-0573, 2025 WL 1536224, at *1, 22 (Tex. May 30, 2025). First, the trial court here only ruled that the Demands, as promulgated by OAG, ran afoul of the DTPA and therefore required modification. By contrast, the trial court in *Annunciation House*

rested its permanent injunction base on a holding that a separate statute, §§ 12.151 and 12.152 of the Business Organizations Code, was facially unconstitutional. Second, the trial court here enjoined OAG only from seeking responses to requests already considered and rejected or modified by the trial court and from taking adverse action against PFLAG "*in relation to the Demands*," including commencing a quo warranto action against PFLAG for an alleged failure to comply with the Demands. Appellants' App'x Tab A at 19 (emphasis added). By contrast, the permanent injunction in *Annunciation House* had an "unusual and broad scope," including the "extraordinary aspect" of a pre-compliance requirement that obligated the OAG to seek permission from the same trial court that issued the injunction before serving any future requests to examine records from Annunciation House. *See id.* at *25. There is no such pre-compliance requirement here. While OAG cannot take further action against PFLAG based on the Demands, any future interactions between OAG and PFLAG with respect to CIDs remain governed by the DTPA. Appellants' assertion that OAG is blocked "from pursuing legitimate other investigatory avenues against PFLAG and its Texas chapters in perpetuity," Appellants' Br. at 36, has no basis in reality. The injunction is narrowly drawn to redress PFLAG's specific injuries relating to the Demands.

## CONCLUSION

The district court did not abuse its discretion in granting OAG all of the documents and relief that it is entitled to under the DTPA. Now that PFLAG has complied with the modified CID, this dispute has been resolved and there is no need for the Court to embrace the OAG's request to rewrite and override the statutory requirements of the DTPA. Appellants' grievances may be best directed towards the Legislature, not the courts.

## PRAYER

The Court should affirm the district court's injunction.


| | |
|---|---|
| ALLISSA POLLARD<br>State Bar No. 24065915<br>ARNOLD & PORTER KAYE SCHOLER LLP<br>700 Louisiana St.<br>Houston, Texas 77002<br>(713) 576-2400 – Phone<br>allissa.pollard@arnoldporter.com<br><br>LORI B. LESKIN*<br>ARNOLD & PORTER KAYE SCHOLER LLP<br>250 West 55th Street<br>New York, NY 10019-9710 (212) 836-8541 – Phone<br>Lori.Leskin@arnoldporter.com | PAUL CASTILLO<br>State Bar No. 24049461<br>LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.<br>3500 Oak Lawn Ave, Unit 500<br>Dallas, Texas 75219<br>(214) 219-8585<br>pcastillo@lambalegal.org<br><br>KAREN L. LOEWY*<br>SASHA J. BUCHERT*<br>LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.<br>815 16th Street, N.W., Suite 4140<br>Washington, D.C. 20006<br>(202) 804-6245<br>kloewy@lambdalegal.org<br>sbuchert@lambdalegal.org |

| | |
|---|---|
| | Omar Gonzalez-Pagan*<br>LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.<br>120 Wall Street, 19th Floor<br>New York, NY 10005<br>(212) 809-8585<br>ogonzalez-pagan@lambdalegal.org |
| LYNLY S. EGYES*<br>TRANSGENDER LAW CENTER<br>lynly@transgenderlawcenter.org<br>Milo Inglehart<br>milo@transgenderlawcenter.org<br>594 Dean Street, Suite 11<br>Brooklyn, NY 11238<br>Phone: (510) 587-9696 Ext. 353<br><br>*Motion for Admission *pro hac vice* forthcoming | HARPER SELDIN<br>AMERICAN CIVIL LIBERTIES UNION FOUNDATION<br>125 Broad Street, Floor 18<br>New York, NY 10004<br>(212) 549-2500<br>hseldin@aclu.org<br><br>ELIZABETH GILL<br>AMERICAN CIVIL LIBERTIES UNION FOUNDATION<br>39 Drumm Street<br>San Francisco, CA 94111<br>(415) 343-1237<br>egill@aclunc.org<br><br>BRIAN KLOSTERBOER<br>ACLU FOUNDATION OF TEXAS, INC.<br>Texas State Bar No. 24107833<br>bklosterboer@aclutx.org<br>CHLOE KEMPF<br>Texas State Bar No. 24127325<br>ckempf@aclutx.org<br><br>*Counsel for Appellee* |

## CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 12,540 words, excluding exempted text.

*/s/ Allissa Pollard*
Allissa Pollard

**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

## APPENDIX

---


| Exhibit | | Page |
|---|---|---|
| A. | Reporter's Record, Court Hearing on May 8, 2024, *PFLAG, Inc. v. Office of the Attorney General of Texas, et al.*, Trial Court Cause No. D-1-GN-24-001276 (261st Jud. Dist. Ct., Travis County, Tex.). | 1 |
| B. | Defendants' Notice of Direct Appeal, filed Oct. 10, 2024, *PFLAG, Inc. v. Office of the Attorney General of Texas, et al.,* Trial Court Cause No. D-1-GN-24-001276 (261st Jud. Dist. Ct., Travis County, Tex.). | 20 |
| C. | Appellee's Response to Statement of Jurisdiction and Motion to Dismiss Appeal, filed Oct. 31, 2024, *Office of the Attorney General of Texas, et al v. PFLAG, Inc.*, No. 24-0892 (Tex. 2024) (on direct appeal from the 261st Jud. Dist. Ct., Travis County) | 26 |
| D. | Notice and Order of Abatement, issued Feb. 7, 2025, *Office of the Attorney General of Texas v. PFLAG, Inc.*, No. 24-0892 (Tex. 2025*)* (on direct appeal from the 261st Jud. Dist. Ct., Travis County) | 230 |

E. Briefing on the Merits Requested, Apr. 4, 2025, *Office of the Attorney General of Texas v. PFLAG, Inc.*, No. 24-0892 (Tex. 2025) (on direct appeal from the 261st Jud. Dist. Ct., Travis County) 233

F. Appellant's Response to Appellee's Emergency Motion for Temporary Injunctive Relief Pursuant to Rule 29.3, filed Apr. 25, 2024, *Office of the Attorney General of Texas, et al. v. PFLAG, Inc.*, No. 03-24-00241-CV (Tex. App.—Austin) 236

# EXHIBIT A

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. D-1-GN-24-001276

| | | |
|---|---|---|
| PFLAG, Inc., *Plaintiff,* | ) | IN THE DISTRICT COURT |
| VS. | ) | |
| OFFICE OF THE ATTORNEY GENERAL OF TEXAS; and WARREN KENNETH PAXTON, JR., in his official capacity as Attorney General of Texas, *Defendants.* | ) | TRAVIS COUNTY, TEXAS |
| | ) | 261ST JUDICIAL DISTRICT |

---

COURT HEARING

---

On the 8th day of May, 2024, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Maria Cantú Hexsel, Judge presiding, held in Austin, Travis County, Texas;

Proceedings reported by machine shorthand.

**A P P E A R A N C E S**

FOR THE PLAINTIFF:

**PAUL D. CASTILLO**
SBOT NO. 24049461
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
3500 Oak Lawn Avenue, Unit 500
Dallas, Texas 75219
(214) 219-8585
*pcastillo@lambdalegal.org*

**BRIAN KLOSTERBOER**
SBOT NO. 24107833
ACLU FOUNDATION OF TEXAS, INC.
P.O. Box 8306
Houston, Texas 77288
(713) 942-8146
*bklosterboer@aclutx.org*

FOR THE DEFENDANT:

**RYAN S. BAASCH**
SBOT NO. 24129238
Chief, Consumer Protection Division
OFFICE OF THE ATTORNEY GENERAL OF TEXAS
P.O. Box 12548
Austin, Texas 78711-2548
*ryan.baasch@oag.texas.gov*

**DAVID G. SHATTO**
SBOT NO. 24104114
Assistant Attorney General
Consumer Protection Division
OFFICE OF THE ATTORNEY GENERAL OF TEXAS
P.O. Box 12548
Austin, Texas 78711-2548
*david.shatto@oag.texas.gov*

**I N D E X**

**VOLUME 1**

**COURT HEARING**

**MAY 8, 2024**


| | Page | Vol. |
|---|---|---|
| Announcements..... | 4 | 1 |
| Discussion Among the Court and Attorneys.. | 4 | 1 |
| Adjournment..... | 17 | 1 |
| Court Reporter's Certificate..... | 18 | 1 |

**PROCEEDINGS**

THE COURT: All right. We're on the record in D-1-GN-24-1276, PFLAG, Incorporated vs. Office of the Attorney General of the State of Texas. I'd ask those present for their appearances for our record beginning with plaintiff.

MR. BAASCH: I'm sorry. Did you say you're asking for --

THE COURT: Yeah, but from -- I guess I started with plaintiff.

MR. BAASCH: Counter-plaintiff?

THE COURT: Well, I guess -- on here I have you guys first and then them.

MR. BAASCH: Okay.

THE COURT: It doesn't matter. Go ahead. Go ahead.

MR. BAASCH: Ryan Baasch for the Office of the Attorney General here with David Shatto, my colleague.

THE COURT: Thank you.

MR. CASTILLO: Paul Castillo and Brian Klosterboer for plaintiff, PFLAG.

THE COURT: All right. Okay. So as I understand it currently, the posture is a counterclaim by the Attorney General's Office. And so I want to

be -- I want to have a small discussion about what's set and what we intend to try and go forward on this morning. So if you'd like to go ahead, Mr. Baasch.

MR. BAASCH: Certainly, Your Honor. Do you want me to approach the podium?

THE COURT: No. No. I think for now just let me know what you think is set this morning and what the requested relief is.

MR. BAASCH: Oh, certainly. And I had only meant this one and not the bench, but -- so if I -- if you'll indulge me for 60 seconds, I think I can put this --

THE COURT: Sure.

MR. BAASCH: -- into context. So this is really a miniature suit. It's a -- we're in a pre-suit posture. There really is no formal litigation that you'd normally think of here. We served discovery -- essentially investigative demands that look a lot like discovery, like requests for documents and interrogatories on PFLAG.

Now, after receiving those demands, PFLAG had an option under the statute that governs the demands to move to set -- or to petition to set them aside. It's like a motion to quash. We by contrast have an option under the statute to petition to enforce a motion

to compel basically. So that's the posture that we're in where they have a petition to set aside; we have a petition to enforce.

Now, there's an oddity that occurred earlier in this case, namely on their petition to set aside their motion to quash. The Court granted a temporary injunction in their favor. Now, our position is that doesn't make a lot of sense. It's essentially like the Court just granted their petition to set aside, but it's styled as a temporary injunction. And then the Court set a trial for the summer on the petition to set aside. Again, we would submit that doesn't really make sense in this posture. It doesn't -- it's not really -- it's not necessary. It's just a motion to quash. You don't have a trial on a motion to quash.

But that's where we are. And for our -- to preserve our rights for appeal in this case, we think that the Court needs to issue a ruling on our motion to compel, our petition to enforce. That's all we're here for. If Your Honor is not inclined to revisit the ruling on the temporary injunction, then the only thing that the Court can really do here is deny our petition to enforce. We think that we're right on the merits. We don't think that that's the right outcome. But the Court has already ruled, and that's the state of play

here today.

THE COURT: Okay.

MR. BAASCH: And I'm sorry. It might have taken more than 60 seconds.

THE COURT: No. No, no, that's fine. I think that -- I'm clear on where you're at. Let me hear from you, Mr. Castillo.

MR. CASTILLO: Thank you, Your Honor. So we -- we believe that there's no motion set today. You know, although a hearing was set, we have been engaged in communications about what it is that the office is presenting to the Court, what motion. And we learned for the first time last week that it is sort of a dispositive motion, last Thursday.

THE COURT: Right.

MR. CASTILLO: And so we -- the -- there is -- there is a trial set in plaintiff's original petition to set aside or otherwise modify the demands at issue in this case. It is set for June. They recently filed the counterclaim after PFLAG's request for temporary injunction was indeed granted by this Court. And so that is currently on appeal. There is a June date for plaintiff's petition to set aside, also for declaratory judgment and injunctive relief that was set.

They filed the counterclaim. We answered

the counterclaim on Monday. And, you know, the -- two days later they're seeking a dispositive motion. They haven't filed a motion for summary judgment pursuant to 166a. We haven't had an opportunity to brief in writing, and we think this is entirely inappropriate. There's nothing to be set.

So what we would ask is nothing be done today. It's sort of perplexing that they would ask for relief denying their counterclaim inasmuch as their -- this was filed after the temporary injunction. And temporary injunction is just a preliminary view on the merits --

THE COURT: Right.

MR. CASTILLO: -- that goes to irreparable harm and maintaining the status quo. It is not a disposition on the merits. And again, this -- these -- you know, it's flip side of the same coin, Your Honor. We are -- we are seeking to be relieved for the demands to be set aside, and they're seeking to otherwise modify. They've attempted for several times to try and modify the demand. But, you know, the demands at issue were the February demands. They have not otherwise served plaintiff with any other demands nor could they since we had relief. But we do agree that their counterclaim was properly filed. It's not set for any

sort of motion or trial at this juncture.

THE COURT: Okay. So I -- I think that you're correct, Mr. Baasch, that there's -- I mean, this is procedurally a little bit different, but I -- but it's -- I see your request for today as sort of a final merits hearing for which under the rules there at least has to be 45 days' notice of a hearing on that. Remind me when the June date is on the -- on the trial that's set.

MR. BAASCH: It's June 10th, Your Honor.

THE COURT: June 10th. Okay. It's my thought that -- I understand for appellate purposes that you want something more final than an order on the temporary injunction. I think you might even be entitled to it. But I also think that we need to make sure that there's adequate notice for such a hearing to take place because it would finally dispose of from where we started.

So -- so I'm inclined to either see if there's -- I also was concerned that there wasn't really enough conferring as required by our local rules on what is set and when it's set. So if there's agreement that that June 10th date -- which is not quite 45 days away, but, you know, at least there's been notice for it. If there's agreement to go forward on what you would

request as a final disposition on this case, then I think that's where we put it, is June 10th.

MR. BAASCH: Thank you, Your Honor. If PFLAG is willing to stipulate here that they're willing to go forward on June 10th -- and I certainly take Your Honor's points, and I think, you know, all things considered, that's an okay resolution for us.

I would propose that there is an alternative, though. And the appeal, as they mentioned, of the temporary injunction has already gone up. It's a very odd posture where that appeal is up. In our view that's a final disposition of their side of the case. And we're -- our side of the case is stuck down here.

As I've said, I think we're right on the merits. But in order to not muck up what's going on on appeal, Your Honor could just deny our counterclaim; then everything here is settled and the appeals court can take it all. And I think that that's really the most efficient use of the judicial system's time. But like I said, if Your Honor is not inclined to go that route, we would stipulate that if they're -- if they're going forward on June 10th, we'll stick with June 10th.

THE COURT: Mr. Castillo?

MR. CASTILLO: Thank you, Your Honor.

THE COURT: I think you should stand.

Yeah.

MR. CASTILLO: I'm sorry. The temporary injunction is not a final resolution on the merits.

THE COURT: Right.

MR. CASTILLO: And it -- you know, the trial date on June 10th is something that we had indicated at a time before they filed their counterclaim or they're seeking disposition. Now, we agree and we have had conversations with the Office about that many of the claims can be resolved on summary judgment and have asked for dates since March regarding setting a schedule. And I think the -- the most efficient way forward for resolution finally on the merits for both sides is to -- we would propose to set a summary judgment schedule and continue the trial thereafter. We believe many of those issues could be resolved beforehand. With regard -- I'm sorry.

THE COURT: No, go ahead.

MR. CASTILLO: With regard to the claim by the Office that this is a final -- what's currently before the Third Court of Appeals is final, the Texas Supreme Court has obviously indicated in *Brooks vs. Expo Chem Company* that it is not a final claim at the merits. This is preliminary based on the likelihood of success.

THE COURT: Right.

MR. CASTILLO: And it focuses on the harm and the status quo.

THE COURT: Sure. So Mr. Baasch, here's what I see is a problem. If -- there's -- if I deny a counterclaim that I haven't had a proper hearing on, I think that's reversible error. So I'm trying to figure out, like, what's best to actually tee up this issue so that should either side choose to appeal my ruling, they have something to go up on.

In that respect, it makes sense to me to have each of you file motions for summary judgment with what your requested relief is from whatever claims are still pending such that I can give you a ruling that is I think in the right posture to go up to the Court of Appeals. And so that -- that's why I'm not really interested in denying any counterclaim that I have not heard the merits on. And instead, what I would propose is to -- for each of you to confer on a date by when you'd have your summary judgments filed and then a hearing date that you are both okay with so that we tee this up in the proper way. And that's -- I think that's what we should do if in fact there is something to take up after I make a ruling.

MR. BAASCH: Well, if I may, Your Honor.

THE COURT: Uh-huh.

MR. BAASCH: I think that there is a way through this thicket now. If you'll indulge me for 30 seconds, I could tell you. If you're not inclined to do that, then I'd just like to make a -- have a word about the --

THE COURT: Sure.

MR. BAASCH: -- motion you're proposing. Right now, plaintiffs have already represented to us and they've represented to the Third Court I think that the ruling on the temporary injunction was a denial of the counterclaim. I've gotten an email from them that says that right here. And so I would propose to Your Honor that the order that you could sign today resolving everything just says in light of the temporary injunction order, the counterclaim is denied.

THE COURT: Well, just because they said it doesn't mean I agree with it.

MR. CASTILLO: We disagree. We did not say that.

THE COURT: Yeah.

MR. CASTILLO: This counterclaim was properly filed. Now, whether or not they can receive any sort of records, we're currently protected both by the temporary injunction --

THE COURT: Right. Right.

MR. CASTILLO: -- that's been reinstated by the Third Court of Appeals.

THE COURT: But I think ultimately the issue is: Do you get those records or not? And that I think is what needs to be teed up to go to the Court of Appeals.

MR. BAASCH: I understand, Your Honor. If I might correct a misstatement that my opponent made. I'm reading from an email from them right now verbatim. I'm happy to hand it up to the Court. "A petition to enforce would be a violation of the temporary injunction order entered by the Court." So that's their position.

I certainly understand Your Honor's reservation, but in light of that representation, I do think it would be proper for the Court to deny the counterclaim in light of, and the order can say that. We have a draft right here.

THE COURT: No, but just because they believe that allowing the records is a violation of the TI, I don't think that means ultimate -- your ult- -- the ultimate issues are decided. I mean, I think -- I entered a TI, and in compliance with that, the records are not being produced. But whether or not ultimately the State is entitled to those records and the plaintiff has protection against that, that's the ultimate issue

that needs to go up. And I don't believe the posture that you're suggesting will result in a proper look at it from the appellate courts.

MR. BAASCH: I -- I certainly understand that, Your Honor. My only request in that case would be then that the trial remain scheduled for June 10th. Judge Meachum scheduled it for June 10th. She ordered it -- we have that in the transcript -- for June 10th. PFLAG agreed to the June 10th date. This is in the transcript. We're happy to provide it to the Court. PFLAG agreed to the June 10th date after Judge Meachum said that the Attorney General's Office should file its petition to enforce. Nothing has changed in that respect.

THE COURT: Got it.

MR. BAASCH: We don't think motions for summary judgment present the proper way to resolve this in light of what Judge Meachum has already done, and so we would just request that Your Honor reaffirm the June 10th date as set.

THE COURT: Well, I think the June 10th date can be the merits hearing. It's just -- I mean, you each have claims and that's -- that's the merits hearing. What -- okay. I'm not going to hear anything today. I think I want to talk to Judge Meachum and just

confirm what she was setting so that it's clear to both of you whether or not to go forward on that June 10th. And with that, each of you have a final merits hearing on your respective claims.

I'm not opposed to going forward on June 10th. I would like the opportunity to discuss it with her as far as what she intended. And I'm sounding like this is all coming back to me, and I'm not saying that it is necessarily, but I would like the opportunity to check with her about that and see. I would hold that June 10th. I'd start teeing up what your requested relief is for that date and what evidence you might want to put on for it.

MR. CASTILLO: Your Honor, in light of the fact that, you know, both sides, you know, seem to agree that many of the issues could be resolved on dispositive motions on summary judgment, we've been proposing, again, in conformity with the rules and for judicial economy of this Court and --

THE COURT: Well, yeah, but you've got this June 10th date. So I'm going to check in with her about what -- I don't know if she wanted you to have some sort of at least briefing deadline with respect to the 10th and exchange of evidentiary material. I'm going to check in with her and then get back with all of

you about what you can expect, but I think for now just hold that June 10th date.

MR. CASTILLO: We will hold the date. And it was certainly in a posture of subsequent events including the counterclaim --

THE COURT: Right.

MR. CASTILLO: -- and other things, you know, we would be seeking.

THE COURT: I understand. I just don't want -- I'm not going to -- I'm not going to change or reverse any of her decision on that right now. So I will check with her today and get back with you, but I think for now just make sure and save that June 10th date.

MR. CASTILLO: Understood, Your Honor.

MR. BAASCH: Thank you, Your Honor.

THE COURT: All right. Thank you. You may be excused.

*(Court adjourned)*

**REPORTER'S CERTIFICATE**

THE STATE OF TEXAS )
COUNTY OF TRAVIS )

I, Chavela V. Crain, Official Court Reporter in and for the 53rd District Court of Travis County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered in evidence by the respective parties.

WITNESS MY OFFICIAL HAND this the 13th day of May, 2024.

*/s/ Chavela V. Crain*
Chavela V. Crain
Texas CSR 3064, RMR, CRR
Expiration Date: 10/31/2024
Official Court Reporter
53rd District Court
Travis County, Texas
P.O. Box 1748
Austin, Texas 78767
(512) 854-9322 *

# EXHIBIT B

10/10/2024 3:25 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-24-001276
Rosa Oneal

**CAUSE NO. D-1-GN-24-001276**

| | | |
|---|---|---|
| **PFLAG, INC.,** | § | **IN THE DISTRICT COURT OF** |
| | § | |
| ***Plaintiff*,** | § | |
| **v.** | § | **TRAVIS COUNTY, TEXAS** |
| | § | |
| **OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS; and WARREN KENNETH PAXTON, JR., in his official capacity as Attorney General of Texas,** | § | |
| | § | |
| ***Defendants*.** | § | **261st JUDICIAL DISTRICT** |

**DEFENDANTS' NOTICE OF DIRECT APPEAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, the Office of the Attorney General of the State of Texas and Warren Kenneth Paxton, Jr., desire to appeal the Judge's ruling regarding modifications of the CID set out in PFLAG's proposed final judgment in *PFLAG, Inc. v. Office of the Attorney General of the State of Texas, et al.*, Cause No. D-1-GN-24-001276, entered on September 13, 2024, by the Honorable Amy Clark Meachum of the 201st Judicial District Court of Travis County, Texas. Defendants desire to take a direct appeal to the Supreme Court of Texas as authorized by Tex. Gov't. Code § 22.001(c) and Tex. R. App. P. 57.

Dated: October 10, 2024

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

JOHNATHAN STONE
Division Chief, Consumer Protection Division

*/s/ Abigail E. Smith*
ABIGAIL E. SMITH
Assistant Attorney General
State Bar No. 24141756
abby.smith@oag.texas.gov
Office of the Attorney General
Consumer Protection Division
12221 Merit Drive, Ste. 650
Dallas, Texas 75251
Tel: (214) 290-8830
Fax: (214) 969-7615

DAVID SHATTO
State Bar No. 24104114
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2185
(512) 473-8301 (facsimile)
David.Shatto@oag.texas.gov

**ATTORNEYS FOR THE STATE OF TEXAS**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10th day of October, 2024, this document was served via the Court's electronic filing system to all counsel of record.

*/s/ Abigail E. Smith*
ABIGAIL E. SMITH

## Automated Certificate of eService

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

Emily Samuels on behalf of Abigail Smith
Bar No. 24141756
emily.samuels@oag.texas.gov
Envelope ID: 93036733
Filing Code Description: Notice of Appeal
Filing Description: DEFENDANTS' NOTICE OF DIRECT APPEAL
Status as of 10/10/2024 3:44 PM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Grace Ojionuka | | grace.ojionuka@arnoldporter.com | 10/10/2024 3:25:42 PM | SENT |
| Catherine Hughes | | catherine.hughes@oag.texas.gov | 10/10/2024 3:25:42 PM | SENT |
| Allissa Pollard | | Allissa.Pollard@arnoldporter.com | 10/10/2024 3:25:42 PM | SENT |
| Harper Seldin | | hseldin@aclu.org | 10/10/2024 3:25:42 PM | SENT |
| Paul Castillo | | pcastillo@lambdalegal.org | 10/10/2024 3:25:42 PM | SENT |
| Omar Gonzalez-Pagan | | ogonzalez-pagan@lambdalegal.org | 10/10/2024 3:25:42 PM | SENT |
| Elizabeth Gill | | egill@aclunc.org | 10/10/2024 3:25:42 PM | SENT |
| Karen Loewy | | kloewy@lambdalegal.org | 10/10/2024 3:25:42 PM | SENT |
| Michele Clanton-Lockhart | | mclanton@lambdalegal.org | 10/10/2024 3:25:42 PM | SENT |
| Brian Klosterboer | | bklosterboer@aclutx.org | 10/10/2024 3:25:42 PM | SENT |
| Lynly Egyes | | lynly@transgenderlawcenter.org | 10/10/2024 3:25:42 PM | SENT |
| Shawn Meerkamper | | shawn@transgenderlawcenter.org | 10/10/2024 3:25:42 PM | SENT |
| Elizabeth Gill | | egill@aclunc.org | 10/10/2024 3:25:42 PM | SENT |
| Harper Seldin | | hseldin@aclu.org | 10/10/2024 3:25:42 PM | SENT |

Associated Case Party: OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Pauline Sisson | | pauline.sisson@oag.texas.gov | 10/10/2024 3:25:42 PM | SENT |
| David G. Shatto | | david.shatto@oag.texas.gov | 10/10/2024 3:25:42 PM | SENT |
| Kathy Johnson | | Kathy.Johnson@oag.texas.gov | 10/10/2024 3:25:42 PM | SENT |
| Rob Farquharson | | rob.farquharson@oag.texas.gov | 10/10/2024 3:25:42 PM | SENT |

## Automated Certificate of eService

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

Emily Samuels on behalf of Abigail Smith
Bar No. 24141756
emily.samuels@oag.texas.gov
Envelope ID: 93036733
Filing Code Description: Notice of Appeal
Filing Description: DEFENDANTS' NOTICE OF DIRECT APPEAL
Status as of 10/10/2024 3:44 PM CST

Associated Case Party: OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

| | | | | |
|---|---|---|---|---|
| Rob Farquharson | | rob.farquharson@oag.texas.gov | 10/10/2024 3:25:42 PM | SENT |
| Abby Smith | | Abby.Smith@oag.texas.gov | 10/10/2024 3:25:42 PM | SENT |
| Matthew T.Kennedy | | matt.kennedy@oag.texas.gov | 10/10/2024 3:25:42 PM | SENT |
| Zoann Willis | | zoann.willis@oag.texas.gov | 10/10/2024 3:25:42 PM | SENT |

# EXHIBIT C

FILED
24-0892
10/31/2024 5:08 PM
tex-93812488
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

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 of Travis County, Texas
No. D-1-GN-24-001276

# APPELLEE'S RESPONSE TO STATEMENT OF JURISDICTION AND MOTION TO DISMISS APPEAL

PAUL D. CASTILLO
Texas State Bar No. 24049461
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
3500 Oak Lawn Ave, Unit 500
Dallas, Texas 75219
(214) 219-8585 – Phone
pcastillo@lambdalegal.org

ALLISSA POLLARD
Texas State Bar No. 24065915
ARNOLD & PORTER KAYE SCHOLER, LLP
700 Louisiana Street, Suite 4000
Houston, TX 77002-2755
(713) 576-2451 – Phone
(713) 576-2499 – Fax
Allissa.Pollard@arnoldporter.com

BRIAN KLOSTERBOER
Texas State Bar No. 24107833
bklosterboer@aclutx.org
CHLOE KEMPF
Texas State Bar No. 24127325
ckempf@aclutx.org
ADRIANA PINON
Texas State Bar No. 24089768
apinon@aclutx.org
ACLU FOUNDATION OF TEXAS, INC.
P.O. Box 8306
Houston, TX 77288
(713) 942-8146 – Phone
(713) 942-8966 – Fax

*Counsel for Appellee*

## IDENTITY OF PARTIES AND COUNSEL

Appellants
The Office of the Attorney General of the State of Texas
Warren Kenneth Paxton, Jr.

Counsel for Appellants – Appearing in the Supreme Court of Texas
Ken Paxton, Attorney General of Texas
Aaron L. Nielson, Solicitor General
Lanora C. Pettit, Principal Deputy Solicitor General (lead counsel)
Kateland R. Jackson, Assistant Solicitor General
Brent Webster, First Assistant Attorney General
Abigail E. Smith, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
(512) 936-1700 – Phone
Lanora.Pettit@oag.texas.gov

Counsel for Appellants – Appearing in the Trial Court
Ken Paxton
Brent Webster
James Lloyd
Ryan S. Baasch
Christin Cobe Vasquez
David G. Shatto
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
(512) 475-4656
David.Shatto@oag.texas.gov

Appellee
PFLAG, Inc.

Counsel for Appellee – Appearing in the Trial Court


PAUL D. CASTILLO
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
3500 Oak Lawn Ave, Unit 500
Dallas, Texas 75219
(214) 219-8585 – Phone
pcastillo@lambdalegal.org

ALLISSA POLLARD
ARNOLD & PORTER KAYE SCHOLER, LLP
700 Louisiana Street, Suite 4000
Houston, TX 77002-2755
(713) 576-2451 – Phone
Allissa.Pollard@arnoldporter.com

OMAR GONZALEZ-PAGAN
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, New York 10005-3919
(212) 809-8585 – Phone
ogonzalez-pagan@lambdalegal.org

LORI B. LESKIN
ARNOLD & PORTER KAYE SCHOLER, LLP
250 West 55th Street
New York, NY 10019-9710
(212) 836-8541 – Phone
Lori.Leskin@arnoldporter.com

KAREN L. LOEWY
kloewy@lambdalegal.org
SASHA J. BUCHERT
sbuchert@lambdalegal.org
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
111 K Street, N.E., 7th Floor
Washington, DC 20002
(202) 804-6245 – Phone

HARPER SELDIN
Pennsylvania State Bar No. 318455
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, Floor 18
New York, NY 10004
(212) 549-2500 – Phone
hseldin@aclu.org

LYNLY S. EGYES
lynly@transgenderlawcenter.org
MILO INGLEHART
milo@transgenderlawcenter.org
TRANSGENDER LAW CENTER
594 Dean Street, Suite 11
Brooklyn, NY 11238
(510) 587-9696 – Phone

ELIZABETH GILL
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111
(415) 343-1237 – Phone
egill@aclunc.org

SHAWN MEERKAMPER
TRANSGENDER LAW CENTER
P.O. Box 70976
Oakland, CA 94612
(510) 587-9696 – Phone
shawn@transgenderlawcenter.org

BRIAN KLOSTERBOER
bklosterboer@aclutx.org
CHLOE KEMPF
ckempf@aclutx.org
ADRIANA PINON
apinon@aclutx.org
ACLU FOUNDATION OF TEXAS, INC.
P.O. Box 8306
Houston, TX 77288
(713) 942-8146 – Phone

## TABLE OF CONTENTS

TABLE OF CONTENTS ..... iv

INDEX OF AUTHORITIES ..... v

STATEMENT OF THE CASE ..... 1

ARGUMENT ..... 4

A. No Final Order Exists to Establish Jurisdiction ..... 5

B. Even a Final Ruling by the Trial Court on PFLAG's Petition Would Not Establish Direct Appellate Jurisdiction in This Court. ..... 8

C. The OAG Cannot Manufacture Appellate Jurisdiction Where None Exists. ..... 8

PRAYER ..... 13

CERTIFICATE OF SERVICE ..... 15

CERTIFICATE OF COMPLIANCE ..... 16

APPENDIX ..... 17

## INDEX OF AUTHORITIES

**Page(s)**

### Cases

*Burlington N. R. Co. v. Off. of Inspector Gen., R.R. Ret. Bd.*,
983 F.2d 631 (5th Cir. 1993) ..... 11

*F.T.C. v. O'Connell Assocs., Inc.*,
828 F. Supp. 165 (E.D.N.Y. 1993) ..... 11

*In re Fort Worth Chamber of Com.*,
100 F.4th 528 (5th Cir. 2024) ..... 11

*Indus. Specialists, LLC v. Blanchard Ref. Co. LLC*,
652 S.W.3d 11 (Tex. 2022) ..... 5

*New York Underwriters Ins. Co. v. Sanchez*,
799 S.W. 2d 677 (Tex. 1990) ..... 5

*In re Off. of Inspector General*,
933 F.2d 276 (5th Cir. 1991) ..... 11

*United States v. Markwood*,
48 F.3d 969 (6th Cir. 1995) ..... 11

### Statutes

Tex. Bus. & Com. Code § 17.61 ..... 4, 9

Tex. Bus. & Com. Code § 17.61(g) ..... 8, 10, 11

Tex. Bus. & Com. Code § 17.62 ..... 9

Tex. Bus. & Com. Code § 17.62(b) ..... 9

Tex. Bus. & Com. Code § 17.62(c) ..... 4, 8, 13

Tex. Civ Prac. & Rem. Code § 51.014 ..... 7

**Other Authorities**

Fifteenth Court of Appeals, Case Events, available at https://search.txcourts.gov/Case.aspx?cn=15-24-00044-CV&coa=coa15 (last accessed Oct. 31, 2024) .....10

Texas Constitution .....6

Texas Constitution Article I, Sections 8 and 27 .....6

Texas Constitution Article I, Section 9.....6

Texas Rule of Appellate Procedure 42.3 .....13

Texas Rule of Appellate Procedure 57 .....5

Texas Rules of Appellate Procedure 57.4 .....13

U.S. Constitution First Amendment .....6

U.S. Constitution Fourth Amendment .....6

U.S. Constitution Fourteenth Amendment .....6

## STATEMENT OF THE CASE

*Nature of the Case*: PFLAG is a national, nonprofit membership organization, with over 1,600 members in Texas. PFLAG brought this case pursuant to the Texas Deceptive Trade Practices Act ("DTPA), Tex Bus. & Com. Code § 17.61(g), and the Texas Uniform Declaratory Judgments Act ("UDJA"), Civil Practice and Remedies Code § 37.001, to defend the constitutional and statutory rights of PFLAG and its members against unconstitutional and overbroad demands from the Office of the Attorney General ("OAG"). The OAG filed a counterclaim, a petition to enforce its demands pursuant to Tex Bus. & Com. Code § 17.62(b).

*Trial Court:* 261st Judicial District Court, Travis County
The Honorable Amy Clark Meachum

*Course of Proceedings*: On February 9, 2024, PFLAG received a Civil Investigative Demand ("CID") and a Notice of Demand for Sworn Written Statement ("DSWS") (collectively, "Demands") from the OAG. The Demands seek documents, communications, information, and statements related to an affidavit from PFLAG CEO Brian K. Bond, dated July 11, 2023, and submitted in *Loe v. Texas*, Case No. D-1-GN-23-003616 in the Travis County District Court, in support of Plaintiffs' Verified Original Petition for Declaratory Judgment and Application for Temporary and Permanent Injunctive Relief, challenging the constitutionality of SB14 and seeking to enjoin it from going into effect. The lawsuit and affidavit were filed prior to the effective date of SB14 and together with the declarations and affidavits of other plaintiffs, described SB14's impact, including losing access to gender-affirming medical care even before the law took effect and plans to travel outside Texas if SB14 were to become effective. The Demands required PFLAG to provide information, documents, communications, and statements in response on or before Monday, February 26, 2024. On

February 20, 2024, the OAG granted a one-week extension of that date, up to and including Monday, March 4, 2024.

On February 28, 2024, PFLAG filed an Original Verified Petition to Set Aside Civil Investigative Demands, for Declaratory Judgment, and Application for a Temporary Restraining Order and Temporary and Permanent Injunctive Relief. The Petition requests that the Demands be set aside on the grounds that: (1) the Demands are beyond the OAG's scope of authority and are otherwise improper under the DTPA; and (2) the Demands violate PFLAG's and its members' freedoms of speech, association, assembly, petition, and to be free from unlawful search and seizure under both the federal and Texas constitutions. In the alternative, the Petition requests a reasonable extension of time to further respond to the Demands and modification of their scope.

On March 1, 2024, following a hearing, District Court Judge Maria Cantú Hexsel granted Plaintiff's Application for a Temporary Restraining Order ("TRO") relieving PFLAG of the obligation to respond to the Demands while the case was pending. On March 15, Judge Cantú Hexsel extended the TRO until March 29, 2024.

The district court held a hearing to show cause on PFLAG's application for a temporary injunction on March 25, 2024. After hearing testimony and the parties' arguments, the trial court granted Plaintiff's Application for a Temporary Injunction ("TI"), relieving PFLAG of the obligation to respond to the Demands while the case was pending.

On April 12, 2024, the OAG filed a Notice of Accelerated Appeal, seeking reversal of the temporary injunction from the Third Court of Appeals. Plaintiff filed an application for emergency relief pursuant to Texas Rule of Appellate Procedure 29.3 on April 16, which the Court of Appeals granted on April 17, reinstating the relief ordered by the district court. Also on April 12, 2024, the OAG filed a

Counterclaim for Enforcement of Demand for Sworn Written Statement and Civil Investigative Demand ("Counterclaim"), which attached a modified CID and DSWS.

On June 10, 2024, the district court held a trial in this matter. The court heard testimony from two witnesses and considered all of the claims in PFLAG's Petition as well as the OAG's counterclaim. Before the trial, PFLAG submitted a Proposed Order, proposing that the Court make findings of fact and conclusions of law, specifying the injunctive and declaratory relief it seeks, proposing findings and modifications where appropriate for each component of the Demands, and offering to produce certain documents in response thereto.

On September 13, 2024, the district court issued a letter order, stating: "this Court grants the modifications of the CID set out in PFLAG's proposed final judgment. PFLAG has until October 11, 2024 to respond to the modified CID. Please confer with each other and contact Ms. Jones, 201st JEA, and schedule a hearing for the week of October 14, 2024." Order Granting Modifications of CID in PFLAG's Proposed Final Judgment (Appellants' App'x Tab A). The letter did not address PFLAG's request to modify or set aside the DSWS, PFLAG's request for a permanent injunction, or PFLAG's request for a declaratory judgment. Nor did the letter address the OAG's counterclaim.

The OAG filed this appeal on October 11, 2024. On October 14, 2024, the district court cancelled the upcoming hearing in the case, explaining "While this Court **has not issued a final judgment** and has not provided the Office of the Attorney General permission for an interlocutory appeal, the Court will await the Supreme Court of Texas' direction on this matter before proceeding to a status conference and entry of order." October 14, 2024 Letter from the Court re: Appeal (Appellants' App'x Tab H) (emphasis added).

*Disposition in the Trial Court:* At this time, there is no final disposition. The district court ordered PFLAG to respond to portions of the CID as modified. PFLAG's Petition against the OAG and the OAG's Counterclaim against PFLAG both remain pending in the district court, which has not entered a final or appealable order.

**To the Honorable Supreme Court of Texas:**

PFLAG respectfully asks this Court to dismiss this appeal for lack of jurisdiction, pursuant to Texas Rules of Appellate Procedure 57.4 and 42.3. The OAG's appeal is premature because there is no final order: the district court is still in the process of ruling on PFLAG's claims—PFLAG has been ordered to respond to modified portions of the CID—and the OAG's counterclaim against PFLAG is still pending. Granting this appeal without a final order would radically expand what is appealable under Texas civil law, and this Court should dismiss this appeal for lack of jurisdiction.

## ARGUMENT

The OAG's only purported jurisdictional basis of this appeal is Texas Business & Commerce Code § 17.62(c), which permits the OAG to appeal directly to this Court a "final order entered" on a petition to enforce. The statute does not allow a party to appeal a trial court decision on a petition to enforce directly to this Court prior to the entry of a final order and does not apply to appeals from a final order on a petition to modify or set aside a CID under Texas Business & Commerce

Code § 17.61. Because the trial court has not yet entered a final order on either PFLAG's underlying petition or the OAG's counterclaim, the OAG's appeal fails to properly invoke this Court's jurisdiction under Texas Rule of Appellate Procedure 57 and should be dismissed.

### A. No Final Order Exists to Establish Jurisdiction

The district court's September 13, 2024 letter ordering PFLAG to respond to portions of the OAG's CID as modified, requiring the parties to meet and confer, and setting a further hearing date is not a "final order" on either PFLAG's original petition or the OAG's petition to enforce. A final order "must dispose of all issues and parties in the case, including those presented by counterclaim or cross action, to be final and appealable." *New York Underwriters Ins. Co. v. Sanchez*, 799 S.W. 2d 677, 678-79 (Tex. 1990) (applying the final judgment rule to DTPA claims). Texas courts are required to "honor[] this final-judgment rule" because it "promotes '[c]onsistency, finality, and judicial economy' and ensures that courts decide cases expediently and on a full record." *Indus. Specialists, LLC v. Blanchard Ref. Co. LLC*, 652 S.W.3d 11, 13 (Tex. 2022) (quoting *Sabre Travel Int'l, Ltd. v. Deutsche Lufthansa AG*, 567 S.W.3d 725, 730 (Tex. 2019)).

The district court's September 13, 2024 letter order explicitly does not dispose of all parties and claims. As set forth in the below chart, the letter order does not in any way address, much less dispose of, the majority of the claims in the matter:

| Cause of Action (Party) | Addressed in Trial Court's Interlocutory Order? |
|---|---|
| Request to Modify or Set Aside Civil Investigative Demand (PFLAG) | Yes |
| Request to Modify or Set Aside Notice of Demand for Sworn Written Statement (PFLAG) | No |
| Violation of Rights to Freedom of Association and Speech under First Amendment to U.S. Constitution and Article I, Sections 8 and 27 of the Texas Constitution (PFLAG) | No |
| Violation of Rights to Freedom of Association and Assembly under U.S. Constitution and Texas Constitution (PFLAG) | No |
| Retaliation in Violation of First and Fourteenth Amendments to U.S. Constitution (PFLAG) | No |
| Violation of Rights to Freedom from Unlawful Search and Seizure under Fourth Amendment of U.S. Constitution and Article I, Section 9 of the Texas Constitution (PFLAG) | No |
| Request for Declaratory Judgment (PFLAG) | No |
| Request for Permanent Injunction (PFLAG) | No |
| Counterclaim for Enforcement of Civil Investigative Demand (Texas OAG) | No |
| Counterclaim for Enforcement of Demand for Sworn Written Statement (Texas OAG) | No |

Instead of fully resolving all the claims in the case, the district court's letter order ***grants*** the OAG some of the relief it is seeking by requiring PFLAG to respond to certain of the Demands, as modified, by October 11, 2024. Appellants' App'x Tab A. The letter order then contemplates further process in the case by ordering the parties to meet and confer and to reappear before the court for a hearing, initially set for the week of October 14, 2024. *Id.* In fact, the district court previewed that it might address the parties' claims in a piecemeal fashion at the end of the trial, stating that

the court was considering "whether I do a modified type of ruling, or we have more work to do, or whether I rule a final ruling." Tr. of June 10, 2024 Trial (Appellee's App'x Tab A) at 166:20-24.

A partial ruling in a case involving a number of claims is not a final order under any circumstances, let alone where the ruling expressly contemplates future actions by the parties (the response to modified CID requests and a meet and confer) and future action by the court (a scheduled hearing following the deadline for complying with the order). Indeed, in cancelling the scheduled hearing following the OAG filing its appeal, the district court explicitly stated in a letter to the parties that "this Court has not issued a final judgment." Appellants' App'x Tab H.[1]

Before the OAG filed this appeal, PFLAG was actively preparing to submit proposed findings of fact and conclusions of law, as anticipated by PFLAG's proposed final order, *see* PFLAG's Proposed Final Judgment (Appellants' App'x Tab J) at 1, to aid the district court in rendering final judgment on all outstanding claims and issues and to aid the appellate courts in any eventual appeal. Assuming jurisdiction over this case now—before the district court has issued a final judgment and made any findings of fact or conclusions of law—would interfere with the

[1] It also bears noting that the OAG has no basis for seeking interlocutory review of the district court's letter ruling. An interlocutory appeal here is neither statutorily authorized nor permissively granted by the district court. *See* Tex. Civ Prac. & Rem. Code § 51.014; Appellants' App'x Tab H (district court "has not provided the Office of the Attorney General permission for an interlocutory appeal.").

orderly administration of justice and require this Court to assume the role of the district court, rather than a court of final review.

### B. Even a Final Ruling by the Trial Court on PFLAG's Petition Would Not Establish Direct Appellate Jurisdiction in This Court.

Even if the district court's letter order were a final order on PFLAG's petition—which it is not, as the order only granted certain portions of PFLAG's proposed order, remaining silent on the rest—this Court would not have jurisdiction over a direct appeal from that order. The DTPA only authorizes a direct appeal where a "final order" has been entered on a ***petition to enforce***, brought by the OAG. Texas Bus. & Com. Code § 17.62(c). The ability to take a direct appeal explicitly applies only to petitions filed "under this section," *id.*, whereas PFLAG's petition was filed pursuant to Texas Business & Commerce Code § 17.61(g), which contains no similar direct appeal route to this Court. If the OAG wants to appeal when the district court issues a final order on PFLAG's petition, they will be able to seek relief from the Fifteenth Court of Appeals in the ordinary course.

### C. The OAG Cannot Manufacture Appellate Jurisdiction Where None Exists.

The OAG's argument for why jurisdiction is proper essentially boils down to an assertion that, despite the order from which they appeal not mentioning their counterclaim in any way, the district court "effectively" or "constructively" denied it. This assertion is wrong. First, the OAG's claim that the district court effectively

ruled on their counterclaim by ruling on any portion of PFLAG's petition misrepresents the connection between Tex. Bus. & Com. Code §§ 17.61 and 17.62. Appellants' Statement of Jurisdiction ("Statement") at 4. Describing their counterclaim as the "mirror image" of PFLAG's petition is a dramatic oversimplification. *Id.* Section 17.61 allows the recipient of a demand to challenge its lawfulness, whereas section 17.62 facilitates enforcement when a recipient has failed to respond to a *lawful* demand. The OAG's counterclaim has not been ruled upon—even constructively—because it only becomes ripe if PFLAG "fails to comply" with the Demands. *See* Tex. Bus. & Com. Code § 17.62(b). PFLAG has not "fail[ed] to comply" because it has (1) sought relief from the district court by filing its Petition, pursuant to § 17.61, and obtained temporary injunctive relief against the OAG shielding PFLAG from having to respond to the Demands until after their lawfulness could be determined, and (2) timely produced documents in response to the district court's letter order. Absent a finding by the district court that PFLAG has failed to comply with lawful demands, there has been no ruling on the OAG's counterclaim.

Second, the OAG's assertion that "[a]t a bare minimum, the trial court's order is constructively final by virtue of the court's effective denial of OAG's counter petition to enforce," Statement at 5, fares no better. The OAG's only purported basis for this claim is the district court's temporary injunction ruling, which the OAG has

already appealed.[2] The OAG's complaint that the district court is *likely* to rule against it on most (but not all) of the relief it seeks cannot manufacture a final order or establish jurisdiction over this appeal. These arguments effectively concede that jurisdiction is lacking.

At the end of the day, the OAG's real issue is with the process the district court has undertaken in assessing the parties' claims. The OAG complains that "the trial court let this case drag on for months" while asserting that "courts typically rule on administrative subpoenas in a matter of days or weeks." Statement at 1-2. In support of that bold statement, the OAG cites only out-of-state cases relating to administrative proceedings brought under unrelated statutes. But the non-Texas cases that the OAG cites do not involve Demands issued pursuant to the DTPA, nor do they implicate the statutory provision that expressly authorized PFLAG to challenge the Demands and protect its constitutional and statutory rights under the DTPA. Tex. Bus. & Com. Code § 17.61(g) (authorizing petitions to challenge civil

[2] That appeal remains pending and was recently transferred to the Fifteenth Court of Appeals. On August 8, 2024, the OAG filed an Unopposed Second Motion to Abate Appeal Pending Final Judgment to "abate this appeal until after the entry of a final judgment in the district court in this case." Appellant OAG's Unopposed Second Mot. to Abate Appeal Pending Final Judgment (Aug. 8, 2024) (Appellee's App'x Tab B) at 1. The Third Court of Appeals granted the OAG's requested abatement, and the OAG has not asked the Fifteenth Court of Appeals to reinstate the appeal as of this date. *See* Fifteenth Court of Appeals, Case Events, available at https://search.txcourts.gov/Case.aspx?cn=15-24-00044-CV&coa=coa15 (last accessed Oct. 31, 2024).

investigative demands for "good cause").[3] Here, the district court is not simply enforcing a subpoena—it is assessing the lawfulness of the Demands, balancing the constitutional and statutory rights of PFLAG with the OAG's interest in furthering governmental investigations. In doing so, the district court is following the very process established by the Texas legislature in the DTPA by which a recipient can challenge such demands, issuing interim orders to protect PFLAG from irreparable harm and maintain the status quo during the pendency of the litigation. In only eight months, this case has already proceeded through Temporary Injunction and Temporary Restraining Order hearings and a trial in accordance with proper civil procedure, but the district court has not yet issued a final judgment or addressed all outstanding claims or the OAG's counterclaim.[4]

---

[3] The cases that the OAG cites for the proposition that "Actions seeking review of an administrative subpoena are commonly resolved in a matter of weeks, not months," Statement at 3, are readily distinguishable and even cut against them. The first case the OAG cites, *F.T.C. v. O'Connell Assocs., Inc*., 828 F. Supp. 165, 167 (E.D.N.Y. 1993), involves an enforcement action on a federal subpoena that was not even filed until seven months after the subpoena's original deadline. By contrast, the district court has been engaged with assessing PFLAG's challenge to the lawfulness of the OAG's Demands since before the Demands' response date and throughout the pendency of the case, as explicitly anticipated by Tex. Bus. & Com. Code § 17.61(g). Similarly, the litigation over the enforcement of an administrative subpoena by the Inspector General of Railroad Retirement Board in *In re Off. of Inspector General*, 933 F.2d 276, 277 (5th Cir. 1991), ultimately lasted three years (*see Burlington N. R. Co. v. Off. of Inspector Gen., R.R. Ret. Bd.*, 983 F.2d 631, 636 (5th Cir. 1993)), and it is certainly not "black-letter law that courts reviewing administrative subpoenas are not supposed to hold evidentiary hearings, or trials," as the OAG wrongly claims. Statement at 3. The very case they cite, *United States v. Markwood*, 48 F.3d 969, 983 (6th Cir. 1995), states that it is entirely proper for a court to consider evidence regarding whether demands were "issued for improper purposes."

[4] The OAG cites no legal authority to support its statement that it has a "right to summary relief on its CID." Statement at 3. The case that the OAG cites, *In re Fort Worth Chamber of Com*., 100

More critically, the OAG's complaints about the nature and timing of the proceedings below do not provide any basis for this Court's jurisdiction until the district court has actually ruled. These same arguments have been presented to the district court, *see, e.g.*, Appellee's App'x Tab A at 19-21, 28, 147, and the OAG will be welcome to raise them to an appellate court that has jurisdiction in any future appeal. Because a final order in this case is still forthcoming following PFLAG's document production, the parties' meet and confer and the hearing required by the district court, the OAG suffers no prejudice by merely having to wait (and continue to litigate) until the trial court issues a final and appealable order before bringing an appeal. This Court should not consider the OAG's arguments on appeal in the first instance without a final judgment from the district court, and it would exponentially broaden the universe of appealable orders if the Court were to wade into this case now.

---

F.4th 528, 534 (5th Cir. 2024), is inapplicable because it involved the effective denial of a motion for preliminary injunction before a new agency rule was set to take effect. In contrast, jurisdiction for this appeal requires a final judgment to be issued on PFLAG's petition to modify or set aside the demands and its declaratory judgment action—as well as the OAG's counterclaim to enforce—and there is no deadline in the DTPA or elsewhere that requires the district court to handle this case more expeditiously than others on its docket.

## PRAYER

Consistent with Texas Rules of Appellate Procedure 57.4 and 42.3, and Texas Business & Commerce Code § 17.62(c), the Court should dismiss this appeal for lack of jurisdiction.

Respectfully Submitted,

ARNOLD & PORTER KAYE SCHOLER, LLP

By: */s/ Allissa Pollard*
Allissa Pollard
Texas State Bar No. 24065915
Allissa.Pollard@arnoldporter.com
700 Louisiana Street, Suite 4000
Houston, TX 77002-2755
(713) 576-2451 – Phone
(713) 576-2499 – Fax

LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

By: /s/ *Paul D. Castillo*
Paul D. Castillo
Texas State Bar No. 24049461
pcastillo@lambdalegal.org
3500 Oak Lawn Ave, Unit 500
Dallas, Texas 75219
Phone: (214) 219-8585

ACLU FOUNDATION OF TEXAS, INC.

By: /s/ *Brian Klosterboer*
Brian Klosterboer
Texas State Bar No. 24107833
bklosterboer@aclutx.org
Chloe Kempf
Texas State Bar No. 24127325
ckempf@aclutx.org
Adriana Pinon
Texas State Bar No. 24089768
apinon@aclutx.org
P.O. Box 8306
Houston, TX 77288
(713) 942-8146 – Phone
(713) 942-8966 – Fax

*Counsel for Appellee*

## CERTIFICATE OF SERVICE

I certify that, on October 31, 2024, Appellee electronically served a true and correct copy of the foregoing document on all counsel of record through the electronic-filing manager in the electronic-filing system and separately served a true and correct copy of the foregoing document on Appellants' lead counsel, Lanora C. Pettit, via email at Lanora.Pettit@oag.texas.gov.

*/s/ Allissa Pollard*
Allissa Pollard

## CERTIFICATE OF COMPLIANCE

According to Microsoft Word, this document contains 2487 words, excluding exempted text.

*/s/ Allissa Pollard*
Allissa Pollard

## APPENDIX

| | |
|---|---|
| TAB A | Transcript of June 10, 2024 Trial |
| TAB B | Appellant OAG's Unopposed Second Mot. to Abate Appeal Pending Final Judgment (Aug. 8, 2024) |

# TAB A

# Transcript of June 10, 2024 Trial

**REPORTER'S RECORD**
**VOLUME 1 OF 2 VOLUMES**
**TRIAL COURT CAUSE NO. D-1-GN-24-001276**

| | | |
|---|---|---|
| PFLAG, INC.,<br>Plaintiff,<br><br>VS.<br><br>OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS; AND WARREN KENNETH PAXTON, JR., IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS,<br>Defendants. | ) IN THE DISTRICT COURT<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) TRAVIS COUNTY, TEXAS<br>)<br>)<br>)<br>)<br>)<br>) 261ST JUDICIAL DISTRICT |

---

**BENCH TRIAL ON MERITS**

---

On the 10th day of June, 2024, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Amy Clark Meachum, Judge Presiding, held in Austin, Travis County, Texas:

Proceedings reported by machine shorthand.

**APPEARANCES**

FOR THE PLAINTIFF:

**ALLISSA POLLARD**
SBOT NO. 24065915
ARNOLD & PORTER
700 Louisiana Street, Suite 4000
Houston, Texas 77002
Phone: (713) 576-2400
Email: allissa.pollard@arnoldporter.com

- AND -

**KAREN L. LOEWY**
PRO HAC VICE
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
1776 K. Street, N.W., 8th Floor
Washington, D.C. 20006
Phone: (202) 804-6245
Email: kloewy@lambdalegal.org

- AND -

**LORI B. LESKIN**
PRO HAC VICE
ARNOLD & PORTER
250 West 55th Street
New York, New York 10019
Phone: (212) 836-8541
Email: lori.leskin@arnoldporter.com

- AND -

**PAUL D. CASTILLO**
SBOT NO. 24049461
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
3500 Oak Lawn Avenue, Unit 500
Dallas, Texas 75219
Phone: (214) 219-8585
Email: pcastillo@lambdalegal.org

**APPEARANCES CONTINUED**

FOR THE PLAINTIFF:

**MILO INGLEHART**
PRO HAC VICE
TRANSGENDER LAW CENTER
594 Dean Street, Suite 11
Brooklyn, New York 11238
Email: milo@transgenderlawcenter.org

- AND -

**CHLOE KEMPF**
SBOT NO. 24127325
ACLU FOUNDATION OF TEXAS, INC.
P.O. Box 8306
Houston, Texas 77288
Phone: (713) 942-8146
Email: ckempf@aclutx.org

FOR THE DEFENDANTS:

**DAVID G. SHATTO**
SBOT NO. 24104114
**CHRISTIN VASQUEZ**
SBOT NO. 24074047
OFFICE OF THE ATTORNEY GENERAL OF TEXAS
P. O. Box 12548
Austin, Texas 78711
Phone: (512) 475-4656
Email: david.shatto@oag.texas.gov
christin.vasquez@oag.texas.gov

FOR SAM WEEKS:

**KATHY JOHNSON**
SBOT NO. 24126964
OFFICE OF THE ATTORNEY GENERAL OF TEXAS
P. O. Box 12548
Austin, Texas 78711
Phone: (512) 475-4164
Email: kathy.johnson@oag.texas.gov

**INDEX**

**VOLUME 1**

**HEARING ON TEMPORARY INJUNCTION**


| **MARCH 25, 2024** | **Page** | **Vol.** |
|---|---|---|
| Announcements | 8 | 1 |
| Argument by Ms. Pollard | 10 | 1 |
| Argument by Mr. Shatto | 11 | 1 |
| Argument by Ms. Loewy | 17 | 1 |
| Motion in Limine | 22 | 1 |
| Argument by Ms. Kempf | 22 | 1 |
| Argument by Ms. Vasquez | 24 | 1 |
| COURT'S RULING ON MOTION IN LIMINE | 25 | 1 |
| Argument by Mr. Inglehart | 26 | 1 |
| Motion to Quash | 31 | 1 |
| Argument by Ms. Vasquez | 31 | 1 |
| COURT'S RULING ON MOTION TO QUASH | 33 | 1 |
| Opening Statement by Ms. Loewy | 34 | 1 |
| Opening Statement by Mr. Shatto | 36 | 1 |


**PLAINTIFF'S WITNESSES**


| | **Direct** | **Cross** | **Vol.** |
|---|---|---|---|
| **BRIAN BOND** | | | |
| By Ms. Pollard | 42 | | 1 |
| By Mr. Shatto | | 79 | 1 |
| By Ms. Pollard | 91 | | 1 |

## INDEX CONTINUED

**PLAINTIFF'S WITNESSES**


| | Direct | Cross | Vol. |
|---|---|---|---|
| **SAM WEEKS** | | | |
| By Ms. Leskin | 96 | | 1 |

| | Page | Vol. |
|---|---|---|
| Closing Argument by Ms. Loewy..... | 144 | 1 |
| Closing Argument by Mr. Shatto..... | 153 | 1 |
| Further Closing Argument by Ms. Loewy.... | 158 | 1 |
| Further Closing Argument by Ms. Loewy.... | 162 | 1 |
| TAKEN UNDER ADVISEMENT..... | 166 | 1 |
| Adjournment..... | 168 | 1 |
| Court Reporter's Certificate..... | 169 | 1 |


## ALPHABETICAL WITNESS INDEX


| | Direct | Cross | Voir Dire | Vol. |
|---|---|---|---|---|
| **BOND, BRIAN** | | | | |
| By Ms. Pollard | 42 | | | 1 |
| By Mr. Shatto | | 79 | | 1 |
| By Ms. Pollard | 91 | | | 1 |
| **WEEKS, SAM** | | | | |
| By Ms. Leskin | 96 | | | 1 |

**EXHIBIT INDEX**

**PLAINTIFF'S**

| NO. | DESCRIPTION | OFFER | ADMIT | VOL. |
|---|---|---|---|---|
| 1 | Civil Investigative Demand | 68 | 68 | 1 |
| 2 | Notice of Demand | 69 | 69 | 1 |
| 3 | Articles of Incorporation | 46 | 46 | 1 |
| 4 | Bylaws | 47 | 47 | 1 |
| 5 | Mission Statement | 44 | 44 | 1 |
| 6 | Press Release | 27 | 29 | 1 |
| 8 | Original Petition | 27 | 29 | 1 |
| 9 | Order | 27 | 29 | 1 |
| 10 | Rule 11 Agreement | 27 | 29 | 1 |
| 11 | Relief Order | 27 | 29 | 1 |
| 12 | Letter | 27 | 29 | 1 |
| 15 | SB14 | 27 | 29 | 1 |
| 16 | Original Petition | 27/61 | 29/61 | 1 |
| 17 | TI Order | 27 | 29 | 1 |
| 18 | Notice of Appeal | 27 | 29 | 1 |
| 19 | Docket | 27 | 29 | 1 |
| 20 | AG Opinion KP-0401 | 27 | 29 | 1 |
| 21 | Press Release | 27 | 29 | 1 |
| 22 | Press Release | 27 | 29 | 1 |
| 23 | Press Release | 27 | 29 | 1 |
| 24 | Seattle Children's | 27 | 29 | 1 |

**EXHIBIT INDEX CONTINUED**

**PLAINTIFF'S**

| NO. | DESCRIPTION | OFFER | ADMIT | VOL. |
|---|---|---|---|---|
| 25 | Seattle Children's | 27 | 29 | 1 |
| 27 | Washington Post Article | 30 | 30 | 1 |
| 28 | HuffPost Article | 30 | 30 | 1 |
| 29 | Texas Tribune Article | 30 | 30 | 1 |
| 30 | Washington Post Article | 30 | 30 | 1 |
| 31 | Brief of Amici Curiae | 30 | 30 | 1 |
| 32 | Annunciation House | 30 | 30 | 1 |
| 33 | Annunciation House | 30 | 30 | 1 |
| 34 | Annunciation House | 30 | 30 | 1 |
| 35 | Annunciation House | 30 | 30 | 1 |
| 36 | Annunciation House | 30 | 30 | 1 |
| 37 | Sam Weeks' Affidavit | 103 | 103 | 1 |
| 38 | QueerDoc Website | 116 | 117 | 1 |

**DEFENDANTS'**

| NO. | DESCRIPTION | OFFER | ADMIT | VOL. |
|---|---|---|---|---|
| 3 | Modified CID | 85 | 86 | 1 |
| 4 | Modified NOD | 85 | 86 | 1 |

THE COURT: This is GN-24-1276. The case is styled PFLAG, Inc. vs. Office of the Attorney General of the State of Texas. At this time let me take attorney announcements and who you're representing for the record.

MS. POLLARD: Good morning, Your Honor. Allissa Pollard for plaintiff, PFLAG, Inc. And I'll let my co-counsel introduce themselves.

THE COURT: Thank you.

MS. LOEWY: Good morning, Your Honor. Karen Loewy for PFLAG, Inc.

MS. LESKIN: Good morning, Your Honor. Lori Leskin also for PFLAG.

MR. INGLEHART: Good morning, Your Honor. Milo Inglehart also for PFLAG, Inc.

THE COURT: Thank you.

MR. CASTILLO: Paul Castillo for PFLAG, Inc.

MS. KEMPF: Good morning, Your Honor. Chloe Kempf for PFLAG, Inc.

THE COURT: Thank you.

MR. SHATTO: Good morning, Your Honor. David Shatto with the Office of the Attorney General.

MS. VASQUEZ: And Christin Vasquez also for the Office of the Attorney General, Your Honor.

THE REPORTER: Judge, can I check everyone's mics?

THE COURT: Yeah. I mean, it was -- it was -- I think we just have some soft-spoken people.

*(Off the record.)*

THE REPORTER: Thank you.

MS. JOHNSON: Your Honor, I just wanted to let you know. My name is Kathy Johnson. I'm from Office of the Attorney General, and I'll be representing Mr. Sam Weeks, who's a witness later.

THE COURT: Okay. Yeah. It seems like it would work -- we've been louder in here than we are, but, you know, I think turning the microphones on helps some. But -- but also just try and speak up just because sometimes it is hard to hear. And for whatever reason, my computer's doing that thing where it makes noise and so -- and you don't know what's happening with it. It's just sort of having a mind of its own. So at any rate, for now if you could talk up.

I know -- we have some initial matters. I know y'all reached out on Friday afternoon. Apologies. We were short-staffed last week. A lot of -- I mean, a lot of people are on vacation, both in my office, and all around the courthouse. It's a heavy vacation week.

So before we get started, we're -- we're here for kind of the final trial and the final injunction today, but I know there were some preliminary matters that maybe PFLAG wanted to raise with the Court. And so I would allow that to happen at this time. Ms. Pollard, is it you?

**ARGUMENT BY MS. POLLARD**

MS. POLLARD: Thank you, Your Honor. We were -- most of what we were planning to raise in the injunction is probably moot now just in terms of kind of the plan for today, logistics, things like that. We are happy to address time, time allotment, those sorts of things, if that's helpful to the Court.

Two preliminary matters we would still like to raise, we have a motion in limine that we would like to address, and we'd like to request that the Court take judicial notice of certain documents. I don't think either of those things will take more than a couple of minutes. We have two of the younger lawyers who were responsible for drafting those motions who would like to present them if the -- if the Court's amenable to that.

THE COURT: So you're ready to proceed.

MS. POLLARD: We are.

THE COURT: All right. Thank you.

Anything from the State on that?

MR. SHATTO: Your Honor, the -- the State actually, before even that, believes that we may be able to save the Court time and all the parties time if you're able to give me a couple of minutes to kind of explain why we believe so.

THE COURT: I -- I will allow you to have the floor, yes.

**ARGUMENT BY MR. SHATTO**

MR. SHATTO: Okay. Well, thank you, Your Honor. Since you heard the temporary injunction hearing in this matter, nothing material has changed since then. Our office has filed a counterclaim, which is the mirror image of PFLAG's petition, and that's really the only thing that's changed since then.

PFLAG got the opportunity to develop factual information at that time, and we believe that all the other issues here are simply legal issues for the Court to determine. For that reason, understanding the Judge's earlier decision, temporary injunction, while we disagree with that, we do understand that since nothing material has changed, that the Judge could be in a position to make a determination now.

To that point, we're here on a demand issue. The State of Texas issued demands to PFLAG, and

PFLAG believes that those demands were essentially improperly issued. The way we view these demands, these are pre-suit investigation demands that allow the State to, you know, do certain --

THE COURT: But now you're just going back into your -- that's just argument. Isn't that the same argument again?

MR. SHATTO: Well, no, it's not. I -- I think our argument here or -- or our statement here is that these issues are supposed to be determined by the Court summarily, and -- and there just isn't a reason for any further factual developments or any further development of a record at this point. And we believe that the Court has all the information they need to make a determination.

THE COURT: Let me ask you a few questions because I think it's fair to say that you've probably been following this case more closely than I have.

MR. SHATTO: Correct.

THE COURT: Because I have a lot going on. What happened? So I've -- I've -- I've granted a -- I granted a TI. I assume you then sent -- did something with it. You went to the Third Court. Where did you go?

MR. SHATTO: The Third Court of Appeals. We appealed that, correct.

THE COURT: Okay.

MR. SHATTO: And that's currently on stay.

THE COURT: And then I heard something -- so you appealed it to the Third Court of Appeals --

MR. SHATTO: Correct.

THE COURT: -- which triggered the automatic --

MR. SHATTO: Correct.

THE COURT: -- stay. But you're not -- I guess I don't under- -- you're going to have to explain to me what's actually happening in the world.

MR. SHATTO: Sure.

THE COURT: Because like both -- I would like to know the procedural history of where you are in your appellate world, but I also want to know the practical history of what's currently going on in the world, given that decision, and then what happened after y'all were here.

MR. SHATTO: Sure. So we appealed it to the Third Court of Appeals.

THE COURT: Okay.

MR. SHATTO: And the automatic --

automatic stay went -- went through. We then --
THE COURT: Your what went through?
MR. SHATTO: The automatic stay --
THE COURT: The automatic stay.
MR. SHATTO: -- went through. And then we then filed our counterclaim. That counterclaim --
THE COURT: Not in the Court of Appeals. Here.
MR. SHATTO: Correct. At this level, at the trial court level. PFLAG has since filed a motion to the Court of Appeals to stay the automatic stay. The -- the Court -- I'm sorry. To reinstate the --
THE COURT: I'm sorry. I didn't understand -- to what?
MR. SHATTO: The Third Court of Appeals reinstated --
THE COURT: The Third Court of Appeals --
MR. SHATTO: -- the temporary injunction.
THE COURT: -- reinstated my temporary injunction.
MR. SHATTO: Correct.
THE COURT: So they have it on temporary -- I think they do -- I think they call it temporary orders.
MR. SHATTO: Correct.

THE COURT: That's their -- I am not an appellate expert, but when it has happened in the past, they issue temporary orders.

MR. SHATTO: Correct.

THE COURT: And so then did you, as the State, take those temporary orders up to the Texas Supreme Court?

MR. SHATTO: No, we have not. That is currently --

THE COURT: And that's been in place for a while though?

MR. SHATTO: That --

THE COURT: So you chose --

MR. SHATTO: -- that's still in place.

THE COURT: -- not to, for whatever reason?

MR. SHATTO: Correct.

THE COURT: Okay. So that's where it sits.

MR. SHATTO: That's where it sits.

THE COURT: Which is on temporary -- the temporary injunction sits with the Court of Appeals having issued temporary orders that reinstated my temporary injunction?

MR. SHATTO: Correct. Thank you for

explaining that better than I did.

THE COURT: All right. So that's where that sits.

MR. SHATTO: Yes.

THE COURT: Meanwhile was there ever a jurisdictional argument in this case? No. Usually -- and the reason I ask is -- is I just want to know. I rarely see you guys without you making some sort of jurisdictional argument, but maybe you're making -- not making one here because you're also bringing your own counterclaim, and, therefore, you're conceding there is jurisdiction.

I feel like -- and I -- I've done this before. You're not the first Attorney General that's been here where I've joked about how much you file pleas to the jurisdiction, so much so that many times you don't even replace the party everywhere. Like, you don't do your search find; find and replace.

MR. SHATTO: Okay.

THE COURT: They just get redone. So anyway, I guess I'm asking, process-wise, where are you with jurisdiction in this case?

MR. SHATTO: So process-wise at the TRO hearing, very early on, we did file -- I think we raised some jurisdictional issues, and there was a plea

to the jurisdiction filed; however, we have not -- we have not --

THE COURT: You never sought it?

MR. SHATTO: -- we have not sought that issue or pressed that issue.

THE COURT: And you're not seeking it today?

MR. SHATTO: Correct.

THE COURT: All right. That's what I wanted to know. That's helpful. Okay.

Now let me hear -- I asked him about the process and procedural history. Now he's brought up two points. One, I want you to address process and procedural history, anything that you think needs to be pointed out to me that is different or may have nuance to what he said.

And, two, I would like you to come back also for what Mr. Shatto said about the character of the evidence today and whether you think you need to have a full record hearing or whether or not you believe the Court can summarily rule on the injunction, such as Mr. Shatto said. Ms. Loewy.

**ARGUMENT BY MS. LOEWY**

MS. LOEWY: Thank you, Your Honor. So the only thing that I would add to the procedural

recitation is that in light of the pendency of today's hearing, the Attorney General's office requested, and with our consent, put proceedings at the Court of Appeals on hold. So the status is that their appeal is sitting there pending because they've asked the Court of Appeals to basically hold it in abeyance.

THE COURT: That was on Friday, right? There was some -- I got something from you that they had filed something, and you weren't objecting? Is that what I received on Friday? Some notice about something that was -- had been done at the AG's -- at the Third Court of Appeals.

MS. POLLARD: It might have been Thursday.

MS. LOEWY: Yeah.

THE COURT: Maybe it was Thursday.

MS. POLLARD: Some point last week.

THE COURT: Yeah. So that was that Thurs- -- or that was the development on Thursday is now they're also saying, Court of Appeals, don't do anything with our appeal.

MS. LOEWY: That's correct, Your Honor.

THE COURT: And you did not fight that?

MS. LOEWY: We did not oppose that and particularly in light of the temporary relief being in

place so that PFLAG remains protected.

THE COURT: I think I understand, but go ahead. Yes. Thank you.

MS. LOEWY: Okay. Great. With regard to what's happening here today, we -- we don't agree that a summary proceeding is -- is an appropriate way to approach this. That's a framework that the Attorney General's office is borrowing from federal case law and federal administrative subpoenas. It doesn't actually mirror what the DTPA sets forth in terms of a -- of a recipient of demand's ability to challenge the demands that they've received.

We do believe that witness testimony is appropriate, both with regard to setting the stage for -- for the impact on our client but also with regard to our ability to -- to challenge their offer of the legitimacy of the demands and their underpinnings and the -- how these demands relate to the investigation that they purport to have undertaken. So we do believe that a full trial is what is appropriate today.

THE COURT: And -- and how long do you think it will take for you to put on your evidence? You announced total of four hours.

MS. LOEWY: We did. We don't anticipate

a tremendous amount of testimony. We're talking two witnesses, Your Honor, and otherwise argument. We don't -- we don't anticipate it will take very long, but want to be clear that it's not a summary proceeding in the way that the Attorney General's office has described it.

THE COURT: All right. Thank you. I tend to agree with PFLAG here, Mr. Shatto. Let me just say, I wish sometimes -- I wish a lot of times that there were mechanisms under Texas law that we could do things summarily. But even something as simple as attorney's fees under Texas law, like, sometimes you'll grant the entire case on summary judgment, and you still have to have -- you can have a jury trial on the issue of attorney's fees.

The Federal Rules of Procedure make clear that you don't do that. The Texas Rules of Procedure, they don't make anything clear, and so as a trial judge, I think I would be -- I'd be taking too big of a risk to not allow the full evidence to come in today. It's going to be short, but I think given where this posture is and the likelihood that whatever happens, the posture continues up at the Court of Appeals. It's better safe than sorry for me, and so we'll have some evidence today and let the record be established. I

think that's the safer thing to do and the better thing to do under state law.

Maybe there are people who can correct -- try to lobby the Legislature on making those processes or the Texas Supreme Court making those processes a little more summary under state law, but they don't exist yet.

MR. SHATTO: Well, thank you for hearing us, Your Honor.

THE COURT: Thanks. All right. So then let's proceed with opening and then we will proceed to evidence. Oh, you have a motion in limine. Go ahead and bring your motion in limine, but I don't really understand a motion in limine, I'm going to be honest, outside the context of a jury trial.

MS. POLLARD: Understood. It will be fairly brief, and we will address what we -- we expected that to be a question. We plan to address it.

THE COURT: All right. Thank you.

MS. KEMPF: Thank you, Your Honor.

THE REPORTER: I'm sorry. Can I get your name again, because I did not get your name earlier.

MS. KEMPF: Thanks. Chloe Kempf for PFLAG, Inc.

THE REPORTER: Kemp?

MS. KEMPF: Kempf, K-e-m-p-f.

THE REPORTER: Thank you.

MS. KEMPF: Thank you.

**MOTION IN LIMINE**

**ARGUMENT BY MS. KEMPF**

MS. KEMPF: So the motion before you is simply seeking an acknowledgement of the first amendment guardrails surrounding Mr. Bonds' potential testimony today, in particular with respect to his cross-examination by the Office of the Attorney General. So essentially it's seeking a court ruling that defendants refrain from asking Mr. Bond questions that would elicit testimony protected by the First Amendment privilege or to the extent that they plan to ask those questions, that they first seek a ruling from the Court regarding privilege before asking them.

And to -- to your question about why is this needed in -- in a nonjury trial context, PFLAG is claiming that that information regarding its member names, member identification information, and internal communications at its meetings implicate its members' First Amendment rights to freedom of association and freedom of expression.

Essentially that disclosure of this information to the State, to the Office of the Attorney

General would chill its members' First Amendment rights to come together and exchange information in these meetings. That disclosure, to this party in particular and to the public at large, would inhibit their -- their expression of these -- of these First Amendment rights. And so I can walk through the test quickly from the motion.

First, PFLAG has met its initial burden to show that disclosure of the privileged information at issue here would burden its members' First Amendment rights to freedom of association and expression. As Mr. Bond can testify to today and as was already testified to at the temporary injunction hearing, the existence and the issuance of these demands has already actually chilled PFLAG members' association and expression rights.

They -- PFLAG members have been limiting their amount of participation in PFLAG meetings. They have changed and limited the way that they are communicating with each other. The locations of PFLAG meetings have changed from public accessible meetings to private, harder to accessible meeting locations for example.

And part two of the test is that the disclosure of this information does not have a

substantial relationship to a compelling government interest. In particular, member names, identifying information, private and sensitive communication that happens at PFLAG meetings is not substantially related to the government's purported insurance fraud investigation of providers of gender-affirming care.

And so essentially we're just asking for a court order that before any of these type of questions are asked -- are asked by the defendants to Mr. Bond, that the Court can step through this legal framework with both parties to ensure that privileged information is appropriately protected.

THE COURT: Mr. Shatto.

MS. VASQUEZ: I'm going to take this argument, Your Honor.

THE COURT: What is it again? Ms.?

MS. VASQUEZ: Christin Vasquez, Your Honor.

THE COURT: Vasquez. Thank you.

**ARGUMENT BY MS. VASQUEZ**

MS. VASQUEZ: Yes. Your Honor, we have no objection to not asking Mr. Bond about the member names. That is completely fine. We have amended -- or agreed to redaction of that portion of our CID request. What we do object to, Your Honor, is not being able to

ask him about member communications that PFLAG has had.

This limitation would foreclose our cross-examination of Mr. Bond on the contents of his affidavit regarding these members being chilled in order to test the First Amendment claim, Your Honor. That communication does go to a compelling State interest, and that interest is -- is Texas' interest in enforcing the laws that we have set forth. In order to test that, Your Honor, we must be allowed to ask him about the communications that -- that PFLAG has had with the -- their members.

**COURT'S RULING ON MOTION IN LIMINE**

THE COURT: Okay. Here's where I am on this. I mean, it basically -- the argument is that the utility and merits of this entire injunction is mooted or vitiated if I allow these questions. I understand that. I think that we're just going to have to take it as we come, though. I'm inclined to -- there's going to be some line. I don't know where that line is, but we will -- I mean, I'll have to just get there when I get there. We'll have to do it in real time, I think.

And at some point, to make it clear for the record for you, Ms. Vasquez, if -- when I cut your questions off, because there is going to be some line, that we just put on the record where we got to and

we'll just make sure that's clear for you so we can have that record.

MS. VASQUEZ: Thank you, Your Honor.

THE COURT: All right.

MS. KEMPF: Thank you, Your Honor.

THE COURT: And then the next thing is -- there was something you wanted me to take judicial notice of.

MS. POLLARD: Yes, Your Honor.

THE COURT: And what's that?

MS. POLLARD: We'll have Mr. Inglehart prepare -- present on that, if we may, Your Honor.

THE COURT: Thank you.

**ARGUMENT BY MR. INGLEHART**

MR. INGLEHART: Thank you, Your Honor. We just ask that the Court take judicial notice of a number of exhibits. We filed a request last night with the Court. These are documents primarily relating to the *PFLAG v. Abbott* and *Loe v. Texas* cases, as well as two other lawsuits that Consumer Protection Division has initiated under somewhat similar circumstances, the *Seattle Children's Annunciation House* cases. The documents we'd like the Court to take judicial notice of are all in Box and in the file.

THE COURT: Well, so you want me to admit

them, I think, not just take judicial notice, but admit some exhibits, preadmission? I mean, some of them might be worth taking judicial notice of. Some of them are probably -- I think I can take judicial notice of. I -- I don't -- but I have -- do we want to go through them one by one, is there any objection from the State? I guess I don't know.

I think lawsuits and other court filings I can take judicial notice of. It might be simpler to just admit them, especially if they're all public records. But I'll ask the Attorney General what they think.

MR. INGLEHART: The Attorney General indicated to us that they have no objections to these.

THE COURT: So I -- I'm sorry. It's Exhibits 1 through 36?

MR. INGLEHART: No, Your Honor. It's Exhibits 6, 8 to 12, 15 to 25.

THE COURT: Okay. Then we're going to need to go a little slower.

MR. INGLEHART: Okay. Sorry.

THE COURT: I'm going to admit them -- I'm going to admit them probably as we go. Anything they don't have objections to, I'm going to go ahead and admit.

MR. INGLEHART: Okay.
THE COURT: You're correct. I could probably also take judicial notice of them, but since they're in Box, I'll just admit them because that's easier.
MR. INGLEHART: Okay.
THE COURT: So 6.
MR. INGLEHART: Yes.
THE COURT: Is an OAG press statement.
MR. INGLEHART: Yes, Your Honor.
THE COURT: Any objection?
MR. SHATTO: The Attorney General is going to object on relevance, Your Honor.
THE COURT: So they aren't -- then -- are you -- are there ones you aren't objecting to? That's my question.
MR. SHATTO: The Attorney General is going to object on relevance for all of them.
THE COURT: Oh. So it's one of your big objections because you just don't think there should be any evidence at this hearing because you think it's a summary hearing? You think I should just rule?
MR. SHATTO: We do believe it's a summary hearing. Yes, Your Honor.
THE COURT: So that objection is

overruled. And you can have a running objection on that or you can state it whenever you want, but that objection of what -- why we're even here, that's overruled.

So short of that, it didn't sound like you had, like, evidentiary objections to the documents themselves.

MR. SHATTO: The Attorney General office -- they were admitted as judicial evidence before or judicial notice before, and we understand that to be the case and okay here.

THE COURT: So it's -- 6 is admitted.

*(Plaintiff's Exhibit 6 admitted.)*

THE COURT: And the Court takes judicial notice of 6. And then it was 8 through 15?

MR. INGLEHART: 8 through 12, Your Honor.

THE COURT: 8 through 12 is admitted -- are admitted.

*(Plaintiff's Exhibits 8-12 admitted.)*

THE COURT: And the Court takes judicial notice of 8 through 12.

MR. INGLEHART: Thank you. And 15 to 25.

THE COURT: 15 to 25 are admitted.

*(Plaintiff's Exhibits 15-25 admitted.)*

THE COURT: And the Court takes judicial

notice of those as well.

MR. INGLEHART: Thank you, Your Honor. And the final group is 27 to 36.

THE COURT: All right. 27 to 36 are admitted.

*(Plaintiff's Exhibits 27-36 admitted.)*

THE COURT: And the Court also takes judicial notice of those. Now we can go to opening, and we'll do opening both sides and then we'll come back to evidence.

MS. VASQUEZ: I'm sorry, Your Honor. Another -- another matter that we visited on Thursday, I think it was, but the Court on Thursday during our emergency hearing said that we could reurge it this morning. And if I could, I'd like permission to do that.

THE COURT: So you went to Duty Court last week?

MS. VASQUEZ: Yes, Your Honor.

THE COURT: Was that Judge Mangrum? Who is that? Judge Crump?

MS. VASQUEZ: Yes.

THE COURT: Judge Crump.

MS. VASQUEZ: Yes, Your Honor.

THE COURT: Okay. Go ahead.

**MOTION TO QUASH**

**ARGUMENT BY MS. VASQUEZ**

MS. VASQUEZ: This is on the Office of the Attorney General's motion to quash the subpoena by -- of Sam Weeks. He's a former investigator in our Division that PFLAG has subpoenaed for testimony today.

The -- the basis of his testimony is from a declaration that he wrote in this case that basically authenticated two articles. This matter is akin to a discovery dispute. We don't believe that his testimony is proper, especially because any relevant testimony that he plausibly could have is privileged, Your Honor, by attorney-client privilege, work-product privilege, and also the law enforcement privilege.

Under the attorney-client privilege, any communications made by and to non-attorneys working under or serving as agents of attorneys in internal investigations are routine -- routinely protected. Sam was employed by the Office of the Attorney General when he wrote this, this communication or this declaration, and his job was to investigate these matters here. Any statements that he would have outside of what he wrote would be privileged by the attorney-client privilege.

It would also be protected by work product. Work product of an attorney or an attorney's

representative includes their mental impressions, opinions, conclusions, or legal theories. Calling him to testify in this matter is an improper --

THE COURT: Is he a lawyer?

MS. VASQUEZ: He is not. He's an investigator. Calling him to testify is an improper attempt to probe further into --

THE REPORTER: Excuse me. Could you slow down when you read?

MS. VASQUEZ: Sure.

THE REPORTER: Thank you.

MS. VASQUEZ: It's an improper attempt to probe for more information that he -- pursuant to his investigation that is not easily segregated from the attorney's mental impressions and opinions about this case.

THE COURT: Except he's not a lawyer.

MS. VASQUEZ: Correct. He's an agent of the attorneys of the Attorney General's office. And also the law enforcement privilege, Your Honor. The Consumer Protection Division is a law enforcement entity that is statutorily designated to enforce Texas law, specifically the Consumer Protection Statute, the DTPA. His investigation is related to that delegation of power by the Legislature, and it is protected, Your

Honor. So any testimony that he could give here today is protected by those three privileges and is otherwise irrelevant.

THE COURT: He's here -- is he in the room or no?

MS. VASQUEZ: He is not, Your Honor. Judge Crump told him to be available by 10:00 or 11:00 today.

**COURT'S RULING ON MOTION TO QUASH**

THE COURT: All right. Thank you. So Judge Crump -- the way I read it, you may have -- she -- you may have interpreted it differently, but she's on a plane to Tokyo, and so I'm going to interpret it in her note in this matter. And her note in this matter said that the motion to quash was denied, but the trial judge will determine in real time, basically, the substance and any sort of objections made in real time.

So we'll just have to do it that way, because I don't have the ability to give her a call. And that's how we do the Central Docket, is we just rely on what the Judge did and what the note says or the order says, and that's what that says.

I'm not going to say no. Some of it might actually get into investigative privilege of some

sort, and so I'm sensitive to that. But we're just going to have to call him, ask some questions, and then if you think it gets into privileged and protected matters, you're just going to need to object in real time.

MS. VASQUEZ: Thank you, Your Honor.

THE COURT: All right. Thank you. All right. Go ahead.

**OPENING STATEMENT BY MS. LOEWY**

MS. LOEWY: Thank you, Your Honor. Thank you, Your Honor. Good morning. PFLAG Incorporated is a nonprofit membership organization dedicated to supporting LGBTQ people and families across Texas and across the country. The support for those families has included PFLAG representing those families against the State challenging child abuse directive in *PFLAG vs. Abbott* and SB14 and *Loe vs. Texas*.

On the heels of those cases, the defendants sent a Civil Investigative Demand and a demand for sworn written statement that are in- -- inextricably tied to those pieces of litigation incorporating the affidavit that Brian Bond submitted in *Loe v. Texas* as the centerpiece of those demands.

We're here today to determine the lawfulness of those demands and to engage in a process

to modify them to bring them within the bounds of the DTPA and constitutional constraints. We had hoped to work with the Attorney General's office since the time Your Honor issued the temporary injunction to come to resolution to engage in that process indirectly.

But it's become clear since the temporary injunction issued that they have no interest. They rejected outright the affidavit that we offered that mirrored exactly what they reflected to this Court would be sufficient to bring this matter to an end. They sought a ruling on their counterclaim independently of the underlying -- with no recognition of the underlying petition that PFLAG brought that was denied -- well, that was not ruled upon because there there was nothing to rule upon by Judge Cantu-Hexsel.

What's become clear is that they're looking for the fastest route to an appeal, that that is their goal, but PFLAG's goal is to put an end to the burden that these demands are placing on them, both practically and legally.

The testimony and arguments that the Court will hear today, among other things, go to the impact of the demands on PFLAG, the improper motives behind them, the lack of reasonable relevance of the demands to the investigation the Attorney General's

office purports to have undertaken, and the limits of the Attorney General's authority, both statutorily and constitutionally.

The demands exceed the Attorney General's authority under the DTPA. They do not comply with the statutory requirements and they infringe PFLAG and its members' rights. These are reasons to set aside the demands but also to order the kinds of modifications that are necessary to bring them within the requirements of the law.

The Attorney General's office has offered, has proposed some modifications to the demands through various filings, including attached to their counterclaim, but those do not go far enough to remedy the legal flaws with the demands.

PFLAG and its members seek the Court's assistance in ensuring that the Attorney General's office is precluded from abusing its authority, allowing PFLAG to continue providing Texas families with the support and the safe space that they need without undue influ- -- interference. Thank you, Your Honor.

THE COURT: Opening?

**OPENING STATEMENT BY MR. SHATTO**

MR. SHATTO: Yes, Your Honor. Thank you.

So the State of Texas has grand powers of investigations, and these powers exist to -- to -- first Consumer Protection Division specifically to look into false, misleading -- potential false, misleading, or deceptive acts. And the powers can be to determine whether or not wrongdoing is occurring or whether or not no wrongdoing is occurring at all, and that's all that's happening here today.

The State of Texas has issued demands to PFLAG. They have reasons to believe that PFLAG has certain knowledge as to potential wrongdoing. That knowledge resides within the organization of PFLAG and is going to be beyond Mr. Bond's totality of his knowledge.

There's going to be information that PFLAG has, we expect, that Mr. Bond simply does not know about, but Mr. Bond's previous affidavit about alternative avenues of care in Texas and contingency plans, while all that occurred at a time where this gender-affirming care was occurring in Texas legally, it indicates a potential of future fraudulent activity.

And -- and so the State of Texas issued these demands. And we believe we issued these demands completely appropriately. 17 -- the Statute 17.61 -- if the Court is interested, I have a copy of it here.

But all that the demand is required to have -- it says, Each demand shall state the statute and section under which the alleged violation is being investigated and the general subject matter of the investigation.

And our demands are clear. They state the Division believes they are in possession, custody or control of documentary material relevant to the subject matter --

THE REPORTER: I'm sorry.

THE COURT: You can't read like that because she can't take it down.

MR. SHATTO: Yeah.

THE REPORTER: Yeah. Thank you.

THE COURT: Go ahead.

MR. SHATTO: They're clear. Our demands are clear. The Division believes that you are in possession, custody, or control of documentary material that is relevant to the subject matter investigation of actual or possible violations of DTPA 17.46. That's your statute, and that's your section right there.

And it continues, For issues related to misrepresentations regarding gender transitioning and reassignment treatments and procedures in Texas law. And the gender transitioning and reassignment treatments and procedures is expansively defined within

the document itself. That's your general purpose. The Office of the Attorney General has clearly followed the letter of the law in terms of issuing these demands.

Furthermore, these demands can be issued to any person. It -- it -- it does not matter if that person engages in trade or commerce in the state of Texas. It doesn't matter what they do in the state of Texas. They can be issued to any person, and the reason for that is because just like a grand jury, which our powers are similar to a grand jury's in terms of the expansiveness of our investigation, you're going to look at third parties to determine that evidence that you need to find out the actual person of wrongdoing.

That's the same thing that's happening here. We're looking to the third party, PFLAG, who we have stated is not a target of this investigation. We do not believe they have done any wrongdoing. We simply believe that they have information that may help us within our investigation. And the statutes are clear that these can be issued to any person.

Furthermore, our proposed, modified demands rectify all of PFLAG's valid concerns, or at least we believe they do. Of course, PFLAG believes otherwise, and this has all been developed in a record

up to this point.

PFLAG has raised First Amendment concerns. We believe we've rectified those valid First Amendment concerns. Those concerns include the seeking of membership lists. Our demands have expressly -- the new modified demands, expressly allow for the redaction and the anonymization of identifying information.

It also clearly states that the Division does not seek PFLAG's membership list in any form. We also admitted completely the definition for identify. And it expansively defines members to include due-paying individuals and those served by PFLAG. This goes beyond any of the constitutional law that we've seen as it regards to First Amendment membership lists.

Now, PFLAG raises the idea that the First Amendment continues on to deal with member communications. We disagree with that. We have not seen the case law that actually supports that. In fact, in the motion in limine the one Fifth Circuit case that PFLAG cites -- I believe it's *Whole Woman's Health* -- all their citations appear to be dicta in that case.

And the Court itself did not actually come to the constitutional determination because of con- -- the doctrine of constitutional avoidance. And

so the Court didn't make that determination that member communications were protected. We have not seen anything that goes beyond membership lists themselves, and we've clearly made it apparent that we're not seeking those membership lists.

And for those reasons, we believe our demands should issue -- the modified demands should issue as presented to the Court previously.

THE COURT: All right. You may call your first witness.

MS. POLLARD: Your Honor, may I have permission to question the witness from counsel table?

THE COURT: You -- you can question the witness from counsel table. But who's your first witness?

MS. POLLARD: PFLAG calls Brian Bond to the stand.

THE COURT: Mr. Bond, go ahead and come on up. I'm going to swear you in and then you'll have a seat over here, but first raise your right hand.

*(Witness sworn in.)*

THE COURT: All right. Thank you. So walk around and have a seat right here in front of the microphone.

*(Off the record.)*

**BRIAN BOND,**

having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

BY MS. POLLARD:

Q. Good morning. My name's Allissa Pollard. My pronouns are she and her. Would you please introduce yourself for the record?

A. Sure. Good morning. My name is Brian Bond. My pronouns are he, him, and his.

Q. Mr. Bond, how are you employed?

A. I am the CEO of PFLAG, Inc.

Q. And I couldn't hear you very well, so I'll ask that you speak up just a little bit for us.

A. Sure. I'm the CEO of PFLAG, Inc.

Q. And how long have you been with PFLAG?

A. A little over five years as of February of this year.

Q. What are your responsibilities as the CEO of PFLAG, Inc.?

A. I have a fiduciary responsibility for the organization. I oversee the strategic priorities of the organization, the division, and work with an incredible staff and oversee that staff.

Q. Do you have any direct reports at PFLAG?

A. I do.

Q. And who are they?
A. The executive VP, the director -- or the VP for communication, and the VP for development.
Q. And in 2023, did you have the same direct reports?
A. I had several more.
Q. Who -- who were your direct reports in 2023?
A. We had not hired any VP at that point, so I was overseeing communications, development, operations, policy, advocacy, learn inclusion, and, of course, chapter engagement.
Q. I asked about your direct reports, but do all of those people still report to you indirectly?
A. Indirectly through my EVP, other than comms and development, who report directly to me, and a couple of minor staff -- junior staff. I'm sorry. \ not minor, but junior.
Q. What is PFLAG?
A. So PFLAG is the first and largest organization made up of LGBTQ+ individuals, parents, family, and allies. This is our 51st anniversary. We have been in the state of Texas for decades. It's made up of -- truly of the most caring and amazing parents who want to do right for their kids.
Q. Is PFLAG a 501(c)(3) nonprofit?

A. It is.
Q. What is PFLAG's mission?
A. PFLAG's mission is to create a more caring, just, and affirming world for LGBTQ+ people and those who love them.
Q. Does PFLAG have a mission statement?
A. It does.
Q. I'd like to show you what has been pre-marked as Plaintiff's Exhibit 5. Mr. Bond, are you familiar with this document?
A. Yes.
Q. And what is it?
A. That would be our mission statement.
Q. And this a true and accurate copy of PFLAG's mission statement?
A. It is.
MS. POLLARD: Your Honor, plaintiff moves to admit Plaintiff's Exhibit 5 into evidence.
MR. SHATTO: No objection.
THE COURT: 5 is admitted.
*(Plaintiff's Exhibit 5 admitted.)*
Q. (BY MS. POLLARD) Mr. Bond, is it your job as CEO to make sure that PFLAG achieves its mission?
A. Absolutely.
Q. And what kind of work does PFLAG do in order

to achieve that mission?

A. So our work is broken down really in three basic areas: One, support; two, education; three, advocacy. Support being through our 350-plus chapters around the country providing peer-to-peer support for parents who are on a journey, kids are coming out. We do virtual meetings as well to support those families.

And then second would be education where our members then talk -- talk about their journey, share their story, remind individuals that -- that we are citizens just like them, that we are parishioners just like them, that we are their neighbors and we go to their schools, we -- we go to their churches, we shop at the same places.

And then third, when the need arises when there is risk to that journey for parents and -- and members to speak out and speak out loudly in support of keeping families safe and -- and making sure that people are treated equitably.

Q. And does PFLAG have Articles of Incorporation?

A. Yes, it does.

Q. Are you familiar with those Articles of in- -- Incorporation?

A. I am.

Q. I'm going to show you what has been pre-marked

as Plaintiff's Exhibit 3.

MS. POLLARD: This is a longer document, Your Honor. Can I have permission to approach the witness?

THE COURT: Yes.

Q. (BY MS. POLLARD) Mr. Bond, would you identify Plaintiff's Exhibit 3?

A. These are our Articles of Incorporation.

Q. And does it appear to be a true and correct copy of those articles?

A. Yes, it does.

MS. POLLARD: Your Honor, plaintiffs move to admit Plaintiff's Exhibit 3 into evidence.

MR. SHATTO: Objection; relevance.

THE COURT: Overruled. 3's admitted.

*(Plaintiff's Exhibit 3 admitted.)*

Q. (BY MS. POLLARD) And, Mr. Bond, does PFLAG have Bylaws?

A. Yes, we do.

Q. Are you familiar with those Bylaws?

A. I am.

Q. I'd like to show you what has been marked as Plaintiff's Exhibit 4.

MS. POLLARD: This is, again, a longer document. May I approach again?

THE COURT: Yes.

Q. (BY MS. POLLARD) Mr. Bond, would you identify Plaintiff's Exhibit 4?

A. These are our current Bylaws for PFLAG.

Q. And does this appear to be a true and accurate copy of your Bylaws?

A. Yes, it does.

MS. POLLARD: Your Honor, plaintiffs move to admit Plaintiff's Exhibit 4 into evidence.

MR. SHATTO: Objection; relevance.

THE COURT: Overruled. 4 is admitted.

*(Plaintiff's Exhibit 4 admitted.)*

THE COURT: I -- I have given you a standing -- you can keep objecting, too. I just wanted to make clear that I have given you the continuing objection for the relevance, but you can go ahead as well. But just so you know, you have that. Thank you. Go ahead.

Q. (BY MS. POLLARD) Mr. Bond, does PFLAG provide medical care?

A. No.

Q. Does PFLAG provide or sell any sort of goods related to medical care?

A. No.

Q. Does PFLAG offer resources to medical

professionals regarding how to bill for medical care?

A. Absolutely not.

Q. Does PFLAG offer resources to anyone regarding how to bill for medical care?

A. No.

Q. Does PFLAG ever have occasion to bill insurance providers?

A. No.

Q. What, if any, goods does PFLAG offer for sale in the state of Texas?

A. Our online shop; T-shirts, buttons, dog leashes.

Q. Does PFLAG have any brick or mortar locations in the state of Texas?

A. No.

Q. And to be clear, does any of what PFLAG offers for sale on its website relate to medical care?

A. No.

Q. Is PFLAG a membership organization?

A. Yes, it is.

Q. How does someone become a member of PFLAG?

A. People can become a -- a member of PFLAG one of two ways. They can either join the national through the national portal, or they join through our chapters here in the state. Of -- when they join -- chapters

can set the dues at whatever level they want, but $15 of that money goes to national and they're an automatic member.

THE COURT: Okay. That was -- you -- you really --

THE WITNESS: Sorry.

THE COURT: I understand the natural inclination to fade out, but -- but fight, okay, and try to continue to project. Yes. Go ahead. Let's -- can we do that question again and -- and maybe answer again?

MS. POLLARD: Sure.

Q. (BY MS. POLLARD) How does someone become a member of PFLAG?

A. They can join by two routes. One either directly through the national office, through our website, or second, they can join the chapter, which a lot of -- most of our folks do. Our chapters can set whatever level of dues they would like, but $15 of each member goes to the national office. They're then recorded as members of PFLAG.

Q. So if someone becomes a member through their local chapter, they also become a member of PFLAG national or -- who we've been referring to as PFLAG in this case?

A. Absolutely. Yes.
Q. And what is the rule of members within PFLAG?
A. One of the primary responsibilities for a member of PFLAG is to vote on our portion of our board of directors, our 24 board of directors. And the membership has actually a really -- a lot of input into that.

A third of the board is -- is elected directly by the membership as a whole. A third of the board actually elect our regional directors who are 13, and of that eight of those have to be a member of the board, and then the other eight members of the board are selected by the board itself.
Q. Is that all described in PFLAG's Bylaws?
A. Yes.
Q. About how many members does PFLAG currently have?
A. About 325,000 members that support us across the country.
Q. Does Tex- -- does PFLAG have chapters in Texas?
A. Yes, we do.
Q. How many Texas chapters of PFLAG are there?
A. So we have 18 chapters today. Big towns, small towns across the state. Obviously here in

Austin, but places like Beaumont, El Paso, bigger cities as well, obviously, but Lubbock, across the state. Here for decades.

Q. How many members of PFLAG are in Texas?

A. About 1,600.

Q. Do you know whether any of PFLAG's members in Texas have transgender children?

A. Yes, they do.

Q. How do you know that?

A. Because I hear from them.

Q. What kinds of support has PFLAG provided to its Texas members with transgender children?

A. Sorry. I couldn't hear that one.

Q. Yeah. What kind of support has PFLAG provided to its Texas members with transgender children?

A. Great question. Because as I said, we've been in Texas for decades. Probably the -- the cornerstone of the work we do is around our support meetings. Now some extension, the virtual meetings as well. This is peer-to-peer support where people can go into a meeting who may be terrified, ashamed, angry, all kinds of emotions who literally get the opportunity to hear from others that are -- they're -- they're going to be okay, that their kid is going to be okay. And it's very similar to a -- an AA meeting, if you will, in that

confidentiality and safety is key. This is where parents can go to talk about their worst fears and know they're doing it in a safe space and know that they're going to be okay.

Q. Why is it important for PFLAG to provide that kind of support.

A. It's lifesaving. Literally lifesaving and it helps keep families together.

Q. So I would like to talk some more about the support meetings. How do people meet?

A. Again, mentioned earlier, similar to an AA meeting in that people come to our meetings. There now is a little more of a screening process to ensure safety and confidentiality. People are welcomed with open arms. Our tag line is leading with love, and we live that every day.

These are run by volunteers. Our chapter leadership in the state of Texas are all volunteers. They're neighbors and community members. You come into a meeting. You're welcome. You don't have to say a word if you don't want. You can just observe, or you can participate. The -- the -- the benefit of that is literally knowing you are not alone that -- and that there are people you can talk to that have been on similar journeys as you and all -- and -- and -- and

truly -- in not a religious way, but giving people the grace to -- to share where they are right now and to -- yeah, and hopefully come back and learn more how to keep their kids safe.

Q. Are meetings in person?

A. Our meetings are in person. Again, because of COVID, we learned a lot, so we obviously had to shift to virtual for that period of time. Now many of our chapters have a hybrid version to ensure that we're reaching more people and allowing people the opportunity to be able to show up.

In this current climate, the virtual meetings have also been a bit of a benefit because it allows more anonymity, especially when -- when parents are essentially -- are afraid to show up.

Q. And who runs the meetings?

A. It's run by our chapter leadership, again, all volunteers. Usually one person, sometimes two are designated as the facilitator for the -- the support meeting.

Q. And are those the volunteers that you talked about earlier?

A. Yes.

Q. In your view, why do people go to PFLAG support meetings?

A. Because it's a safe space. Again, parents I meet -- not everybody is that parent. You don't necessarily start out in your journey with your kid coming out as that parent you see in a parade. It's a longer journey than that for many. And this is a place where they can go in a safe and confidential environment with peers, people who have been where they are, to try to -- to -- to walk through that path. These are -- these are good Samaritans that live this every day and -- and are trying to make their community safe and -- and help these families through this journey.

Q. Do meetings provide opportunities for members to share their experiences?

A. If they choose to, yes. They do not have to.

Q. Do they provide opportunities for members to learn from each other in these --

MR. SHATTO: Objection; leading.

THE COURT: It's leading. Sustained.

Q. (BY MS. POLLARD) Describe what, if any, opportunities to hear from others might exist at a meeting.

A. A -- a significant portion of the meeting is about parents sharing where they are in any particular moment with their kid. And -- and it's a really --

it's -- if you haven't been to a meeting, it's -- it's -- it's -- it's a -- it's an experience because you have parents in the room who are -- who -- who are 100 percent on board with their kid and -- and lead with this -- this hope and this joy of where they are, of seeing their kid thrive and accepted.

And then there was parents there who are maybe for the first time able to say out loud to people, to -- to their peers, that I'm scared. I'm uncomfortable. I hate this. I don't know what to do. And there's no judgment. There's no judgment because they have that safe space to be able to share that.

And sometimes, honestly, people may go to one meeting, may go to two. Doesn't help us with membership, but they walk out and say, I'm okay. I'm good. I got this. And that's -- that goes back to our mission. That's what we're supposed to do.

Q. What chap- -- steps do PFLAG chapters take to ensure that the meetings are what you called a safe space?

A. On the front end, if somebody reaches out in the majority of cases that's new -- although a reminder, many of these chapters are in smaller communities, so they are known at some level, but not maybe their journey they're on. But there is a bit of

a screening process to make sure. It's usually just a conversation to make sure it's a right fit for somebody to be able to come and/or to flag if there may be an issue or concern.

But upfront when you come into a meeting, it's made very clear that it is -- and many of the chapters actually read things that say, This is a safe space. This is a confidential meeting. This is for you to be yourself and -- and to feel that you can ask any question here. Part of our -- our motto is about meeting people where they are.

Q. Do all meetings have that expectation of confidentiality?

A. Absolutely. That's core to -- to ensuring parents can share where they are.

Q. I'd like to switch gears a little bit and talk about some prior litigation that PFLAG has been involved with. Are you familiar with a case called *PFLAG v. Abbott*?

A. Yes.

Q. And what's PFLAG's role in that case?

A. We're the plaintiff in this case.

Q. What does that case relate to?

A. The -- sorry. My personal opinion, the egregious overreach of investigating parents that are

doing their best to see their kids thrive and be whole.

Q. Did PFLAG bring that case on behalf of its members?

A. Yes, we did.

Q. Why did PFLAG bring that case?

A. Because our parents were hurting. Our members were hurting. The state of Texas was hurting over this. Again, it's just parents in conjunction with their medical providers trying to do the best they could for their kids.

Q. And do you know whether there was a protective order negotiated in that case that protected information exchanged in that lawsuit?

A. Yes.

Q. Do you know whether there was a temporary injunction that was issued in that case?

A. Yes.

Q. And that was probably a poor question. Yes, you know, or yes, there was an injunction?

A. Yes, there was.

Q. Okay. And the -- the same for the protective order?

A. Yes. Correct.

Q. Yes, that it was -- yes, that you know or yes, that there was one issued?

A. Yes, I know.
Q. I apologize.
A. Sorry.
Q. And is there currently, what we call, discovery going on in that case?
A. I don't believe so.
THE COURT: Is that I believe so?
THE WITNESS: I do not believe so.
THE COURT: I do not believe so.
THE WITNESS: Sorry.
THE COURT: Thank you.
THE WITNESS: Sorry.
Q. (BY MS. POLLARD) What is your understanding of the current status of the *PFLAG v. Abbott* case?
A. Currently our -- while this is playing itself out and -- our families are protected.
Q. And so by that, you mean that PFLAG members are not currently subject to child abuse investigations?
A. That is my understanding.
Q. On the basis of their children receiving gender-affirming care?
A. They are being protected right now, yes. They're not being investigated.
Q. Are you aware of a case called *Loe v. Texas*?

A. I am.
Q. And was PFLAG also a plaintiff in that case?
A. Yes.
Q. And do you know if there was a protective order negotiated in that case?
A. There was. Yes, I do know that.
Q. Did PFLAG also bring that case on behalf of its members?
A. We did.
Q. And do you know whether there's discovery and exchange of discovery currently ongoing in this case?
A. I believe there is not right now.
Q. And do you know whether a temporary injunction was granted in that case?
A. I believe there was.
Q. And are you aware of the status of that case?
A. Again, it's on hold while it's playing itself out in the courts.
Q. Did you, on behalf of PFLAG, submit an affidavit in *Loe v. Texas*?
A. Yes, I did.
Q. I'm going to show you what has been marked as Plaintiff's Exhibit 16. Another longer exhibit. If I may, Your Honor, I'd like to approach the witness?
THE COURT: You may.

Q. (BY MS. POLLARD) Mr. Bond, do you recognize this document?
A. I -- I do. Excuse me.
Q. And what is this?
A. This is our filing in the *Loe v. Texas* case asking for a permanent injunction.
Q. And you stated that you submitted an affidavit in support of this case; is that correct?
A. Yes, we did.
Q. So if you -- it's a large document. So I have flagged for you where an Exhibit 11 starts. It will be on Page 147 of the electronic exhibit, and it's marked as Exhibit 11.
A. I got it.
Q. Are you there?
A. Yes.
Q. What is this document?
A. This is my affidavit in that case or in the filing.
Q. And does this exhibit as a whole appear to be a true and accurate copy of the petition in *Loe v. Texas*?
A. It does.
MS. POLLARD: Your Honor, I'd like to move Exhibit 16 into evidence.

MR. SHATTO: Objection; relevance.
MS. POLLARD: Your Honor, this is the lawsuit and the affidavit upon which both of the demands are based.
THE COURT: Overruled. It's 16? What number?
MS. POLLARD: It's Plaintiff's Exhibit 16, Your Honor.
THE COURT: 16 is admitted.
*(Plaintiff's Exhibit 16 admitted.)*
Q. (BY MS. POLLARD) Mr. Bond, on what date did you sign your affidavit?
A. July 11th, '23.
Q. And was that after -- before or after SB14 was enacted?
A. That was before it went into -- before it was -- it had passed, but it hadn't gone into law yet -- into effect. Sorry.
Q. And so at the time you signed your affidavit, SB14 was not yet in effect?
A. Correct.
Q. In general, what did your affidavit discuss?
A. That SB14 was going to cause incredible -- it was causing incredible harm and distress to our families in the state of Texas who were literally just

trying to ensure that between them and their medical providers that they were able to get the care they need for their kids. And we were -- we wanted to get rid of SB14, obviously.

Q. I'm sorry.

A. And we wanted --

Q. Didn't hear the last part of your response.

A. Sorry. I'm just mumbling.

Q. Why did PFLAG decide to become a plaintiff in *Loe v. Texas*?

A. Because our members had been very active in trying to keep SB14 from passing, very vocal about it. And when it did pass, it -- it created a -- a lot of fear, not even uncertainty, just fear because of the impact of the law and how it would impact their families and the care that they were looking for for their kids, their children.

Q. All right. Mr. Bond, if you could turn to Paragraph 13 in your affidavit. Let me know when you're there.

A. Okay.

Q. Would you please read Paragraph 13 of your affidavit?

A. Sure. I will talk slow. This brief sigh of relief we felt from the DFPS rule being enjoined ended

when SB14 was signed into law on June 2nd, 2023. PFLAG members had been actively engaged in fighting against SB14's passage voicing their opposition regularly at the state House given the hostility of the climate in Texas towards transgender people in general and toward youth in particular. Its passage was met with both resignation at it's predictability and tremendous fear.

New families showed up in droves for chapter meetings and support groups seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and nonbinary ado- -- adolescents shared their contingency plans. Those with the resources to move or seek care out of state have begun firming up their plans to do so.

While the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking healthcare providers who specialized in medical care for gender dysphoria, but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming care -- gender-affirming medical care

or leave the state as a result of SB14.

Requests for mental healthcare providers have skyrocketed as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents existing mental health issues connected to their gender dysphoria.

Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date.

The chapter leaders have heard concerns about the impact on transgender and nonbinary youth in the foster care system who receive healthcare coverage through Medicaid and will lose coverage for their medical care for gender dysphoria if SB14 goes into effect.

Q. Mr. Bond, when you refer to contingency plans in your -- your affidavit, what were you referring to?

A. First of all, please put this in context. This is a time, a window in time before the law went into effect. There were already medical providers, especially because of the previous two years of stuff going on, who were starting to shutter and -- and shut down their care. So parents were scrambling within what currently existed to ensure that they had care for

their kids or could try to find care for their kids.

Q. In referring to contingency plans, were you referring to plans to access gender-affirming medical care for minors in Texas after the effective date of SB14?

A. No.

MR. SHATTO: Objection; leading.

THE COURT: Overruled.

A. No.

Q. (BY MS. POLLARD) And if the *Loe v. Texas* lawsuit were successful, would that have prevented SB14 from going into effect?

A. Yes.

Q. Have you ever had discussions with anyone about how they could continue to access gender-affirming medical care for minors in Texas after the ban went into effect?

A. Absolutely not.

Q. Have you ever discussed plans to access gender-affirming medical care for minors in Texas after the effective date of SB14 with any PFLAG members?

A. No.

Q. Now, what did you mean when you referred to alternative avenues for care in your affidavit?

A. Again, context of the window in time. Our

hope would be that SB14 was going to be stricken from the books. That being the case, in the current timeframe we were dealing with, this is what I was hearing from parents. A lot of parents were leaving, a lot of parents were splitting up households, a lot of parents were just trying to find other doctors in the meantime that could take care of their kids. These are law-abiding good citizens that were just trying to do their best to keep their kids safe.

Q. In referencing alternative avenues to care in your affidavit, were you referring to accessing gender-affirming medical care for minors in Texas after the effective date of SB14?

A. No.

Q. What did you mean when you referred to affirming general practitioners in your affidavit?

A. I think that's just a relatively common term for doctors who understand what's going on with these families, these kids that can be supportive.

Q. And when you refer to affirming general practitioners in your affidavit, were you referring to healthcare providers who would provide gender-affirming medical care for minors in Texas?

MR. SHATTO: Objection; leading.

MS. POLLARD: Your Honor, for a question

to be one, it's not even done; two, for a question to be leading, it has to suggest an answer. I'm not suggesting an answer to him.

THE COURT: Well, it's not done yet, so why don't you start and ask your question again.

Q. (BY MS. POLLARD) In your reference to gender-affirming -- excuse me. In your reference to affirming general practitioners in your affidavit, were you referring to healthcare providers who would provide gender-affirming medical care for minors in Texas after the effective date of SB14?

A. Would not. No, would not.

Q. Are you aware of any such providers?

A. No.

Q. In your affidavit, you discussed concerns about PFLAG members. How were you aware of those concerns?

A. So I -- through multiple avenues. My team, my chapter engagement team, my communications team, conversations with chapters on the ground. It all bubbles up to me and/or people reach out to me directly share what's going on.

Q. I would like to switch gears again and talk more directly about what has brought us here today. Did PFLAG receive a Civil Investigative Demand from the

Office of the Attorney General?

A. Yes, we did.

Q. I'm going to show you what has been marked as Plaintiff's Exhibit 1.

MS. POLLARD: May I approach, Your Honor?

THE COURT: Yes.

Q. (BY MS. POLLARD) Is this the Civil Investigative Demand that PFLAG received?

A. It is.

MS. POLLARD: Your Honor, plaintiff moves to admit Plaintiff's Exhibit 1 into evidence.

MR. SHATTO: No objections.

THE COURT: Exhibit 1 is admitted.

*(Plaintiff's Exhibit 1 admitted.)*

Q. (BY MS. POLLARD) Did PFLAG also receive a notice of demand for a sworn written statement?

A. Excuse me. Yes, we did.

MS. POLLARD: May I approach, Your Honor?

THE COURT: Yes.

Q. (BY MS. POLLARD) I'm going to show you a document that's been marked as Plaintiff's Exhibit 2. Is this the notice of demand for sworn written statement that PFLAG received?

A. It is.

MS. POLLARD: Your Honor, plaintiff moves

to admit Plaintiff's Exhibit 2 into evidence.

MR. SHATTO: No objections.

THE COURT: 2 is admitted.

*(Plaintiff's Exhibit 2 admitted.)*

Q. (BY MS. POLLARD) Mr. Bond, when -- and if I refer to these two documents, Exhibit 1 and 2, together as demands, will that make sense to you?

A. Yes.

Q. If it doesn't or if I ask a question where it doesn't make sense, just let me know, and I'll restate it.

A. Okay. Thank you.

Q. When were the demands issued?

A. February 5th.

Q. Of what year?

A. Oh, 2024, sorry.

Q. When did PFLAG receive the demands?

A. February 9th of 2024.

Q. What did the demands seek from PFLAG?

A. It seeks a lot. They wanted -- they wanted our list. They wanted all communication with our members, our Texas members. It -- it -- it literally was a laundry list of everything that PFLAG does and --

Q. Did the demand --

A. -- very burdensome. I'm sorry.

Q. Oh, I'm sorry. Go ahead.
A. No. I was just going to say, and -- and it was -- it was -- well, I'm done.
Q. Did the demands reference your affidavit in the *Loe v. Texas* litigation?
A. Yes.
Q. Did they, in fact, attach a copy of that affidavit?
A. They did.
Q. Would the information sought by the demands reveal identities of PFLAG members?
A. Yes, it could.
Q. And would the information sought by the demands include communications between or among PFLAG members?
A. Yes.
Q. And -- and would it reveal identities of PFLAG families with transgender adolescents?
A. Yes, it could very well do that.
Q. Are you aware that defendants in this case have said that they issued the demands as a part of an investigation into insurance fraud?
A. Yes.
Q. And specifically that defendants have stated they're investigating the use of billing codes for

endocrine disorders in the context of gender-affirming care?

A. I'm sorry. Could you repeat that?

Q. Yeah. Are you aware that specifically defendants are saying that their investigation relates to the use of billing codes for endocrine disorders in the context of gender-affirming medical care?

A. Yes.

Q. Prior to this litigation, have you ever discussed what billing codes might be used for the provision of gender-affirming medical care?

A. We have not. We do peer-to-peer support. This is -- that is not what we do.

Q. Have you personally, prior to this litigation, ever discussed what billing codes might be used for the provision of gender-affirming care?

A. No.

Q. And outside the context of this litigation, have you ever discussed the idea of someone seeking gender-affirming medical care as treatment for endocrine disorder, as opposed to treatment for gender dysphoria?

A. No.

Q. And in your work at PFLAG outside of the context of this litigation, have you ever discussed

medical billing codes at all?

A. No.

Q. Has PFLAG created any resources for its members about how to submit bills to insurance for gender-affirming medical care?

A. No.

Q. Do you still have a copy of Exhibit 1 in front of you?

A. Yes.

Q. That's the Civil Investigative Demand. Does that have attached to it a document that lists some other organizations?

A. Yes, it does.

Q. And I believe that's styled Exhibit B2; is that correct?

A. Yes.

Q. Does that list include medical providers?

A. Yes, it does.

Q. Has PFLAG had any communications related to its members in Texas with any of the entities identified on Exhibit B2?

A. No.

Q. Before this litigation, had you ever heard of QueerDoc?

A. No.

Q. Had you ever heard of QueerMed?
A. No.
Q. And had you ever heard of Plume Health?
A. No.
Q. Does PFLAG have any communications with its members about medical billing codes in gender-affirming medical care?
A. Absolutely not.
Q. Does PFLAG have any communications with its members about how to bill insurance for gender-affirming medical care?
A. No. Again, we do peer-to-peer support.
Q. Does PFLAG have any communications with its members about healthcare providers providing gender-affirming medical care in Texas after the effective date of SB14?
A. No.
Q. As the CEO of PFLAG, how do you stay informed about what PFLAG members are experiencing?
A. Through my chapter engagement team, comms team, advocacy team, policy team, and then talking to various chapter members.
Q. And through those mechanisms, are you aware of the reactions that PFLAG members have had to PFLAG receiving the demands?

A. Absolutely.

Q. How have they reacted?

A. Terrified. It's -- I was in Texas just a few days after I received this and -- and parents were already feeling under attack. This -- all they're trying to do is to protect their kids, allow them to thrive. And -- and this violation here, this -- this, like, almost -- this -- literally afraid to go to a meeting now because they're afraid somebody's going to be watching them outside. And, again, they're doing nothing wrong.

That's where we're at right now. That's the impact it's having on my chapters here in this state. The fear of looking over their shoulder when they're doing absolutely nothing wrong and doing everything right for their kids and their family.

Q. Have the demands had an impact on the way PFLAG chapters operate?

A. Absolutely. A, people are -- are not wanting to show up for the reasons I just mentioned. They're -- they're not even wanting to sign a sign-in sheet for fear that that's somehow politically going to be used against them.

Q. And in your view, have PFLAG members been communicating as freely as they would have before the

demands were issued?

A. I think people are being very careful with what they do right now, mostly out of fear of being identified. Not everybody -- especially in some of our smaller chapters and smaller towns, not everybody has the freedom to be out in public about everything. This is literally lifesaving, job saving, all those kinds of things to have that confidential and quiet space to be able to get together. And that is at risk right now because people are afraid to show up, which ultimately puts those kids at even more risk than they are right now.

Q. Since PFLAG received this -- these demands, has there been a decrease in physical participation at meetings?

A. Yes.

Q. Have any volunteers stepped back from participating in PFLAG activities since PFLAG received the demands?

A. Yes.

Q. Are you aware of any particular impact the demands have had on parents of transgender youth in Texas?

A. Yes. I mean, they're -- as I've said, they're horrified, they're looking over their shoulder. These

are good people, good citizens that are just trying to keep their kids and their families safe.

Q. What impact would having to produce the documents and information sought by the demands have on PFLAG?

A. Well, we're already seeing it. It was words used earlier, but chilling. I mean, people won't sign in, people won't show up out of fear that they could somehow be drug into this. A lot of these folks are in small towns across the state. This impacts their potential job, their -- their livelihoods. It -- it's pretty terrifying.

Q. What impact on having to produce internal member communications of PFLAG members have on PFLAG?

A. People will walk away. People will start disappearing into the shadows and -- and trying to navigate what's going on with their kid on their own, which is not -- you know, the -- the model is to be there, to support each other, to help each other, and this is having a direct impact on people doing that.

Q. What impact would having to search for and produce documents have responsive -- or -- search or produce documents responsive to these demands have on PFLAG in terms of time and resources?

A. Oh, it's -- it's a time suck. We are spending

an incredible amount of time trying to make sure we are going through everything we -- I mean, we -- we have a IT person, but she also does multiple things. So we have a consultant that's helping -- helping with this to make sure that we are -- are doing due diligence.

Q. Does PFLAG have any full-time lawyers on staff?

A. No.

Q. What impact would having to search for and produce documents responsive to the demands have on PFLAG in terms of its ability to serve PFLAG members?

A. I mean, there's the morale component of it. Someone that we don't know going through all of our -- our emails. There's that. There's the time of our chapter engagement team. I mean, literally multiple departments have been engaged with Texas. We're talking our policy, our advocacy team, or communications team, and certainly our chapter engagement team. It's very time-consuming and -- and costly. And it's taking us away from doing other things we need to be doing, including here in the state of Texas.

Q. Does PFLAG fear the consequences of having to comply with the demands?

A. I fear the impact on these parents that I'm

already seeing in small towns who are terrified of what's next.

Q. And, Mr. Bond, how do you feel about having to come and testify here today?

A. Look, I wish I wasn't here, but I'm -- I'm proud of our parents. I'm proud that every day they get up and work hard for their kids and try to learn, in conjunction with their pediatricians and -- and their -- or their doctors, medical providers, medical health providers, to keep their kids safe. They should not be having to go through this. It's hard enough out there in this world. These parents just want to do the right thing for their kid, which is why we're here.

MS. POLLARD: Thank you, Mr. Bond.

Pass the witness, Your Honor.

THE COURT: Okay. Let's start and -- because I think we'll probably reach a question pretty quickly on -- based on what I heard on the motion in limine.

So let's start with the questions, and then we'll see if we can do some, and then we'll reach probably a point where I need to make some decisions. So it is Mr. Shatto.

MR. SHATTO: Correct, Your Honor.

THE COURT: Go ahead.

**CROSS-EXAMINATION**

BY MR. SHATTO:

Q. Good morning, Mr. Bond. How are you doing?

*(Off the record.)*

Q. (BY MR. SHATTO) Good morning, Mr. Bond.

A. Good morning.

Q. You said you directly communicate with PFLAG members, correct?

A. I do talk to PFLAG members.

Q. And you do that through multiple ways. Is phone calls one of the ways you directly communicate with them?

A. Occasionally.

Q. How about emails?

A. Definitely.

Q. Meetings? You go to meetings as well?

A. Yes. Yes, I do.

Q. Does PFLAG ever utilize instant messages through a computer system?

A. I don't think so. I -- I don't know. I'm old. Sorry.

Q. Okay. Do you have text messages? Have you ever had text messages with --

MS. POLLARD: Objection.

THE COURT: Well --

MS. POLLARD: I --

THE COURT: I -- I know -- I understand what's happening here, but currently it's not really meeting the objection, so I think I have to allow these sort of foundational questions, so go ahead.

MS. POLLARD: May I make one point of clarification?

THE COURT: Yes.

MS. POLLARD: The initial questions were asking how he personally communicated, which I understand would be relevant. It's the -- this question seemed to relate to how PFLAG in general communicates or what technology it uses, and I would object to general questions about PFLAG's technology.

THE COURT: Well, if he knows, he has to answer, but I agree he shouldn't answer this question if he doesn't know. But I think he is enough of a corporate representative where he might have to answer some general questions. We haven't gotten into -- of the -- I -- we haven't gotten into necessarily your motion in limine yet, I do not believe. So go ahead, Mr. Shatto, carefully. Go ahead.

Q. (BY MR. SHATTO) Do you communicate with PFLAG members in any other way than previously mentioned here?

THE COURT: This is to you personally. Now, do you personally communicate to PFLAG members in any other way?

A. I mean, I -- I know a lot of these people very personal, right, so, yes, I do text with some of them. I call some of them. I see them at meetings. I'm not sure about what the technology is we do as a shop candidly, so...

Q. (BY MR. SHATTO) How often do you communicate with PFLAG members?

A. Well, there's 350 chapters in the country. I mean, I -- what do you mean? I talk to a PFLAG'er every day.

Q. And, of course, you remember filing the affidavit in *Loe v. Texas*, correct?

A. Correct.

Q. And that affidavit discusses, in part, the passage of SB14, correct?

A. Correct.

Q. And SB14 bans certain gender-related treatments and procedures for children, correct?

A. Correct.

Q. And then members have since talked about the effects of SB14, correct?

A. Yes.

Q. And these conversations occurred at PFLAG meetings, correct --

MS. POLLARD: Objection; form.

Q. (BY MR. SHATTO) -- to your knowledge?

THE COURT: There -- there was a form objection, and so I think rephrase your question. I understand what you're trying to say. It wasn't specific enough. So I think currently let's specify your question.

Q. (BY MR. SHATTO) To your knowledge, the conversations about PFLAG that -- about SB14, they occur at PFLAG meetings, correct?

MS. POLLARD: Objection; still vague.

THE COURT: It is. Sustained.

Q. (BY MR. SHATTO) Do you remember talking about the effects of SB14 at PFLAG meetings?

THE COURT: Do you -- are you asking him if he has personally talked about the effects of SB14 at meetings that he has attended?

MR. SHATTO: Yes.

MS. POLLARD: Objection; vague to the time period.

THE COURT: It would have to be after its initial -- like --

MR. SHATTO: The -- the time period is

irrelevant here because it would go directly towards whether or not PFLAG has certain information about potential fraudulent activity.

THE COURT: Well, I don't think that's --

MS. POLLARD: And I'd object --

THE COURT: -- an accurate characterization, but -- but I guess the question to you is, have you ever spoken about SB14. And the time is in the question because it hasn't existed in the world that long at any meetings that you have attended. That's it.

MS. POLLARD: And to the extent that the -- the question is intended, as the Attorney General just represented, to get at the actual substance of the CIDs, we would object.

THE COURT: When he asks about the substance of the CIDs, the Court will sustain your objection. But he has not and so it is overruled at this time. You may answer this question.

THE WITNESS: I'm not really sure what the question is now.

THE COURT: That's fair.

THE WITNESS: Sorry. Sorry.

Q. (BY MR. SHATTO) I -- I think we can move on and just simplify this real quick. You're not involved

in every single one -- you're not involved in every single communication that PFLAG members have, correct?

A. Correct.

Q. And so you don't know everything that PFLAG staff and members discuss then, correct?

A. I would have a pretty good sense of what's going on at a level of where we're potentially being accused of fraud.

Q. But you don't have firsthand knowledge of every conversation that PFLAG staff and members have, correct?

A. No, but I get pretty good readouts.

Q. And have you since talked to PFLAG members about these proceedings, the PFLAG, the OAG proceeding going on right now?

MS. POLLARD: Objection; vague.

THE COURT: I mean, I think we're treading care -- closely into attorney-client privilege and maybe some work-product privilege, but I don't know that vagueness is the problem. And so, like, literally right now the only question is, Have you had conversations. And so I'm going to allow you to ask that question, which is just, Have you personally had conversations? That is an okay question to ask.

Q. (BY MR. SHATTO) Have you personally had

conversations about these proceedings?

A. Yes.

Q. And did you tell them that the State is allowing redaction of their names in these proceedings?

MS. POLLARD: Then I'm going to object that it is vague as to who "them" is. And to the extent it's seeking member communications, it would be protected by the First Amendment. And to the extent it's seeking communications with his lawyers, it's protected by attorney-client privilege and work product.

THE COURT: Those are sustained.

Q. (BY MR. SHATTO) Have you seen the demands as modified by the Attorney General's office?

A. I've spoken with our attorneys about them, yes.

MR. SHATTO: Your Honor, we'd like to introduce the Modified Demands 3 and 4 into the record.

THE COURT: You have -- have you loaded them in the Box?

MR. SHATTO: They are loaded in the Box. They're Exhibits 3 and 4 at this time.

THE COURT: They're State's?

MR. SHATTO: State's Exhibits 3 and 4. They've been on file with the Court for quite a while.

THE COURT: Any objection?
MS. POLLARD: No objection, Your Honor --
THE COURT: So --
MR. SHATTO: -- to the -- to the admission of the exhibits, no objection.
THE COURT: Correct. The admission -- he's moving to admit the exhibits, and the Court is at this time going to admit Exhibits 3 and 4.
*(Defendants' Exhibits 3 and 4 admitted.)*
MR. SHATTO: May I approach the witness and provide Exhibit 3 to the witness to review?
THE COURT: Yes.
Q. (BY MR. SHATTO) This is a Civil Investigative Demand.
THE COURT: So can I ask a question? This is different. This is now a new demand or a new Word demand than the one that the plaintiff's put in?
MR. SHATTO: Correct. These are modified demands that the State has proposed --
THE COURT: That's all I wanted -- I just wanted -- that -- now the witness can answer. I just wanted to make sure I'm looking at a different document, because at first blush, they look like the same document. So --
MR. SHATTO: Correct.

THE COURT: -- I just wanted to make sure they're different.

MR. SHATTO: They are very similar, yes, but they are different.

THE COURT: Okay. Then, yes, you may approach the witness.

Q. (BY MR. SHATTO) These are modified demands, sir. Mr. Bond, will you please read No. 7 of the modified demand?

A. Which one?

MS. POLLARD: Objection; lacks foundation to the extent that he's representing that this is a modified demand.

MR. SHATTO: It's not important. These have been --

THE COURT: Well, let's not call it modified demand. Let's call it what it is, which is Exhibit 3.

MR. SHATTO: Okay.

Q. (BY MR. SHATTO) May you please read No. 7, Members, of Exhibit 3? That is on Page 6, I believe. Correct.

A. No. 7?

Q. Yes, please, No. 7?

A. Members includes individuals who pay dues for

purposes of joining or associating with PFLAG's national chapter or any local chapter. For purposes of this CID, the term shall be broadly construed to encompass donors to PFLAG and individuals who directly participate in PFLAG official programs, events, and services. However, members do not -- does not include PFLAG's professional staff and non-PFLAG entities with whom the organization associates.

Q. Thank you. And can you please turn to Page 3 of Exhibit 3? Then can you please read No. 7 on that page, Permitted Redactions for Member Identifying Information?

MS. POLLARD: Objection; relevance. These are not the actual demands that have been issued in this case and lacks foundation for what the document actually is.

MR. SHATTO: Your Honor, they're completely relevant. The Court itself can make changes to our -- our petition, and we've offered these as potential changes for the Court to consider.

THE COURT: Okay. So I'm going to overrule the objection. And I guess that means the witness can answer the question. It's gotten confusing, but I don't think there's any other objection other than you just wanted to point out that

this -- you don't believe that this document matters. And I'm allowing the Attorney General to ask questions about it as a matter of course, as a matter of their evidence.

Now, if you think that it's infringing upon something, that's where I'm going to be more interested in your objections. But at this time, I don't think that's what you made, so I'm overruling that objection. And you can ask this particular question and maybe line of questions.

MR. SHATTO: All right.

Q. (BY MR. SHATTO) Mr. Bond, do you mind reading No. 7 on Page 3 of Exhibit 3?

A. Sure. Permitted Redactions For Members Identifying Information. In general, all materials or documents responsive to this CID shall be produced in complete unabridged, unedited, and unredacted form, even if portions may contain information not explicitly requested or may reflect interim or final portions of documents or materials. Do you want me to continue?

Q. Then continue.

A. Okay. Unlike the February 5th, 2024 CID, the foregoing, operative CID does not request that PFLAG produce documents and information disclosing the identifying -- the identify -- identify -- I can't

talk -- of its members and/or actual membership lists, either in whole or in part, or in any form. For this reason, PFLAG may elect to redact or *{sic}* any portion of a document otherwise within the scope of the CID that contains information disclosing or providing the identity of any member. Any questions related to the precise information that PFLAG may redact at its own election shall be directed to the Office of the Attorney General's representatives above.

Q. Thank you, Mr. Bond.

MR. SHATTO: And if may I approach the witness again, I have Exhibit 4 to provide to him.

THE COURT: You may.

MR. SHATTO: Thank you, Your Honor.

Q. (BY MR. SHATTO) This is Exhibit 4, sir.

A. Thank you.

Q. Similar to previously, may the witness please turn to Page 4 and read 12, Members?

A. Members includes individuals who pay dues for purposes of joining or associating with PFLAG's national chapter or any local chapter. For purposes of this Demand a Sworn Written Statement, the term shall be broadly constructed to encompass donors to PFLAG and individuals who directly participated in PFLAG's official programs, events, and services.

Q. And please read No. 13, please.

A. The Division does not seek PFLAG's membership list, either full or partially, in any form. Therefore at PFLAG's election, information that identifies a member may be redacted or otherwise acro- -- I can't even say the word -- acronized *{sic}*. Whatever. I can't say it. Missouri schools.

Q. I just have, I think, one more question. Is PFLAG currently gather any responsive documents to the demand?

MS. POLLARD: Objection to the extent it calls for any attorney-client privileged information.

THE COURT: Sustained. It calls for a legal conclusion a bit as well, so -- I mean, I -- I have a temporary injunction in place.

MR. SHATTO: No further questions, Your Honor.

THE COURT: All right. Redirect, if you -- if any.

MS. POLLARD: Just one to two questions.

**REDIRECT EXAMINATION**

BY MS. POLLARD:

Q. Mr. Bond, did these sections that you were asked to read defining members and excluding member names from production, did those exist in the demands

that PFLAG received that we've identified as Exhibits 1 and 2?

A. Sorry. Can you clarify a little bit?

Q. Sure. Can you take a -- do you still have Exhibit 1 in front of you?

A. I should have them all right here.

THE COURT: For my clarification, because it would help me, what are the dates on 3 and 4?

MR. SHATTO: They may not be dated at this time, Your Honor. But they're undated because they were submitted as proposed modified demands for our motion to modify.

THE COURT: Oh, so you didn't actually send them?

MR. SHATTO: They have not been sent to PFLAG, correct. They've only been filed with the Court.

THE COURT: All right. Go ahead.

Q. (BY MS. POLLARD) And, Mr. Bond, if you would turn to the -- the definition section in Exhibit 1.

A. Okay.

THE COURT: All right. Back to --

MS. POLLARD: If we may.

THE COURT: Yes.

MS. POLLARD: We'll be quick.

Q. (BY MS. POLLARD) So in Exhibit 1, in the section on Definitions, do you see anything defining members in Exhibit 1?

*(Off the record.)*

A. I -- I do not.

Q. (BY MS. POLLARD) And if you would take a look at the previous section under Instructions, Item No. 7, if you would, under Instructions. It's on Page 3 of 6 of Exhibit 1.

A. Uh-huh.

Q. What does that say?

A. On no redactions? Is that the right one.

Q. Correct?

A. All materials or documents produced in response to the CID shall be produced in complete, unabridged, unedited, unredacted form, even if portions may contain information not explicitly requested or might include interim or final additions of a document.

Q. And do you still have Plaintiff's Exhibit 2 in front of you?

A. I believe so. Yes.

Q. That document also has an Exhibit A. This time it's titled Definitions and Instructions. Do you see that?

A. Yes.

Q. And do you see any definition of member?
A. I do not.
Q. Thank you very much.
MS. POLLARD: No further questions.
THE COURT: Anything else?
MR. SHATTO: Your Honor, I have no further questions. Just so you know, those demands were filed with the Court March 19th.
THE COURT: All right. Thank you. You may step down --
MS. POLLARD: Your Honor, may this --
THE COURT: -- and we're going to take a break. You may -- oh, yes. You are excused as a witness. You are free to go, and you are also free to stay.
THE WITNESS: Thank you.
THE COURT: All right. We're going to be on a break. It's 10:48. Let's come back at 11:00. Thanks.
*(Recess was taken.)*
THE COURT: Going back on the record. Plaintiffs may call their next witness. Can you state your name again?
MS. LESKIN: Yes. Lori Leskin, Your Honor.

THE COURT: Leskin. Thank you.
MS. LESKIN: PFLAG calls Sam Weeks.
THE COURT: Mr. Weeks, come on up.
MS. LESKIN: Your Honor, while he's coming to the stand, just -- we call Mr. Weeks under Texas Rule of Evidence 611.
THE COURT: Wait. Hold on a second.
THE WITNESS: Oh, my apologies.
MS. LESKIN: That Mr. Weeks is a party identified as an adverse witness -- an adverse party.
THE COURT: Thank you. Mr. Weeks, please raise your right hand.
*(Witness sworn in.)*
THE COURT: All right. Thank you. Come around. Have a seat in front of the microphone. I see your lawyer now. State your name again.
MS. JOHNSON: My name is Kathy Johnson. I'm with the Attorney General's office.
THE COURT: Now, are you in the same division these guys are with?
MS. JOHNSON: I am not. I only represent Mr. Weeks.
THE COURT: So you represent -- what division are you in?
MS. JOHNSON: I'm in the Administrative

Law Division. He -- Mr. Weeks used to work in the Consumer Protection Division, but no longer does. So he's a third party to this matter, and that's why I'm here. I just represented him on the subpoena matter itself, and with your permission, I'd like to sit at counsel table while he's testifying.

THE COURT: You may sit at counsel table, yes.

MS. JOHNSON: Thank you.

MS. LESKIN: May I question from the table?

THE COURT: Yes. Lower that microphone.

MS. LESKIN: That was my next step.

**SAM WEEKS,**

having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

BY MS. LESKIN:

Q. Good morning, Mr. Weeks.

A. Good morning.

Q. Your counsel just represented that you no longer work with Office of the Attorney General Consumer Protection Division; is that correct?

A. Yes, ma'am.

Q. Where do you work now?

A. I work for the Texas Comptroller.

Q. And when did you start working for the Texas Comptroller?

A. Roughly a week or so ago.

Q. How long were you at the Attorney General's Consumer Protection Division?

A. Roughly about four-and-a-half years, I want to say.

Q. Where did you work before then?

A. Before then I was a private investigator. I also had a part-time job because my business wasn't doing too good.

Q. When you were at the Consumer Protection Division, who did you report to?

A. Can you clarify a little bit? I had several supervisors over my tenure. There had been a lot of turnover.

Q. Over the last year that you were employed by the Consumer Protection Division, who did you report to?

A. Jennifer Roscitti.

THE COURT: How -- Jennifer who?

THE WITNESS: Jennifer Roscitti.

THE COURT: R-i-c-h- --

THE WITNESS: It's R-o-s-c-i-t-t-i, if I remember correctly.

THE COURT: I would have never gotten that.

Q. (BY MS. LESKIN) Do you know what her position was or is?

A. She -- she is currently the deputy chief, I believe.

Q. Were you assigned to a particular team or subsection of the Consumer Protection Division?

MS. VASQUEZ: Objection, Your Honor; relevance to this line of questioning.

THE COURT: I'm going to overrule it as general background, but stay at the ready. Go ahead.

A. I'm -- I'm -- I'm sorry. Can you repeat the question. I was getting some water.

Q. (BY MS. LESKIN) Sure. When you were at the Consumer Protection Division, were you assigned to a particular team or subsection of that division?

A. There weren't particular assignments for investigators when I was there. We were just one group.

Q. Did you have --

A. If I remember correctly, as far as, like, it wasn't a section, like, thing while -- while I was there. We had -- we -- we used to be in, like, the Austin office -- Harris -- county office, but we

reorganized.

Q. Was that the Austin office? Is that where you were?

A. Not within the last -- well, it was in the local office now, but we were all on one team now the way we were organized, if that makes sense.

Q. And you were based, though, out of Austin?

A. Yes, ma'am.

Q. Had you been involved in any investigations during your time at the Consumer Protection Division, investigations relating to transgender medical care?

A. Yes, ma'am.

Q. Other than the one that is a -- subject of this litigation, were you involved in other investigations relating to transgender medical care?

MS. VASQUEZ: Objection, Your Honor. This is going to be covered by the law enforcement privilege, also attorney work product, and attorney-client privilege.

MS. LESKIN: I'm not asking for details --

MS. VASQUEZ: This is concerning his duties as an investigator for the law enforc- -- or for the Consumer Protection Division, and that is privileged information, what he worked on while he was

there, other than why we're here today.

MS. LESKIN: I'm actually not asking for any details, just yes or no whether he had done any investigations.

MS. VASQUEZ: That also is privileged, Your Honor.

THE COURT: I'll sustain your objection.

MS. VASQUEZ: Thank you, Your Honor.

MS. LESKIN: Thank you, Your Honor.

Q. (BY MS. LESKIN) Just wanted to understand the background process in your role when you were at the Consumer Protection Division. How would you, in general, decide to initiate an investigation?

MS. VASQUEZ: Objection, Your Honor. That assumes facts not in evidence that he would initiate an investigation.

MS. LESKIN: I can rephrase, Your Honor.

THE COURT: Rephrase.

Q. (BY MS. LESKIN) While you were an investigator with the Consumer Protection Division, would you initiate investigations?

A. It's -- not -- not regularly. It wasn't a normal thing we did.

MS. VASQUEZ: Objection to the narrative, Your Honor.

THE COURT: The answer was given, not normally.

Q. (BY MS. LESKIN) And, generally, how would matters come to your attention to get involved?

A. Sometimes it would be by an email. Sometimes it'd be verbal. You know, that's about it.

Q. And who would they come from?

A. They come from my supervisors. They come from my attorneys. You know, that about runs the gamut roughly.

Q. You signed a declaration in this action, correct?

A. Yes, ma'am.

MS. LESKIN: Your Honor, can I approach the witness?

THE COURT: Yes.

MS. LESKIN: We have an exhibit that's been marked as Plaintiff's Exhibit 37. It has not been uploaded to the Box, but I have a paper copy available. It is the affidavit that Mr. Weeks signed.

THE COURT: You're going to have to upload it to the Box later.

MS. LESKIN: Yes. We are in the process of doing that as to speak.

THE COURT: But you -- you-all have to

provide it, though.

MS. VASQUEZ: Yes, Your Honor, we have it.

MS. LESKIN: It was -- it was submitted to the Court as an exhibit to the response to the TRO by the Office of the Attorney General.

THE COURT: You're going to show it to him first or you're offering it at this time?

MS. LESKIN: I'm going to show it to him, authenticate it, and then I will offer it.

THE COURT: Okay. Go ahead.

MS. LESKIN: Can you put that up on the screen?

THE WITNESS: Thank you.

MS. LESKIN: Thank you. I have a copy for Your Honor. Oh, let me give you this copy.

THE COURT: I think you need to give it to the court reporter, not to me.

MS. LESKIN: Okay.

THE COURT: In case something happens. So give an extra copy to the court reporter.

MS. LESKIN: There you go.

THE WITNESS: Thank you.

Q. (BY MS. LESKIN) I'm showing you what we've identified as Plaintiff's Exhibit 37, Mr. Weeks. If I

could just ask you to take a look at that first. Have you done that?

A. I'm sorry.

Q. Have you reviewed it?

A. Oh, I'm reviewing it right now.

Q. Okay. Let me know when you're done.

A. I've reviewed it.

Q. Okay. And if you look on Page 2, that's your virtual signature, correct?

A. Yes, ma'am.

Q. And you signed this on February 28th, 2024, correct?

A. It says 29th.

Q. I'm sorry. February 29th, 2024, correct?

A. Yes, ma'am.

MS. LESKIN: Your Honor, we would offer Plaintiff's Exhibit 37 into evidence.

MS. VASQUEZ: Your Honor, we would object on relevance grounds for this proceeding.

THE COURT: Overruled, the objection on relevance grounds. 37 is going to be admitted, but you are going to have to promise me you upload it to the Box.

MS. LESKIN: Yes, Your Honor.

*(Plaintiff's Exhibit 37 admitted.)*

THE COURT: All right. Go ahead.

Q. (BY MS. LESKIN) And you understand that the declaration, your affidavit, was submitted to this Court in connection with filings made by the Office of the Attorney General, correct?

A. Just to clarify, you're saying I understand that it was filed with the Attorney General with -- and in the case?

Q. Yes.

A. Yeah, that's -- yes.

Q. And you understood that was the purpose of -- of signing the declaration, correct?

A. Yes, ma'am.

Q. And at the time you signed this, you were still employed by the Consumer Protection Division, correct?

A. Yes, ma'am.

Q. Did you have the opportunity to review the document that was submitted by the Office of the Attorney General with which they submitted your affidavit?

A. Can you clarify for me some more?

Q. Sure. Let me show you a document that was filed in this case, the response to the TRO.

MS. VASQUEZ: Objection, Your Honor;

that's outside the relevance of this witness' knowledge.

THE COURT: I don't know if it is or it isn't yet. I need to see what they're going to show him. Let me just see what they're going to show him and maybe. Let me just see first.

Q. (BY MS. LESKIN) So just to put in context, this is a document filed by the Attorney General's office, the response to plaintiff's application for temporary restraining order. Do you see that?

A. Yes, ma'am, I see it.

Q. Okay. And if we can go to Paragraph 7. And do you see the second sentence in this paragraph, it says, In the meantime, however, the Consumer Protection Division of the Attorney -- Attorney General's office has become aware of information suggesting that medical providers and other persons are evading SB14's structures by committing various forms of fraud, including insurance fraud. Do you see that sentence?

A. Yes, ma'am, I do.

Q. And do you see that in support of that sentence, they cite your affidavit?

A. I do see that.

Q. Okay. Were you aware that your affidavit was being used to support that statement?

A. So just so I understand, are you asking about this specific statement in this document?
Q. Yes.
A. I did not see this specific statement.
Q. You have never seen that before?
A. I have never seen that document or this -- I'm sorry, this -- this specific statement.
Q. And you'll see that refers to Paragraph 5 of your affidavit, correct?
A. Yeah, I see the declaration.
Q. Okay. And you see the reference in Paragraph 5?
A. Yes, ma'am.
Q. Okay. So let's go back to your affidavit. And let's look at Paragraph 5.
A. Okay. Sounds good. Thank you.
Q. And you have a copy there in front of you, if that's easier for you. In Paragraph 5 of your affidavit refers to a true and correct copy of QueerDoc's website pharmacy options page where QueerDoc states the following. And you quote that, correct?
A. Yes, ma'am.
Q. And the website that you cite here, which is also Exhibit 1, if you want to take a look at it --
A. Yes, ma'am.

Q. -- is that something you located, or did someone identify that for you?

A. So I reviewed this website. This had been handed off to me by Mr. Shatto. That being said, I did review this website, and I reviewed the website and I read through it. So I was aware of the contents of this.

Q. Well, when you say "this website," are you referring solely to the page that is marked as Exhibit 1, which is entitled Pharmacy, Exhibit 1 to your affidavit?

A. I'm -- I'm sorry. I'm referring to Exhibit 2.

Q. Okay. So let's refer to Paragraph 5. You see it's referring to Exhibit 1?

A. Yeah. My apologies.

Q. That's okay.

A. I -- I did a lot of review of websites there, so I -- I want to say I came across this, but I don't want to speculate because I did a lot of -- I didn't -- I didn't do -- it wasn't for a long time, like, I maybe put an hour of work into this, but I --

MS. VASQUEZ: Object to the narrative, Your Honor. I'm not sure there's a question on the table right now of what it is.

THE COURT: I think I need to ask this

question at this point in the proceeding, which is, you are not his attorney. And so are you -- how are you proceeding? Are you a friendly to him, or are you claiming to be an unfriendly to him and -- and because you can't -- if you're his attorney, you can't just continuously cut your witness off when he's doing something you don't want him to do with a narrative objection.

But if you're not on his side and that's why Ms. Johnson's here, maybe Ms. Johnson's the one who needs to be doing the objecting if he wanders off into a narrative. But -- but I'm trying -- I just need to understand that. If you're not with him, if you're also someone who he does not share an attorney-client privilege with and he is not under your direction, then I'll be more understanding of some of your objections to narrative.

MS. VASQUEZ: Your Honor, it's my position -- our position, I represent the interest of the Attorney General's office and the Consumer Protection Division. That said, he's --

THE COURT: Is he somebody in your care, custody, control or not?

MS. VASQUEZ: In the sense that he worked for the Attorney General's office during the time of

his work on this case, I represent him at this hearing. She represents him for the motion to quash, Your Honor.

THE COURT: Then -- I'm going to overrule your narrative objections then. When he answers he's going to be able to answer without you cutting him off and -- and giving him tips of what you want him to do.

MS. VASQUEZ: Okay.

THE COURT: All right. All right. Let's -- let's ask some questions. We're going to be careful with how we proceed. You're going to stand at the ready, but I don't want you to just cut him off if he's trying to answer a question. Go ahead.

MS. LESKIN: Thank you, Your Honor.

Q. (BY MS. LESKIN) Mr. Weeks, we were just talking about Exhibit 1?

A. Yes, ma'am, I understand. Sorry.

Q. That's okay. So -- so that we're clear, is Exhibit 1 a website, Exhibit 1 to your affidavit --

A. Uh-huh.

Q. -- is that a website you located on your own, or did someone direct you to that website?

A. I can't remember at this time.

Q. Okay. And when you found the website that you've attached as Exhibit 1 to your declaration, did you look elsewhere on the QueerDoc website?

A. Here, hold on. Sorry. I'm -- like, I'm getting some water.

Q. That's okay.

A. Can you -- can you repeat that for me?

Q. Sure. When you identified the website page that you attached as Exhibit 1 to your affidavit, did you identify or look at other parts of the QueerDoc website, or did you limit your review to this page marked Pharmacies?

MS. VASQUEZ: Your Honor, this goes to the investigative privilege.

THE COURT: I will sustain that.

MS. VASQUEZ: Thank you.

Q. (BY MS. LESKIN) Did you -- have you ever looked at the QueerDoc website beyond the Pharmacies page?

MS. VASQUEZ: Same objection, Your Honor; same privilege.

THE COURT: I think I have to sustain that, even though I recognize there are things in this hearing that everybody would like to know. I think one of the reasons we're here is stopping them from learning more, and so I can't use this hearing as a sword for you guys. It just doesn't work that way, and so sustained.

Q. (BY MS. LESKIN) On the page that you've attached as Exhibit 1, is there any information available indicating that QueerDoc operates within the state of Texas?

A. Can you repeat that? I'm sorry.

Q. Sure. And you can take a look at Exhibit 1 to your declaration on the screen or on the hard copy in front of you, whatever's easiest.

A. Okay. That's...

Q. And take a look at that page. My question is, is there anything on that page that indicates that QueerDoc operates in the state of Texas?

A. On this particular page or are you talking about in the rest of the website? You're just talking about this page?

Q. For now I'm asking about this page that you attached to your declaration.

A. Okay. So -- and, again, to clarify further, are you asking me if they operate or if they have a -- a location in Texas?

Q. Well, right now I'm asking, is there anything on this page that indicates that they operate or have a location in Texas?

A. Just if they operate -- I'm sorry. Let me -- let me get my words together. So you're asking me if

they have a location or if they -- have particular services they provide in Texas? I'm just trying to understand.

Q. Well, let me back up, and I'll start with a different question.

A. Okay.

Q. And we'll come back to this one.

A. All right. Thank you.

Q. As an investigator in the Consumer Protection Division, is it fair to say that your interests are restricted to representations made to consumers in Texas?

MS. VASQUEZ: Objection, Your Honor; vague.

THE COURT: Overruled. If you know, you can answer.

A. And if you can repeat it, just so I understand.

Q. (BY MS. LESKIN) Sure. When you worked as an investigator in the office of the Consumer Protection Division, did you understand that the -- well, let me ask it this way, that the focus of your work were for representations made within the state of Texas.

A. Representations that were made within the state of Texas or could affect the state of Texas? Are

you -- just so I understand.

Q. Well, let me start with representations made in the state of Texas?

A. Okay. So, yes, my -- my work would include representation -- representations made within the state of Texas, yes, ma'am.

Q. And your work involved statements that affected consumers within the state of Texas, correct?

MS. VASQUEZ: Objection to the extent this question calls for a legal conclusion, Your Honor.

THE COURT: Overruled. He's an investigator, and if he knows the answer to this question, he may answer it.

A. Okay. So you're asking me if these Consumer Protection Division's interests apply to basically acts or representations that can affect the consumers within the state of Texas, correct?

Q. (BY MS. LESKIN) Correct.

A. So as I understand it, yes.

Q. Okay. So going back to my question, was there anything on the page that you've attached as Exhibit 1 to your affidavit, was there anything on that page that indicated a statement that affected consumers within the state of Texas?

A. So -- and, again, just looking at this

reminding me, so if you're talking about what can affect consumers, if somebody can order the drugs within the state of Texas where they can be shipped into, like the mail order pharmacy, that could be relevant, as I understand it.

Q. Were you aware that QueerDoc on their website represents the states in which they serve?

MS. VASQUEZ: Objection; that goes into his investigation beyond this page, and that would be covered by law enforcement privilege.

MS. LESKIN: Your Honor, they've opened the door by marking this page and making this the basis of their investigation.

THE COURT: I'm going to sustain your objection.

MS. VASQUEZ: Thank you, Your Honor.

THE COURT: I'm going to sustain the objection. Maybe I shouldn't say this, but I want to say if -- it may hamper the Office of the Attorney General's ability to present their own case, but I understand what you're saying, that you're going to stand on this investigative privilege the same way they're standing on their position of, you don't get to know this, you're standing on, you don't get to know this. But it might come down to a merits issue, and

the absence of information may end up being the reason of -- the Court issues a ruling that it issues.

But as long as you understand that, I think it's your objection to make and it's your position to take, and so the Court is sustaining your objections.

MS. VASQUEZ: Thank you, Your Honor.

Q. (BY MS. LESKIN) I want to show you --

MS. LESKIN: It's for purposes of impeachment, Your Honor, and not for admission of the evidence.

Q. (BY MS. LESKIN) -- a page from a different -- a page of a -- different page from the QueerDoc website. And this is a page --

MS. LESKIN: Can you please move that up a little bit so we can see the caption for that? The bottom part. There we go. There we go.

Q. (BY MS. LESKIN) And I'll ask you, have you seen this page from the QueerDoc website before?

MS. VASQUEZ: Objection, Your Honor; you already sustained the objection to law enforcement privilege which she asked for other pages that he looked at on this website.

THE COURT: I think that -- is this an exhibit of yours?

MS. LESKIN: It's not, Your Honor. We -- we can make it an exhibit. We can offer it as Exhibit 38 and upload it to the Box, if that would be --

THE COURT: I'm -- I'm okay with you doing that. I think you're going to need to rephrase your question, because I think I'm going to sustain their objection to the investigative privilege here. But if you want to ask questions about looking at it now, he can -- he can ask -- you can ask questions about looking at it now.

MS. LESKIN: Thank you, Your Honor, and we will mark this, then, as Plaintiff's Exhibit 38.

THE COURT: And it's a website? You just printed it off?

MS. LESKIN: It's a page from the QueerDoc website. And the bottom of the page does have the full U- -- the full address -- URL address on it.

THE COURT: Okay. I think it's enough to be self-authenticating, so I'm not worried about that. I guess what would be the OAG objection?

Again, we're not going to ask about what he may have looked at in his investigation. I sustained that. So if you have an objection to them offering 38?

MS. VASQUEZ: Foundational.
THE COURT: I'm going to overrule that. 38 will be admitted.
*(Plaintiff's Exhibit 38 admitted.)*
THE COURT: But, again, you have some work to do.
MS. LESKIN: Yes, Your Honor.
THE COURT: Okay. Go ahead. It's just this one page, by the way. It's not a bunch of other pages. It's, like, a screen shot that's going to be Exhibit 38.
MS. LESKIN: Correct, Your Honor.
THE COURT: Okay.
MS. LESKIN: Just one page.

Q. (BY MS. LESKIN) And you can look at this page with me. And do you see anywhere on this page where it indicates that Texas has been identified as a state QueerDoc serves?

A. So you're just saying as to what I'm seeing now does it identify?

Q. Yes.

A. No. I -- I -- I don't see it being identified as such right now.

Q. And are you aware of any information indicating that QueerDoc operates in the state of

Texas?

A. So when you ask me that -- and I just want to understand -- are you saying based on this or based off the previous page?

Q. Based on any information you have available to you, do you have any information indicating that QueerDoc operates in the state of Texas?

MS. VASQUEZ: Objection, Your Honor.

THE COURT: Sustained.

Q. (BY MS. LESKIN) Do you have any information that QueerDoc is suggesting medical providers evade SB14?

MS. VASQUEZ: Same objection, Your Honor.

THE COURT: Sustained.

Q. (BY MS. LESKIN) Do you have any information for -- that QueerDoc is -- has -- strike that.

Do you have any information indicating that QueerDoc is committing insurance fraud within the state of Texas?

MS. VASQUEZ: Same objection, Your Honor.

THE COURT: Sustained. Again, I want to be clear. When you're objecting, you're making a privilege assertion, an investigative privilege assertion, and you are instructing your client not to answer and I'm allowing you to do that.

MS. VASQUEZ: Yes, Your Honor.
THE COURT: Okay. That's what we've been doing. I think it's a little unclear, and that's why I wanted to come back and clarify that.
MS. LESKIN: Understood, Your Honor. And, again, our position is that the State opened the door by citing to Paragraph 5 of Mr. Weeks' affidavit --
THE COURT: I understood that.
MS. LESKIN: -- in their filing to the Court.
THE COURT: I think they -- they'll have some decisions to make about what they want to do with their cross.
MS. LESKIN: Thank you.
Q. (BY MS. LESKIN) If we turn back to your affidavit, if you can turn to Paragraph 6 of your affidavit.
A. Paragraph 6?
Q. Yes. And that refers to Exhibit 2 which we -- we started to reference before.
A. Okay. I'm sorry. I was getting water.
Q. That's okay. You get your water, and you let me know when you're ready to go.
A. Thank you. Okay. What was your question?

Q. I'm just asking you to turn to Paragraph --
A. Oh.
Q. -- 6 of your affidavit?
A. Yes, ma'am. I'm there.
Q. And take a look at Exhibit 2, which you've attached to your -- to your affidavit.
A. Okay.
Q. I believe you testified earlier that the article that you've attached as Exhibit 2 was provided to you by Mr. Shatto, correct?
A. So I just want to make clear, though he initially gave me the article to review, all investigators -- I reviewed this article myself and went through the website -- this particular one. I'm sorry. This particular.
Q. And when you say you went through the website, which website are you referring to?
A. I'm referring -- not the whole website. Let me rephrase. I'm sorry. I misspoke. I'm talking about PJ Media. I -- I reviewed the article for PJ Media.
Q. Okay. And that's Exhibit 2 to your declaration, correct?
A. Exhibit 2, yes, ma'am.
Q. Do you remember when you first saw Exhibit 2?

A. If I recall, I believe it was the day I signed this affidavit.
Q. February 29th, 2024?
A. Yes, ma'am.
Q. Were you familiar with PJ Media before seeing this article?
A. Not off the top of my head, no.
Q. Have you reviewed other articles by or published on PJ Media?
A. No, ma'am.
Q. And if you look to the third page of Exhibit 2, the bottom of the article, do you see the Editor's Note at the bottom there?
A. The Editor's Note on the last one?
Q. Well, it's actually not the last page because there's some ads.
A. Oh, I'm -- yeah.
Q. It's on the third page at the end of the article itself.
A. Yes. The Editor's Note right there. I see it. Yes, ma'am.
Q. And you see where it asks readers to support PJ Media's conservative reporting? Do you see that?
A. Yes, ma'am.
Q. And you see that they espouse the theory that

the destructive transgender ideology is at war with reality. Do you --

A. Yes --

Q. -- see that?

A. -- yes, ma'am, I do see that.

Q. And did you consider that when assessing the article?

A. To be frank, I can't recall.

Q. Now, the article itself says that the story is based on a series of Tweets by Matt Walsh of The Daily Wire, right?

A. If I may review.

Q. Of course. Just so you know, it's on the first page of the article?

A. Cool. Thank you. There it is, Matt Walsh of The Daily Wire at the top. I believe I see that.

Q. And you see where it says that Matt Walsh of The Daily Wire shared these findings in a series of Tweets?

A. Yes, ma'am.

Q. And did you go and did you review the actual Tweets that Mr. Walsh published?

MS. VASQUEZ: Objection; law enforcement privilege.

THE COURT: Sustained.

Q. (BY MS. LESKIN) Did you do anything to confirm the truth of the story being reported?

MS. VASQUEZ: Same objection.

THE COURT: Sustained.

Q. (BY MS. LESKIN) Did you determine what insurance companies require in order to approve coverage for gender-affirming care?

MS. VASQUEZ: Same objection.

THE COURT: I'm going to sustain it. I think at this point I need to tell the witness, I mean, the witness -- I -- they're -- they're -- they're not so much objecting as they're instructing you not to answer. And so that's what I want to be very clear about.

They're instructing you, it's their privilege, and they're saying that you have an investigative privilege with them and they're instructing you not to answer, and I am allowing them to instruct you of that. It's not so much an objection. It's more of a privilege assertion. I see it more like that.

But the witness isn't represented by them. He's represented by his own lawyer who showed up and made an announcement representing themselves, and not in the same department, claiming some sort of

disagreement. So I can only say to you that you, Witness, have some agency here, and they're instructing you not to answer. I'm allowing them to instruct you of that.

But you have some choices to make about maybe you should discuss with your lawyer about whether or not you feel like you should answer these questions or not because that's not something I can instruct you on. And it's really not something they can instruct you on.

If your lawyer wants to be involved in this, if you want to be involved in this, you can choose to answer these questions. And that's why I want to be very clear that it's not so much an objection. That the witness has some agency here.

Now, it may be limited because I understand you're saying that he's in your possession -- I mean, he's in your direction, but I just -- it's not precisely that I am sustaining an objection. I am allowing the Office of the Attorney General to tell a witness, who used to work in their office as part of the Civil Investigative Division, who now works for another state agency, the Comptroller, to tell him not to answer because they believe it is privileged.

He can rely on that, or he can not rely on that. That is a decision that the witness can make along with his lawyer. And do you want to discuss with him after the Court has said that?

MS. JOHNSON: Yes. Can we take just a five-minute recess?

THE COURT: Yes. I think that's what we need to do to make sure that we're doing this correctly. Thank you. Take a ten-minute break.

THE WITNESS: Thank you, Your Honor.

*(Recess was taken.)*

THE COURT: All right. We're going to go back on the record. And, again, I'm not -- I just want to make clear what's going on here. I think it's gotten a little confused. And so -- because I've just been sustaining or overruling objections, and so I don't really necessarily feel like the witness needs to state anything or that anybody needs to state anything. I think everybody now has had a chance to talk to who you needed to talk to and then we'll just go back into it. And you can continue to ask your questions.

MS. LESKIN: Thank you, Your Honor.

THE COURT: All right. Thank you.

Q. (BY MS. LESKIN) We were talking about Exhibit 2 to your affidavit. Did you do anything to

investigate anything further that was mentioned in this article, other than read the article?

MS. VASQUEZ: Objection; law enforcement privilege.

THE COURT: So they're -- they're asserting law enforcement privilege and asking you not to answer the question. And then that is now to you. I'm allowing them to assert it. That said, if the witness doesn't follow that or does follow that is the witness' decision.

THE WITNESS: So how -- how would I confirm how I feel one way or another?

THE COURT: Well, you talked to your lawyer. Lawyer, do you want to say anything?

MS. JOHNSON: If you're not to answer the question because of the privilege, you can just say, I'm not going to answer based on the privilege.

A. I'm not going to answer.

Q. (BY MS. LESKIN) Based on the privilege?

A. Based on the privilege, yes, ma'am.

Q. Okay. Thank you.

A. Uh-huh.

Q. Going back to Exhibit 2, you see that the article is dated June 7th, 2023, correct?

A. Yes, ma'am.

Q. And you understand that that was three months before SB14 went into effect, correct?
A. To be -- SB14 is a law I am not that familiar with. I couldn't tell you the dates on it.
Q. Okay. So you're not aware that it went into effect effective September 1, 2023?
A. I'm not -- I -- I do not have any informa- -- I don't have hardly any information of SB14.
Q. Did you see anything in this article that you've attached as Exhibit 2 to your declaration discussing SB14?
A. Are you asking in my affidavit do I see anything about SB14?
Q. I'm looking at Article 2 to your affidavit.
A. Okay.
Q. The article that we've been referring to published on PJ Media?
A. Oh, you're referring to PJ Media?
Q. The article that's Exhibit 2 to your affidavit, yes --
A. Oh, okay.
Q. -- PJ Media on the bottom?
A. Okay. Yes, absolutely.
Q. And did you see anything in that article or do you see anything in that article referring to SB14?

A. Let me review it real quick. If you're asking me if I see anything about SB14 in -- about the article in front of me --

Q. Yes.

A. -- I do not. I do not see it.

Q. And do you see anything about the state of Texas in the article that's in the PJ Media article?

A. I see a particular line here about there being a transgender provider within the United States, which Texas is within. But if you're asking me if I see Texas mentioned specifically, no.

Q. And do you see anything in this article regarding the provision of transgender care to minors?

A. I see a note there about protecting kids.

Q. Where do you see that?

A. It's at the end. So it says near -- near the end. Protecting kids is just one piece of the puzzle.

Q. And that's a statement by Mr. Walsh himself, correct?

A. Reading that it looks like that from where I'm sitting, as I understand it. As I understand it, I -- I -- to be frank with you, that's what it looks like.

Q. It's a quote following Walsh said, correct?

A. Yes, ma'am.

Q. Okay. But in the recount of the

investigation, there's no indication in the article, you'll agree with me, that Plume was providing gender-affirming care to minors, correct?

A. So you're referring into the rest of the article?

Q. Yes.

A. Okay. Let's see here. I'll check. Sorry. I got to read it. It's been a hot minute. So prior to that comment, I don't see anything else mentioning children.

Q. And if you go to the second page of the article, the second paragraph at the top, it mentions Plume is the largest transgender healthcare provider in the United States. You see that, correct? Do you see that sentence?

A. Yeah. You're -- you're referring to the line that's right below, after a mere 22-minute virtual consultation with Plume?

THE COURT: No. Sorry. You went very fast. Remember to go a little slower so the court reporter can take the accurate record.

A. Yes, ma'am.

Q. (BY MS. LESKIN) And it describes Plume as the largest transgender healthcare provider in the United States, correct?

A. Yeah. And -- and, again, to go slower. That's the line right before, a mere 22-minute virtual consultation with Plume.

Q. So the bottom -- the bottom line of that paragraph right after that, correct?

A. Yeah, yeah. Okay.

Q. Were you familiar with Plume?

A. I want to say I'd come across it in my other work, but to be frank with you, I -- I -- I couldn't -- I couldn't recall exactly.

Q. Do you know where they're located?

A. Not off the --

MS. VASQUEZ: Objection, Your Honor; this gets into law enforcement privilege, and it goes to his other duties assigned at the Consumer Protection Division.

THE COURT: So they have again asserted the investigative privilege. You can follow that or not follow that.

A. I'll go ahead and take the privilege.

Q. (BY MS. LESKIN) And as part of your work, did you do anything to investigate whether Plume provided any medical services within the state of Texas?

MS. VASQUEZ: Same privilege.

A. I'll take the privilege.

Q. (BY MS. LESKIN) Did you do any investigation to whether Plume was providing medical care for minors within the state of Texas?

MS. VASQUEZ: Law enforcement privilege.

A. I'll take the privilege.

Q. (BY MS. LESKIN) Are you aware that Plume does not provide any medical care for minors?

MS. VASQUEZ: Same privilege.

A. I'll take the privilege.

Q. (BY MS. LESKIN) Sure. So let me show you --

MS. LESKIN: This is another website, Your Honor. We'll mark this as exhibit -- Plaintiff's Exhibit 39, and we will provide a hard copy and upload it to the Box.

THE COURT: I think this is the last one of these I'm going to allow --

MS. LESKIN: Okay.

THE COURT: -- so just because it's really not what I asked. We want them to be there already. But I don't want to get confused. I don't want the court reporter to get confused, but we will do 39 as well.

MS. LESKIN: Thank you, Your Honor.

Q. (BY MS. LESKIN) And if we can go to the middle of this page. And I'll represent to you this is

from the Plume website. And do you see the question that says, Can someone under 18 --

MS. LESKIN: Further down. And the only thing we're marking, Your Honor, is this page here.

Q. (BY MS. LESKIN) Can you see where it says, Can someone under 18 use Plume without parental consent?

MS. VASQUEZ: Objection, Your Honor. I'm going to object to foundation.

MS. LESKIN: Just asking if he sees the sentence.

THE COURT: I -- yeah. I don't know if we're going to admit this document, but to the extent that you have pulled up a website for Plume, something that was mentioned in an exhibit to the declaration/affidavit that this witness has performed and put in the record of the Court, I'm going to allow you to show this part of the Plume website and ask a question about it.

MS. LESKIN: Thank you.

Q. (BY MS. LESKIN) And do you see where it says, We're very sorry that we cannot provide services for anybody under the age of 18?

A. Yes, ma'am.

Q. And that's not something you saw prior to

today?

MS. VASQUEZ: Objection, Your Honor; law enforcement privilege.

THE COURT: There again, invoking the law enforcement privilege.

A. I'll take the privilege.

Q. (BY MS. LESKIN) Do you have up with you on the stand there Exhibit 1? It should be Plaintiff's Exhibit 1. It's the CID that was issued to PFLAG and previously admitted.

A. I -- I don't think I see it. Oh, here it is.

Q. It's on the screen as well.

A. Yes, thank you.

Q. I believe it is one of those documents in the pile as well, if you'd like to see the full document.

A. Okay. Thank you. There's a lot here, so I'll just stick with this.

Q. Sure.

MS. LESKIN: Your Honor, if I -- if it's easier, I can identify it for the witness in the pile. It might --

THE COURT: Sure.

MS. LESKIN: -- be easier if I --

THE COURT: You can walk up --

MS. LESKIN: Thank you.

THE COURT: -- and show him which one it is.

A. Okay. Cool. Thank you.

THE COURT: Because there are some -- again, I was confused. So --

A. Thank you.

THE COURT: -- show him one that is actually Exhibit 1.

Q. (BY MS. LESKIN) And my first question is, have you seen this document before?

A. This particular document? No, ma'am. Not -- not that I can recall.

Q. Okay. And if you look at the first page of the exhibit itself, you see that this is a Civil Investigative Demand issued to PFLAG, correct?

A. Yes, ma'am.

Q. And if you look at the bottom, it says, Other authorized agent, and that's you, correct?

A. Yes, ma'am.

Q. And you're listed as the investigator?

A. Yes, ma'am.

Q. And in that second paragraph it directs PFLAG, if it's producing documents electronically to provide them to you, correct?

A. Yes, ma'am.

Q. Did you write this CID?
A. No. I -- I -- to be frank with you, I can't remember. My work with CIDs is usually administrative, but it -- this particular one, I -- I did not have a hand in this one, as far as I can recall.
Q. And you're aware that your counsel filed a motion to quash your subpoena to appear today, correct?
A. Yes, ma'am.
Q. And you're aware that it indicated you had no personal knowledge of the facts relevant to the lawsuit beyond your affidavit, correct?
A. Can you repeat that?
Q. Sure. Are you aware that the motion to quash filed on your behalf indicated that you had no personal knowledge of facts relevant to the lawsuit beyond what is in your affidavit?
A. Just so --
Q. Are you aware that of?
A. Well, I just want to make sure I understand you. So you're saying the motion to quash stated I had no personal knowledge?
Q. Beyond what was in your affidavit.
A. I was unaware of that language.
Q. Okay. Do you disagree with that statement?
MS. VASQUEZ: Your Honor, I'm going to

assert the law enforcement privilege again and the investigative privilege.

MS. LESKIN: It has nothing to do with his investigation, Your Honor.

THE COURT: Overruled. Overruled.

A. So -- and, again, can you just -- I'm trying to answer the question. I just want to understand what you're saying. So what -- are you asking me if I had more knowledge than the affidavit or just knowledge within the affidavit?

Q. (BY MS. LESKIN) More knowledge about this lawsuit and the underlying investigations that the lawsuit is based on beyond what is in your affidavit?

A. The knowledge that I had past this affidavit was, again, mostly administrative and very rudimentary, so -- because I want to answer you truthfully. I -- I have knowledge -- more, more knowledge past this affidavit, but it's not anything that would be relevant. I think it would just be, say, like, you know, you asked me like if I did administrative work on something, so it -- like, if you're asking about this particular case, like, that would be about it, if that makes sense.

Q. And when you say you did administrative work, what does that mean?

A. Like maybe I found Secretary of State filings, you know, but I -- I couldn't give you specifics on like, that's a piece of more information that I have on it. I -- you know, could say -- well, I mean, that would be within this, so, I mean, I -- I reviewed Secretary of State filings. So really I would say it would be within the affidavit, I mean, honestly because there's not much more to say other than -- I mean, only unless there's something I missed specifically. Again, my -- it's been a few months since I've even looked at this -- well, I mean, it has been a few months, but that is when I worked on this.

Q. Are you aware of that there are -- well, strike that.

There are other divisions besides the Consumer Protection Division within the Office of the Attorney General charged with investigating Medicaid fraud, correct?

MS. VASQUEZ: Objection; relevance.

THE COURT: Overruled. If the witness is aware, he can answer it. We're not going to go down this very far, but you may answer it if you're aware.

A. Yes, I am aware of other divisions including Medicaid fraud.

Q. (BY MS. LESKIN) And, in general, the Consumer

Protection Division's investigation regarding insurance-related fraud is focused on insurance companies' deceptive acts as to consumers, correct?

MS. VASQUEZ: Objection; calls for speculation and also a legal conclusion, Your Honor.

THE COURT: I don't think he's the witness for this question, and that might even be something the Court can take judicial notice of, but I don't think it's appropriate for this witness, so sustained on the objection.

MS. LESKIN: Okay.

Q. (BY MS. LESKIN) You have there in front of you Exhibit 1, which we identified as the Civil Investigative Demand. If I could ask you to turn to Exhibit B1 to that document, and that's the affidavit of Brian Bond.

A. B1?

Q. B1.

A. Okay.

Q. It's in Exhibit 1.

A. Exhibit 1. This one you showed me?

Q. That's the one I showed you.

A. Okay. B1?

Q. Yes.

A. All right.

Q. And attached to the demand is an Exhibit B1 entitled Affidavit of Brian Bond.
A. Brian Bond. Okay. Exhibit B.
Q. Yes.
A. Yes, I see this.
Q. Have you seen this document before?
A. No.
Q. You've never read this document?
A. I've never looked over this document that I can recall.
Q. I'm sorry?
A. That I can recall.
Q. And specifically if I could ask you to look at Paragraph 13.
A. Paragraph 13?
Q. Yes, of Mr. Bond's affidavit.
A. Of his affidavit? Okay.
Q. Yes.
A. Paragraph 13 begins with, This brief sigh?
Q. Yes.
A. Okay. I see it.
Q. And whether or not you saw it in the context of this affidavit or not, do you recall ever seeing any part of the statements in Paragraph 13?
A. Yeah, all this is new information to me.

Q. This declaration was not part of the investigation you did, correct, you personally?

A. I'm sorry. Repeat that.

Q. This -- Mr. Bond's affidavit was not part of the investigation you did, correct?

A. No. I've never seen this information as far as I can remember.

THE COURT: We're going to go until 1:00 and then we're going to be done, so you probably need to get to the end with this witness. That will be four hours, and I have another case coming at 2:00.

MS. LESKIN: Yes, Your Honor.

THE WITNESS: Thank you, Your Honor.

Q. (BY MS. LESKIN) Paragraph -- let's go back to your affidavit.

A. Sure.

THE COURT: That means you need to wrap it up, because we need to do some argument. I need to see if they have any witnesses. I don't think they do, but -- but I just want you to be careful of time. Five, ten more minutes at the most.

MS. LESKIN: And that's all I have, Your Honor. Thank you.

Q. (BY MS. LESKIN) Paragraph 2 of your affidavit refers -- says, On or around July 7th, 2023, the

Consumer Protection Division became aware that medical providers may have chosen -- chosen to use false, misleading, or deceptive acts to treat children for gender dysphoria. Do you see that?

A. Yes, ma'am.

Q. Do you know how the Consumer Protection Division became aware?

A. To be frank with you, it's -- not off the top of my head. I think we had reviewed --

MS. VASQUEZ: Objection to -- to investigative privilege.

THE COURT: They are saying it's investigative privilege and asserting it.

A. I'll take the privilege.

Q. (BY MS. LESKIN) And you joined the investigation on August 8th, correct?

A. According to this affidavit, yes, ma'am.

Q. And the -- the demand that -- that I showed you as Exhibit 1, those were issued in February of 2024, correct?

A. Where? Where are we looking?

Q. Sure. At the bottom of Page 1 of Exhibit 1.

A. Uh-huh.

Q. It says issued this 5th day of February, 2024.

A. Yes, ma'am, I see that.

Q. Okay. You are aware that Mr. -- you see, looking at Mr. Bond's declaration, that he filed it in the case called *Loe vs. State of Texas*, correct?

A. Where is that? I'm sorry.

Q. If you go back to Mr. Bond's declaration.

A. Okay. Pardon me. *Lazaro Loe v. State of Texas*.

Q. Are you familiar with that lawsuit?

A. No ma'am.

Q. Do you know the purpose of that lawsuit?

A. No, ma'am.

Q. Did you review anything from that lawsuit?

A. No, ma'am.

MS. LESKIN: No further questions, Your Honor.

THE WITNESS: Thank you.

MS. VASQUEZ: No questions, Your Honor.

THE COURT: All right. Thank you. You are free to go --

THE WITNESS: Thank you.

THE COURT: -- or stay, but you are released from your subpoena.

THE WITNESS: Thank you very much, Your Honor. Thank you.

THE COURT: You, too, Ms. Johnson.

MS. JOHNSON: Thank you, Your Honor.

THE COURT: So for the plaintiff, any further witnesses?

MS. LESKIN: No, Your Honor.

THE COURT: Thank you. For the Attorney General, any witnesses that you would like to call?

MR. SHATTO: No, Your Honor.

THE COURT: Okay. Then let's just go ahead then and we'll have some closing and exactly what you're seeking.

You know, one of the things that I need to research and just haven't had a chance yet, and I'm curious, your thoughts on this. Currently, there is some -- there are some temporary orders issued by the Third Court of Appeals, and there's nothing happening. I think you agreed to stay that.

So when -- if the Court chooses to enter a permanent injunction, kind of what does that do to that and where are we process-wise? Maybe those are questions that you don't know the answer to, but I'd like you to speculate on both sides just so we have some thoughtful discussion about that as part of the closing here today.

And then there's also -- there's an injunction -- is there also a cause of action from the

plaintiff, like a legal cause of action in addition to an equitable injunction? I think I need to further understand that.

And then in your closing, further understand the State's cause of action as well against the plaintiff. I feel like I blew past that a little to get here to -- the evidence in, so let's focus on that a little bit more now. Thanks.

MS. LOEWY: Sure. Do you mind if I stay seated, Your Honor?

THE COURT: I actually think it's a little better because of the way the mic is --

MS. LOEWY: Yes.

THE COURT: -- so I appreciate that, Yes.

**CLOSING ARGUMENT BY MS. LOEWY**

MS. LOEWY: Thank you. Well, so to -- to start with where Your Honor left of in terms of the nature of the cause of action, I think that's where it makes sense to start. The cause of action that the plaintiffs have brought is twofold. One is a straightforward petition to set aside and modify pursuant to Section 17.61 of the DTPA, of the Texas Business and Commerce Code, and under the UDJA.

It is a cause of action. You know, the -- the statute is not exactly fully flushed out in

describing the nature of this cause of action, but it allows a recipient of a CID to file a petition to set aside or modify. And a petition, you know, just says petition just like in Civil Rule of Procedure 22. That's how you commence a civil action. So that is the nature of the plaintiff's -- of PFLAG's filing.

THE COURT: Is there not a lot of published case law on this? Is that where we're lacking?

MS. LOEWY: That's correct.

THE COURT: We just don't have a lot of case law that would put meat on this bone, basically. We don't really have published case law?

MS. LOEWY: That's correct, Your Honor.

THE COURT: So -- I know you loaded up other cases of judicial notice.

MS. LOEWY: Yes.

THE COURT: Are they also operating on that same theory, or are those separate types of cases? Because you loaded up a couple other cases in other venues around the state. And are they making the same argument, or are they making a different argument? Do you know.

MS. LOEWY: So there -- there's a mix of them, Your Honor. Some of them -- some of it is due to

the nature of the specific types of demands that the Attorney General's office sent to some of these other entities. But, for example -- co-counsel will correct me if I'm wrong -- Seattle Children's similarly filed a petition to modify -- set aside and modify their demands.

THE COURT: That -- which one did?

MS. LOEWY: The Seattle Children's.

THE COURT: Okay. And is that one of the ones that's in my evidence or --

MS. LOEWY: Yes.

THE COURT: Okay. And is that here or was that in another venue?

MS. LOEWY: That was here, Your Honor. That case has since been resolved.

THE COURT: That case is resolved.

MS. LOEWY: Yes.

THE COURT: The one in El Paso, is that one resolved, or is that pending?

MS. LOEWY: That is pending, I believe. Yeah. It was a different type of investigative tool. That's part of the issue here, Your Honor. The DTPA provides different -- the -- the 17.61(g) action is specific to civil investigative demands. With regard to the demands for sworn written statements, there

isn't a specific provision of the DTPA to challenge those. That's part of the reason for the UDJA claims.

THE COURT: All right. Thank you. Keep going.

MS. LOEWY: Sure. So -- so that's where I would start, Your Honor, is that that -- there is -- there are underlying causes of action that PFLAG, as a recipient of demands, is entitled to bring.

The counterclaim that the Attorney General's office has brought against them, as Mr. Shatto noted, is the flip side in that it is a petition to enforce where there has been failure to comply with an underlying demand, similarly framed in terms of a petition.

Opposing counsel had -- has suggested this summary proceeding, this pre-litigation posture by borrowing from federal case law in a variety of ways with regard to administrative subpoenas. What I would say, Your Honor, is that at the end of the day, the inquiry that the Court is engaged in is not different. That in the context of those kinds of administrative subpoenas, the Court has a role in assessing whether the agency has exceeded its authority.

Now, demands like those that the AG's office has served on PFLAG do receive some measure of

deference, but it's the government's initial burden to show the legitimate purpose of the investigation, whether the inquiries are reasonably relevant to that purpose, whether the agency already has the sought information, and whether statutory procedures have been followed.

Those are factors that are set forth in the U.S. Supreme Court case called *United States vs. Powell*. Those are the factors that apply in assessing -- in assessing administrative subpoenas, which is the context that they're borrowing from. And in that case law, the Attorney General's office can use an affidavit from a responsible investigating agent to make that showing of all of those factors.

Your Honor, I would argue that the testimony from Mr. Weeks does not meet that threshold for the Attorney General's office. He testified that he did not have a hand in writing the Civil Investigative Demand, that his knowledge was rudimentary, administrative, that he reviewed Secretary of State filings and had not seen the exhibits attached to his affidavit until the day he signed it when Mr. Shatto put them in front of him.

He had no idea what the genesis of this investigation was. He had never seen Mr. Bond's

affidavit before, had never seen the paragraph from his affidavit with the words on which the Attorney General's office hangs their hat to suggest that PFLAG had actual knowledge of insurance fraud. And so the idea that that could be enough to justify the legitimacy of the investigation is -- is pretty surprising.

Our cause of action here, Your Honor, raises the big picture deficiencies with the demands, but also more discrete demand-by-demand deficiencies. And what -- as I started with today, Your Honor, our goal today is -- is to see whether there's a way to bring this to an end for PFLAG.

Now, that can't come about in a way that infringes their constitutional rights. If Your Honor would like me to address the case law with regard to protected communications beyond just the revelation of member names, I am happy to do that. It is ample.

THE COURT: I -- I don't need you to do that. I think at this point, though, I'm going to ask you a question about -- so at some point they sent you, You're right on member names. We don't want your member names. We're going to agree. We're going to concede. Now, maybe they didn't do it and maybe that's what you're standing on because they didn't actually

send a -- a new investigate demand. They filed a document with a pleading.

But if that were -- what is wrong with that compromise, or do you want to address it, which is, they have put forth a compromised position that PFLAG has not taken them up on. And so I guess my question would be that. They've almost conceded that they don't get your member lists. I think they've conceded that.

MS. LOEWY: Which is great, Your Honor, and we're glad for that concession. But those proposed modifications don't go anywhere near far enough to cure the full range of deficiencies with the demands. And, yeah, I'm happy to address that globally but, also, you know, they -- there has to be a connection with every single one of the demands to the investigation that they purport to be pursuing, and they can't meet that showing.

Even with that concession that they're not seeking member names, they are still seeking protected communications among PFLAG members, which similarly receive constitutional protection under both the state and federal constitutions. The demands seek information that is overbroad, that would not be reasonably discoverable under the Rules of Civil

Procedure, which is another safeguard of the DTPA.

So -- so we recognize that they have offered proposed modifications, but those proposed modifications don't go far enough in complying with the requirements of the DTPA or in shielding PFLAG from constitutional infringement.

What we have offered, Your Honor, is -- our motion for summary judgment in this case was the start of an identification process of where the granular demands failed to meet the requirements of either the DTPA or the Constitution.

We would welcome, as we said -- as said at the outset, we're -- we're not looking for an all or nothing solution here, Your Honor. While we think there are reasons to set aside the demands in their entirety, our ultimate goal here is to bring this to an end for PFLAG. And if that includes turning over some discrete amount of information, whether through the affidavit that Mr. Bond already submitted along with the motion for summary judgment or through his testimony today, whether there are ways for this to be modified in a discrete way to come within the bounds of the law, that that is actually the ultimate solution that we are looking for here. Because the last thing PFLAG wants is an endless array of appeals in this

matter.

So we have -- our proposed order that we did submit to the Court does exactly this kind of more granular assessment of the different aspects of the demands that we would ask the Court to take a look at and rule on.

THE COURT: Where -- where could I find -- look at your proposed order? Is it part of the pleading, or did you just put it in the Box, or is it on an email?

MS. LOEWY: We put it in Box, and we have paper copies if Your Honor would like.

THE COURT: Let me see if I can find it in the Box. Got it. Thank you.

MS. LOEWY: Absolutely. So we recognize that it looks a little bit unusual. It looks a little bit like you're ruling on discovery issues, but that's sort of the nature of what we're looking at here. The tests are a little bit different, though. Right? It's not just your average relevance assessment. There are requirements under the DTPA of what every demand has to include and cannot include.

We've identified where we think the demands fall short. We've identified where we think there are constitutional backstops. And because in

particular this does implicate constitutional concerns, the bar is higher than just a simple relevance assessment.

THE COURT: All right. Thank you. I'll give you last word, but let's turn to the Office of the Attorney General. Mr. Shatto.

**CLOSING ARGUMENT BY MR. SHATTO**

MR. SHATTO: Thank you, Your Honor. As mentioned by PFLAG, our counterclaim is what we would like you to rule on today. That counterclaim is the mirror image of their claim and essentially the petition to modify -- I'm sorry, the petition to enforce is effective simply because at this point PFLAG has not provided us documents, and we are asking the Court to enforce our demands as modified, as we've produced them to the Court through the previous motions we filed and have them issue those -- issue those documents to us.

As far as the powers of the State and where we are right here, the Consumer Protection Division, DTPA is largely patterned after a federal law, like the Federal Trade Commission types of ideas, and there just isn't much case law in this world. And so we do often borrow law from across different jurisdictions.

And these are pre-suit investigat- -- investigatory tools and administrative agencies, such as the Consumer Protection Division, these powers are analogous to a grand jury's. We have the power of inquisition. We have -- which means that we can investigate merely on suspicion that the law is being violated or just to assure the law is not being violated.

Now, as far as it goes to the actual demands themselves, we've met our statutory burden clearly. Each demand shall, number one, state the statute and section under which the alleged violation is being investigated and general subject matter of the investigation. We already went through this earlier. We've met that burden.

Now, PFLAG and the State have different opinions about the demands themselves. What we believe, that we have certainly modified those demands to alleviate any valid First Amendment concerns they have. They also raise Fourth Amendment concerns in particular, and those are largely for overbreadth in this instance. And we would also -- we didn't go over this earlier, but we eliminated several of the questions specifically and we've narrowed the questions down as well.

An overview of those changes is in our motion to modify, and -- and our office has taken into -- really taken into consideration their concerns and modified these demands on purpose so that they don't actually violate any of their concerns.

And so CPD, we're tasked with enforcing the DTPA, and to -- to deny the CPD from issuing these demands as modified would -- would keep CPD from fulfilling its statutory law enforcement duties. There is also a important governmental interest in investigating potential false, misleading, and deceptive acts.

THE COURT: I -- I have a question. Can -- I want to respect the Consumer Protection Division, so I've been thinking about a way to ask this question. But outside of this case, just in another analogous case, many of which have been here at the courthouse -- I mean, I don't know. I can't remember if it has mandatory jurisdiction here or not, but we've tried a Consumer Protection Division case last week here in Travis County. We try them.

Have you ever -- can you give me an analogous example? I -- I don't -- where you're actually doing this much investigation of the non-target? Because this is a -- not a target of the

investigation.

MR. SHATTO: Sure.

THE COURT: And I just -- I want to ask you for -- if there are analogous situations where you feel like you've put this much effort into a non-target of an investigation in order for you to be able to do your job? And I'm literally just asking. Like, I -- I don't know, but I don't want you to -- I'm not asking you to break your investigative privilege. I'm asking you to tell me about things that might be in the public domain that your division has done that -- where you have put this much effort into a non-target of an investigation.

MR. SHATTO: Sure. I don't know if I can answer that question specifically, but I can say that we often issue demands to third parties. I would say that the amount of effort that has gone into this case is not necessarily so much -- may not be so much because of our interest, but because of the response we received from PFLAG.

THE COURT: Okay. Keep going.

MR. SHATTO: And as far as -- just to kind of wrap this up a little bit, as far as the reasoning of the investigation itself and -- and hanging that on the knowledge of Mr. Weeks, I think we

can all -- at least I'll say, there is a fair amount of investigative privilege here, and that certainly is not necessarily the end-all and be-all, the knowledge that the Consumer Protection Division has, in terms of the reason why we may investigate one party over another.

And for these reasons, we think that the -- the Court has all the information necessary that's needed to sign our order for counterclaim.

THE COURT: Where would I find your proposed order?

MR. SHATTO: I just realized it has not been updated to the proposed orders online, but I can do that right now for you.

THE COURT: Yeah. I think I'm going to take this under -- I'm not going to rule right away. I'm going to take this under advisement --

MR. SHATTO: We do also have copies.

THE COURT: -- and spend some time looking at a significant record that's been provided to me in considering some of the countervailing interests here, I think. I think it's fair to say it's -- I don't know if it's a matter of first impression, but it's a matter of -- it might be a matter of first impression. We at least don't have a published case where we looked at these issues. I'm going to take and

consider it. And during that time, why don't you get me a copy of what you'd like the Court to rule on your side.

MR. SHATTO: Yes, Your Honor.

THE COURT: But I think -- there was a lot of back talk about getting here. I didn't quite understand all of that. You know, I would get a -- I fol- -- I tried to follow it, and I didn't understand exactly what was going on.

But I think both sides now feel like, after I give the last word to the plaintiff, as we would in any trial, that we have completed a record now. And the Court has what it needs to rule on this matter and issue a final decision; is that correct?

MS. LOEWY: That's correct, Your Honor.

MR. SHATTO: Yes, Your Honor.

THE COURT: All right. Thank you. So then I will let the plaintiff have the final word.

**FURTHER CLOSING ARGUMENT BY MS. LOEWY**

MS. LOEWY: Thank you, Your Honor. A couple of things that I would follow up on. So first, you know, we would disagree that the demands themselves are sufficiently specific. They cite to the general laundry list in the consu- -- in the DTPA, for here are all the things that are unlawful trade practices

without any specificity. Their after the fact description that this was really about insurance fraud is helpful, but isn't actually on the face of the demands, so it didn't actually allow PFLAG to assess the demands through the lens of what they were allegedly purporting to investigate.

Your Honor raised the right point here that -- that this is a third party. They have disclaimed that PFLAG is the target of the investigation, but if you're going to -- if they're going to send demands to an entity that they believe has information about a deceptive trade practice, there has to be a reasonable basis for that.

And the cherry-picked language from Mr. Bond's *Loe v. Texas* affidavit not only doesn't get them there, it also really raises questions about whether there were improper motives behind the demands in the first place. And, yes, they received lots of deference, and they can investigate what they want to, but, you know, there has to be more than mere intuition that illegal conduct is happening for them to send these demands to a third party. And the fact that they are a third party actually is another reason that the bar gets raised.

Other really discrete things that I would

mention, Your Honor, one is specifically with regard to the use of a demand for a sworn written statement. It is our read of the statute that that's actually not appropriate to send to a third party at all. That -- that they can use CIDs to gather information from third parties, but the specific language of the statute says that they can demand sworn written statements from the person, the entity that is actually suspected of engaging in the deceptive trade practice.

The last thing that I would say specifically with regards to their counterclaim, Your Honor, is that their ability to file a petition to enforce turns on the recipient of demands failing to respond, failing to reply.

Whether the Attorney General's office likes the temporary injunction that was issued by this Court and the temporary relief that was issued by the Court of Appeals or not, those injunctions extended the return date for the demands to the end of this litigation and shielded PFLAG from having to turn over anything while the lawfulness of the demands were being assessed, so there has been no failure to -- to reply to respond to the demands at this point in time.

We would actually suggest, Your Honor, that a different approach would be either -- whether

Your Honor wants to deny it without prejudice --

MR. SHATTO: Objection, Your Honor; this goes beyond the extent of the closing.

THE COURT: It's kind of what I asked to do, though, so -- I'll let you respond. I'm not going to -- I'm not going to let it end here because I think they are going a little bit beyond. But I did want to understand some procedural implication, so I'm going to let them say this, but I will let you respond to it. Go ahead.

MS. LOEWY: We would actually ask that the Court consider holding it in abeyance until after the -- there has been a time past during which PFLAG has had the opportunity to respond to anything they are required to provide to the Attorney General's office, if anything at all, after Your Honor has been able to assess the lawfulness of any of the demands themselves.

THE COURT: I guess I don't understand what that means, though. I don't understand what you just said. Like what -- who would be the judge at the time you need and what would you be responding to?

MS. LOEWY: Well, so the proposed order that -- that we have suggested would extend the return date for the demands, as modified, to 30 days from issuance.

THE COURT: I'm trying to understand how that would work. Maybe I'd be better off listening to this side and then I'd better understand what you're asking.

Go ahead. What would be your response to that request?

**FURTHER CLOSING ARGUMENT BY MR. SHATTO**

MR. SHATTO: Just in general, we would argue that PFLAG had missed their opportunity to respond to the demands in general. We don't believe they filed timely in the very beginning. This has all been fully briefed by -- by the parties. Obviously PFLAG disagrees with this contention, but that's one of the initial issues that was brought up in the beginning, was the timeliness of the filing.

THE COURT: Right. Well, one of the things was, though, I mean, I -- in the practical part of me, and I'm nothing if not practical -- you'd be surprised by the way, how many cases come down to a document case. You never actually sent a modified demand.

MR. SHATTO: Correct.

THE COURT: You just filed a pleading and proposed it.

MR. SHATTO: Correct.

THE COURT: And so how are they going to ever respond to a modified demand that you never sent?

MR. SHATTO: So this was -- we never got the hearing set properly, but it's been with the Court now for some time. We sent the modified demands as part of that motion to modify in deference to the Court's injunction at that time. We wanted to propose these potential compromises that we had. And at this point in time, I think it's all in front of the Court for those modified demands to now be -- for the Court to rule on and then to determine that those modified demands should issue.

THE COURT: So that's one of the things -- you're almost asking for an injunction as well. You're almost asking for some equitable relief, because you never sent a modified demand. So you're asking me to send it for you by an order.

MR. SHATTO: I guess.

THE COURT: I mean, you're conceding that you don't get what you originally sent, but you should only get what your modified demand was. And you're asking me to basically rewrite your own demand and -- and issue that as my order.

MS. VASQUEZ: Your Honor --

MR. SHATTO: I think that's --

MS. VASQUEZ: -- I think -- we had filed a motion. I think it was a motion for clarification and motion to modify. I think we were concerned about violating your temporary injunction by sending a modified demand, so that's why we were seeking to do that.

THE COURT: I understand that. Now, did you get here on that or no? You never set it?

MR. SHATTO: It was already set, but it's our understanding that everything is before the Court now.

THE COURT: Okay. So that's actually pending in front of me maybe. So I don't know that that position is too far off of what you just said.

MS. LESKIN: Well, Your Honor, the petition that plaintiffs have filed is a petition to set aside or modify. Like, we are asking for modifications to be made. What we've argued is that the modifications that the Attorney General's office that has -- to -- to be clear, the first time they were submitted was in a motion to modify the temporary restraining order.

THE COURT: Right. I understand that. I think what I'm hearing, though, interestingly, three hours and 45 minutes into today, that I have a menu of

options rather than just check yes or no.

MS. LOEWY: That's correct Your Honor. And forgive me if it wasn't clear at the outset. That's what I meant by we're asking the Court to engage in the process of considering modifications because we think that's actually the most straightforward route to bringing this to resolution.

We think that the demands need to be modified much further than what is being proposed by the Attorney General's office because there are flaws beyond simply the piece that they've cured.

THE COURT: All right. Thank you. All right. I understand that. And then I think even though you have a motion to modify that I have not ruled on, your preference would be -- their preference is maybe modify first and hold the final order off until after we do some modifying.

Your preference is, Go ahead and rule, Judge, and -- because we've -- you've got everything you need, and we're past modification?

MR. SHATTO: Our counterclaim incorporates those modifications.

THE COURT: Okay. All right. I think I understand that position. I understand the positions. I don't think I -- I don't think that is not clear.

MS. LOEWY: That's fair, Your Honor. To -- to be clear, their proposed modifications are incorporated into their counterclaim at this point.

THE COURT: I understand.

MS. LOEWY: They're a different set of modifications than we have offered. And to the extent, I mean, it would be helpful to the Court to do -- I mean, I think the parties cross-motions for summary judgments that are on file, but obviously not being ruled on, may also be illuminating and helpful in this regard because they've laid out some of these pieces. And -- and if the Court would want proposed findings or additional briefing, we're -- we're happy to help the Court in any way that we can.

THE COURT: All right. I understand where we are. I think I get that. Sorry it took me so long to figure that out, but I've got it now in terms of where the parties are.

**TAKEN UNDER ADVISEMENT**

THE COURT: With that said, I'm going to take it all under advisement and make some decisions about where to go next and whether I do a modified type of ruling, or we have more work to do, or whether I rule a final ruling.

You never answered my question, though,

about just the appellate law question. And I didn't know if either one of you wanted to answer the appellate law question which was just, if I were to rule and issue a final permanent injunction or not issue a final permanent injunction, what effect does that -- I mean, I guess that's the ruling that just sort of overtakes the ruling that currently sits at the Third Court of Appeals? I don't really know. I'm just asking. I don't know.

MS. LESKIN: I mean --

THE COURT: You think so? Best guess.

MS. LOEWY: Your Honor, because the temporary injunction is only in place until a final ruling --

THE COURT: Yeah.

MS. LESKIN: -- to some extent, right, it would almost render the -- the sort of appeal of the underlying temporary injunction mute.

THE COURT: That's what I think, but you-all have a lot more of an issue -- you have a lot more access to resources and attorneys than I do, so I just thought I'd ask the question.

MS. LOEWY: It's a fair question, Your Honor.

MS. POLLARD: We would be happy to

continue to consider it and --

THE COURT: If there is something --

MS. POLLARD: -- and let you know if we find something particularly helpful, but...

THE COURT: Sure. That's what I think, but I don't know if anybody else -- with all of your many, many attorneys have other thoughts about it.

MR. SHATTO: I -- I think -- I think we're to some idea that your final ruling would be the appealable order that we would go off of.

THE COURT: Okay. All right. That is everything for me. Thank you. Let's go off the record.

*(Court adjourned.)*

**REPORTER'S CERTIFICATE**

STATE OF TEXAS )
)
COUNTY OF TRAVIS )

I, Alicia Racanelli, Official Court Reporter in and for the 201st District Court of Travis County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered in evidence by the respective parties.

WITNESS MY OFFICIAL HAND this the 27th day of June, 2024.

/s/ Alicia Racanelli
Alicia Racanelli, Texas CSR No. 3591
Expiration Date: April 30, 2025
Official Court Reporter, 201st District Court
Travis County, Texas
P.O. Box 1748, Austin, Texas 78767
Telephone (512) 854-4028

# TAB B

# Appellant OAG's Unopposed Second Mot. to Abate Appeal Pending Final Judgment (Aug. 8, 2024)

ACCEPTED
03-24-00241-CV
90681504
THIRD COURT OF APPEALS
AUSTIN, TEXAS
8/8/2024 12:59 PM
JEFFREY D. KYLE
CLERK

**No. 03-24-00241-CV**

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

FILED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS
8/8/2024 12:59:36 PM
JEFFREY D. KYLE
Clerk

**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS, *et al.*,**
*Appellant,*

**v.**

**PFLAG, INC.**
*Appellee.*

On Appeal from the 261st Judicial District of Travis County, Texas
Cause No. D-1-GN-24-001276, Hon. Amy Clark Meachum

# UNOPPOSED SECOND MOTION TO ABATE APPEAL PENDING FINAL JUDGMENT AND ALTERNATIVE RELIEF

**TO THE HONORABLE THIRD COURT OF APPEALS:**

The Office of the Attorney General of the State of Texas (OAG) files this Unopposed Second Motion to Abate Appeal Pending Final Judgment and seeks to abate this appeal until after the entry of a final judgment in the district court in this case. PFLAG does not oppose this motion.

This case concerns the enforcement of a Civil Investigative Demand (CID) and a Demand for Sworn Written Statement (DSWS), issued by OAG's Consumer Protection Division against PFLAG as part of an insurance fraud investigation. On

March 25, 2024, the district court issued a temporary injunction that, among other things, enjoined enforcement of the CID and DSWS against PFLAG. OAG timely noticed its appeal of the temporary injunction to this court. OAG's opening brief is currently due on August 12.

Since OAG initiated this appeal, the district court held a trial on all issues on June 10, 2024. Courts ruling on materially similar investigative demands tend to do so expeditiously. *See, e.g.*, *In re Off. Of Inspector Gen. R.R. Ret. Bd.*, 933 F.2d 276, 277 (5th Cir. 1991) (challenges to document subpoenas should be "handled summarily and without dispatch"); *Kohn v. State by Humphrey*, 336 N.W.2d 292, 295 (Minn. 1983) (ruling on administrative subpoena less than three months after the subpoena was originally issued). OAG anticipates that the same should occur here.[1] And such a ruling would presumably moot this appeal, or at least materially alter its status by simplifying or addressing many of the issues before this Court. Briefing these issues on appeal now would accordingly be an inefficient and wasteful use of the parties' and the Court's resources.

[1] For reasons unknown, the trial court *sua sponte* ordered a post-trial hearing for September 16, 2024. In response, OAG requested that the court rule no later than August 12, 2024 (the current due date of OAG's opening brief before this Court), or in the alternative, clarify the purpose of the hearing and reschedule it to the Court's earliest availability.

For these reasons, OAG requests that this Court hold this appeal in abeyance until after the district court enters final judgment. OAG requests 20 days after final judgment for the parties to update the Court on whether the parties seek to proceed with this appeal, and in what manner.

Finally, because OAG's opening brief is presently due on August 12 (2 business days after the filing of this motion), OAG respectfully requests that if this Court does not agree to abate or extend this appeal, the Court in the alternative treat OAG's April 25, 2024 preliminary briefing in this matter as its opening appellate brief. Although OAG submits that a stay or abatement is amply warranted, particularly in light of PFLAG's non-opposition, it makes this request in the alternative purely in the interest of ensuring that it does not violate any of this Court's deadlines.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for
Civil Litigation

RYAN S. BAASCH
Chief, Consumer Protection Division

*/s/ David Shatto*
DAVID SHATTO
State Bar No. 24104114
Assistant Attorney General

Office of the Attorney General
Consumer Protection Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2185
(512) 473-8301 (facsimile)
David.Shatto@oag.texas.gov

ATTORNEYS FOR THE OFFICE OF
THE ATTORNEY GENERAL
OF THE STATE OF TEXAS

## CERTIFICATE OF CONFERENCE

I hereby certify that on August 8, 2024, lead counsel for Appellee, Allissa Pollard, lead counsel for Appellee, emailed counsel for the State that PFLAG did not oppose this motion.

*/s/ David Shatto*
DAVID SHATTO

## CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 480 words, excluding preempted text.

*/s/ David Shatto*
DAVID SHATTO

## Automated Certificate of eService

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

Pauline Sisson on behalf of David Shatto
Bar No. 24104114
pauline.sisson@oag.texas.gov
Envelope ID: 90681504
Filing Code Description: Motion
Filing Description: 20240808 OAGs 2nd Mtn to Abate Appeal Pending Final Judg
Status as of 8/9/2024 7:38 AM CST

Associated Case Party: PFLAG, Inc.

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Paul Castillo | 24049461 | pcastillo@lambdalegal.org | 8/8/2024 12:59:36 PM | SENT |
| Allissa Aileen Pollard | 24065915 | allissa.pollard@arnoldporter.com | 8/8/2024 12:59:36 PM | SENT |
| Adriana Pinon | 24089768 | apinon@aclutx.org | 8/8/2024 12:59:36 PM | SENT |
| Brian Klosterboer | 24107833 | bklosterboer@aclutx.org | 8/8/2024 12:59:36 PM | SENT |
| Michele Clanton-Lockhart | | mclanton@lambdalegal.org | 8/8/2024 12:59:36 PM | SENT |
| Lori B.Leskin | | lori.leskin@arnoldporter.com | 8/8/2024 12:59:36 PM | SENT |
| Karen L.Lowey | | kloewy@lambdalegal.org | 8/8/2024 12:59:36 PM | SENT |
| Sasha J.Buchert | | sbuchert@lambdalegal.org | 8/8/2024 12:59:36 PM | SENT |
| Omar GonzalezPagan | | ogonzalez-pagan@lambdalegal.org | 8/8/2024 12:59:36 PM | SENT |
| Lynly S.Egyes | | lynly@transgenderlawcenter.org | 8/8/2024 12:59:36 PM | SENT |
| Milo Inglehart | | milo@transgenderlawcenter.org | 8/8/2024 12:59:36 PM | SENT |
| Shawn Meerkamper | | shawn@transgenderlawcenter.org | 8/8/2024 12:59:36 PM | SENT |
| Dale Melchert | | dale@transgenderlawcenter.org | 8/8/2024 12:59:36 PM | SENT |
| Harper Seldin | | hseldin@aclu.org | 8/8/2024 12:59:36 PM | SENT |
| Elizabeth Gill | | egill@aclunc.org | 8/8/2024 12:59:36 PM | SENT |
| Chloe Kempf | | ckempf@aclutx.org | 8/8/2024 12:59:36 PM | SENT |

Associated Case Party: Office of the Attorney General of the State of Texas, et al.

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Pauline Sisson | | pauline.sisson@oag.texas.gov | 8/8/2024 12:59:36 PM | SENT |
| David G. Shatto | | david.shatto@oag.texas.gov | 8/8/2024 12:59:36 PM | SENT |

## Automated Certificate of eService

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

Pauline Sisson on behalf of David Shatto
Bar No. 24104114
pauline.sisson@oag.texas.gov
Envelope ID: 90681504
Filing Code Description: Motion
Filing Description: 20240808 OAGs 2nd Mtn to Abate Appeal Pending Final Judg
Status as of 8/9/2024 7:38 AM CST

Associated Case Party: Office of the Attorney General of the State of Texas, et al.

| | | | | |
|---|---|---|---|---|
| David G. Shatto | | david.shatto@oag.texas.gov | 8/8/2024 12:59:36 PM | SENT |
| Christin Vasquez | | Christin.Vasquez@oag.texas.gov | 8/8/2024 12:59:36 PM | SENT |
| Zoann Willis | | zoann.willis@oag.texas.gov | 8/8/2024 12:59:36 PM | SENT |
| Ryan Baasch | | ryan.baasch@oag.texas.gov | 8/8/2024 12:59:36 PM | SENT |
| Abby Smith | | Abby.Smith@oag.texas.gov | 8/8/2024 12:59:36 PM | SENT |

## Automated Certificate of eService

This automated certificate of service was created by the efiling system.
The filer served this document via email generated by the efiling system
on the date and to the persons listed below:

Cathy Hodges on behalf of Allissa Pollard
Bar No. 24065915
catherine.hodges@aporter.com
Envelope ID: 93812488
Filing Code Description: Motion not Otherwise Listed
Filing Description: Appellee's Response to Statement of Jurisdiction and Motion to Dismiss Appeal
Status as of 11/1/2024 7:55 AM CST

Associated Case Party: Office of the Attorney General of the State of Texas

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Lanora Pettit | | lanora.pettit@oag.texas.gov | 10/31/2024 5:08:34 PM | SENT |
| Kateland Jackson | | kateland.jackson@oag.texas.gov | 10/31/2024 5:08:34 PM | SENT |
| Abby Smith | | abby.smith@oag.texas.gov | 10/31/2024 5:08:34 PM | SENT |

Associated Case Party: PFLAG, Inc.

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Allissa Aileen Pollard | 24065915 | allissa.pollard@arnoldporter.com | 10/31/2024 5:08:34 PM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Maria Williamson | | maria.williamson@oag.texas.gov | 10/31/2024 5:08:34 PM | SENT |
| Deborah Williams | | deborah.williams@oag.texas.gov | 10/31/2024 5:08:34 PM | SENT |
| Alison Washburn | | alison.washburn@oag.texas.gov | 10/31/2024 5:08:34 PM | SENT |

# EXHIBIT D

FILE COPY

**THE SUPREME COURT OF TEXAS**
**Post Office Box 12248**
**Austin, Texas 78711**

**(512) 463-1312**

Friday, February 7, 2025

Ms. Allissa Aileen Pollard
Arnold & Porter Kaye Scholer, LLP
700 Louisiana St Ste 4000
Houston, TX 77002-2733
* DELIVERED VIA E-MAIL *

Ms. Abigail Smith
Office of the Attorney General
PO Box 12548 (MC 059)
Austin, TX 78711-2548
* DELIVERED VIA E-MAIL *

RE: Case Number: 24-0892
Trial Court Number: D-1-GN-24-001276

Style: OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS
v.
PFLAG, INC.

Dear Counsel:

Today the Supreme Court of Texas issued an abatement order in the above-referenced case.

Sincerely,

Blake A. Hawthorne, Clerk

by Claudia Jenks, Chief Deputy Clerk

cc: Ms. Adriana Pinon (DELIVERED VIA E-MAIL)
Mr. David Shatto (DELIVERED VIA E-MAIL)
Ms. Chloe Kempf (DELIVERED VIA E-MAIL)
Mr. Paul Castillo (DELIVERED VIA E-MAIL)
Ms. Kateland R. Jackson (DELIVERED VIA E-MAIL)
District Clerk Travis County (DELIVERED VIA E-MAIL)
Mr. Brian Klosterboer (DELIVERED VIA E-MAIL)

FILE COPY

# IN THE SUPREME COURT OF TEXAS

NO. 24-0892

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

v.

PFLAG, INC., APPELLEE

ON DIRECT APPEAL

## ORDER

1. The parties dispute the Court's jurisdiction over this direct appeal. Without addressing the merits of the complaint that jurisdiction is lacking, the Court notes that the alleged jurisdictional defect may be cured by the trial court's entry of a final order on the Attorney General's petition for enforcement. Accordingly, this direct appeal is abated and the trial court is ordered to sign and enter a final order on the Attorney General's petition for enforcement in Cause No. D-1-GN-24-001276, styled *PFLAG, Inc. v. Office of the Attorney General and the State of Texas; and Warren Kenneth Paxton, Jr.*, in his official capacity as Attorney General of Texas, in the 261st District Court, Travis County, Texas. *See* Tex. Bus. & Com. Code § 17.62(c).

2. The trial court is authorized and encouraged to render a final judgment while the direct appeal is abated, to streamline appellate review.

3. The case is removed from the Court's active docket until March 10, 2025, by which time the trial court must file the written final order with the clerk of this Court and the parties must file a status report.

Done at the City of Austin, this 7th day of February, 2025.

BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

By Claudia Jenks, Chief Deputy Clerk

# EXHIBIT E

FILE COPY

**THE SUPREME COURT OF TEXAS**
**Post Office Box 12248**
**Austin, Texas 78711**

**(512) 463-1312**

Friday, April 4, 2025

Ms. Allissa Aileen Pollard
Arnold & Porter Kaye Scholer, LLP
700 Louisiana St Ste 4000
Houston, TX 77002-2733
* DELIVERED VIA E-MAIL *

Ms. Abigail Smith
Office of the Attorney General
PO Box 12548 (MC 059)
Austin, TX 78711-2548
* DELIVERED VIA E-MAIL *

RE: Case Number: 24-0892
Court of Appeals Number:
Trial Court Number: D-1-GN-24-001276

Style: OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS
v.
PFLAG, INC.

Dear Counsel:

Today the Supreme Court of Texas noted probable jurisdiction in the above-referenced case. The Court lifted the abatement order issued February 7, 2024 and reinstated the direct appeal. This cause is not set for submission at this time. The date of oral submission will be announced at a later date. (Justice Sullivan not participating)

Pursuant to TEX. R. APP. P. 55.1, you are requested to file briefs on the merits in the above-styled case. Please refer to TEX. R. APP. P. 55 for the requirements of appellant and appellee briefs. The briefing schedule is outlined below. *See* TEX. R. APP. P. 55.7.

Appellant shall file their brief by **May 5, 2025**.

Appellee shall file their response brief by **May 27, 2025**.

Any reply brief due by **June 11, 2025**.

Pursuant to TEX. R. APP. P. 9.2(c)(2) all documents (except documents submitted under seal) must be e-filed through eFileTexas.gov. You may file up to midnight on the due date.

Sincerely,

Blake A. Hawthorne, Clerk

by Claudia Jenks, Chief Deputy Clerk

**THE SUPREME COURT OF TEXAS**
**Post Office Box 12248**
**Austin, Texas 78711**

**(512) 463-1312**

cc: Ms. Adriana Pinon (DELIVERED VIA E-MAIL)
Mr. David Shatto (DELIVERED VIA E-MAIL)
Ms. Chloe Kempf (DELIVERED VIA E-MAIL)
Mr. Paul Castillo (DELIVERED VIA E-MAIL)
Ms. Kateland R. Jackson (DELIVERED VIA E-MAIL)
District Clerk Travis County (DELIVERED VIA E-MAIL)
Mr. Brian Klosterboer (DELIVERED VIA E-MAIL)

# EXHIBIT F

ACCEPTED
03-24-00241-CV
87049853
THIRD COURT OF APPEALS
AUSTIN, TEXAS
4/25/2024 10:05 AM
JEFFREY D. KYLE
CLERK

No. 03-24-00241-CV

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

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF TEXAS, et al.,

*Appellant,*

v.

PFLAG, INC.

*Appellee*.

On Appeal from the 261st Judicial District of Travis County, Texas
Cause No. D-1-GN-24-001276, Hon. Amy Clark Meachum

# APPELLANT'S RESPONSE TO APPELLEE'S EMERGENCY MOTION FOR TEMPORARY INJUNCTIVE RELIEF PURSUANT TO RULE 29.3

KEN PAXTON
Attorney General

BRENT WEBSTER
First Assistant Attorney General

RYAN S. BAASCH
Chief, Consumer Protection Division
State Bar No. 24129238

DAVID G. SHATTO
State Bar No. 24104114

Office of the Attorney General
Consumer Protection Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2185
(512) 473-8301 (facsimile)

ATTORNEYS FOR APPELLANT

## TABLE OF CONTENTS

BACKGROUND .....3

ARGUMENT .....8

A. No relief is necessary to preserve the status quo .....9

B. An injunction preventing OAG from making court filings in the proceedings below would be unlawful.....11

C. PFLAG's merits arguments for refusing to comply with the Demands all fail.....15

CONCLUSION.....18

CERTIFICATE OF SERVICE ..... 20-21

CERTIFICATE OF COMPLIANCE.....21

APPENDIX.....22

## INDEX OF AUTHORITIES

**Cases:** Page(s)

*Anderson v. United States*,
298 F.3d 804 (9th Cir. 2002) .....16

*Gueye v. Mike Bloomberg 2020*,
2021 WL 3910341 (N.D. Tex. Mar. 12, 2021).....16

*Hall v. McRaven*,
508 S.W.3d 232 (Tex. 2017) .....14

*Houston Belt & Terminal Ry. Co. v. City of Houston*,
487 S.W.3d 154 (Tex. 2016) .....13

*Humble Oil & Ref. Co. v. Daniel*,
259 S.W.2d 580 (Tex.App.—Beaumont 1953, writ ref'd n.r.e.) .....18

*In re Grand Jury 87-3 Subpoena Duces Tecum*,
955 F.2d 229, (4th Cir. 1992) .....16

*In re Potts*,
357 S.W.3d 766 (Tex.App.—Houston [14th Dist.] 2011,
orig. proceeding).....14

*In re Texas Educ. Agency*,
619 S.W.3d 679 (Tex. 2021) .....7

*John Doe No. 1 v. Reed*,
561 U.S. 186 (2010).....16

*Leonard v. Abbott*,
171 S.W.3d 451 (Tex.App.—Austin 2005).....14

*Oklahoma Press Pub. Co. v. Walling*,
327 U.S. 186 (1946).....17

*Ramirez v. Ignite Holdings*,
2013 WL 4568365 (Tex.App.—Dallas Aug. 26, 2013)..... 12-13

*Ringgold-Lockhart v. Cnty. of Los Angeles*,
761 F.3d 1057 (9th Cir. 2014).....13

*Schade v. Texas Workers' Compensation Com'n*,
150 S.W.3d 542 (Tex.App.—Austin 2004).....17

*Twitter v. Paxton*,
56 F.4th 1170 (9th Cir. 2022).....*passim*

*Wal-mart Stores, Inc. v. Texas Alcoholic Beverage Comm'n*,
2016 WL 5922315, at *6 (W.D. Tex. Oct. 11, 2016).....16

*Whinstone US Inc. v. Rhodium 30MW*,
2024 WL 1301203, at *4 (Tex.App.—Austin Mar. 27, 2024).....12

*Word of Faith World Outreach Center v. Morales*,
986 F.2d 962(5th Cir. 1993).....6, 15

**Statutes:**

Tex. Bus. & Com. Code § 17.46(a).....4

Tex. Bus. & Com. Code § 17.61.....4

Tex. Bus. & Com. Code § 17.61(a).....4

Tex. Bus. & Com. Code § 17.61(g)..... 9-11

Tex. Bus. & Com. Code § 17.62.....11, 13

Tex. Bus. & Com. Code § 17.62(b) .....*passim*

Tex. Bus. & Com. Code § 17.62(c) ..... 10-11

**Rules:**

Tex. R. Civ. P. 97 .....14

Tex. R. Civ. P. 683.....12

**To the Honorable Justices of the Third Court of Appeals:**

There is no emergency in this case. The Office of the Attorney General (OAG) is statutorily incapable of obtaining a single document from Appellee PFLAG without a Court order affirmatively compelling such production. Tex. Bus. & Com. Code 17.62(b). That is true irrespective of whether a temporary injunction barring OAG from taking enforcement action is in place. A temporary injunction simply does not offer PFLAG any relief above and beyond what the statute provides. That is at least one reason why federal courts have refused to even hear claims for a preliminary injunction against this same investigative tool; there is no possibility that a recipient will experience imminent harm absent the relief. *Twitter v. Paxton*, 56 F.4th 1170, 1176 (9th Cir. 2022) ("[T]o complain about the [document demand] in this posture is to speculate about injuries that have not and may never occur."). For that reason, among others, this Court should deny PFLAG's motion.

PFLAG's emergency motion, however, appears to ask this Court for something quite a bit more extraordinary; namely, it invites this Court to *create* an emergency. Specifically, PFLAG appears to ask this Court to enjoin OAG from ***filing pleadings*** in the ongoing case below. For example, PFLAG says (wrongly) that the "trial court sought to enjoin" OAG from even filing a "***Counterclaim***," and it wants this Court to enter an injunction to that effect. PFLAG Emergency Motion at 32. PFLAG also seems to believe that OAG should be enjoined from "seek[ing]

reconsideration of the" order that the trial court entered below. *Id.* at 24. It would be extraordinary, unprecedented, and unconstitutional for *any* court to grant that relief. Outside of the vexatious litigant statute, it is unheard of for a court to bar any party—much less the Office of the Attorney General—from filing pleadings in an ongoing court case.

Moreover, PFLAG's emergency filing is of a piece with multiple other aspects of its litigation conduct where it has acted to create emergencies rather than extinguish them. For example, before initially seeking relief below, PFLAG demanded that OAG withdraw its investigative demands for documents, and explained that absent a withdrawal, PFLAG would seek a Temporary Restraining Order. App'x D.[1] OAG actually offered to fully withdraw the demands, provided that PFLAG allowed OAG to conduct a deposition of a PFLAG representative. *Id.* This mechanism would have permitted PFLAG to fully vindicate its alleged right to withhold protected information from OAG—its deponent could simply be instructed not to answer any questions implicating protected information. But PFLAG sought emergency relief below anyway. Then, OAG sought to narrow the scope of information sought in the investigative demands, specifically to make crystal clear that it was *not* seeking a single piece of information that would identify a PFLAG

[1] Citations to the "App'x" herein are to the Appendix provided as an attachment to PFLAG's emergency motion. Citations to "Supp. Appx" are to the Supplemental Appendix attached to this response.

member. *Compare* PFLAG's Emergency Motion at 2 (claiming OAG seeks "information that would reveal members' identities") *with* App'x M ¶ 24 ("For the avoidance of any plausible doubt, the Attorney General's office does hereby acknowledge that its Demands do not seek, and therefore is not entitled to, information that would reveal the identities of PFLAG members."). PFLAG has bizarrely rejected this concession because, in PFLAG's words, the concession would "disrupt the status quo." *Id.* ¶ 27. And now, PFLAG comes to this Court in an "emergency" posture ostensibly seeking protection over those same documents!

PFLAG's emergency motion should be denied.

## BACKGROUND

The Consumer Protection Division of the OAG is currently investigating various forms of insurance fraud related to the provision of certain medical treatment. Supp. App'x A ¶ 5 (OAG affiant). Specifically, OAG is aware of information showing that medical providers may be fraudulently prescribing hormones under the guise of treating an "endocrine disorder" when in fact the hormones are for a different condition. *Id.* As just one example, one specific medical provider acknowledges on its website that some insurers "automatically reject payments for 'gender-incongruent' treatments." *Id.* at Ex. 1. That medical provider self-avowedly "do[es] [not] agree with this," and so it issues "prescriptions under the diagnosis of 'endocrine disorder'" as a loophole to get insurer approvals. *Id.* It is

squarely within the Consumer Protection Division's authority under the Deceptive Trade Practices Act (DTPA) to police this activity because the Division is statutorily charged with enforcing against any "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce." Tex. Bus. & Com. Code § 17.46(a).

The Consumer Protection Division believes that PFLAG has information that is highly relevant to these fraud investigations. Namely, PFLAG's CEO submitted an affidavit in unrelated litigation challenging Texas law on gender transitioning, and that affidavit contains peculiar language suggestive that PFLAG is aware of entities who are engaged in the aforementioned insurance fraud, or other highly similar conduct. That affidavit discusses the concepts of "contingency plans" for people having trouble obtaining this treatment, "alternative avenues" to obtaining the treatment, and specific kinds of "practitioners" who would ostensibly facilitate the "contingency plans" or "alternative avenues." *See* PFLAG Emergency Motion at 12 (reproducing the critical section of this affidavit).

Accordingly, on February 5, 2024, the Consumer Protection Division issued a Civil Investigative Demand (CID) under DTPA Section 17.61 to PFLAG demanding documents relevant to Mr. Bond's statements. App'x A. Although the Consumer Protection Division does not currently believe that PFLAG *itself* is violating the DTPA, the CID is a proper investigative tool to gain information from

"***any*** person" with relevant material. Tex. Bus. & Com. Code § 17.61(a). The Consumer Protection Division also issued a Demand for Sworn Written Statement (DSWS) under DTPA Section 17.60(1). App'x B. The DSWS demands that PFLAG provide written answers to certain questions, much like responses to interrogatories. Collectively the CID and DSWS are referred to as "the Demands."

Importantly, ***the Demands are not self-enforcing***. If a recipient refuses to produce documents, and OAG wishes to compel production, the DTPA "requir[es] OAG to petition for an order of the court to enforce." *Twitter*, 56 F.4th at 1176 (addressing this exact statute); Tex. Bus. & Com. Code § 17.62(b). Until after such an order issues, a party in receipt of OAG's demands "never face[s] any penalties for [a] refusal to comply." *Twitter*, 56 F.4th at 1176. "And enforcement is no rubber stamp: If OAG seeks to enforce the [demands], it must serve the recipient with the petition, the state court can conduct hearings to determine whether to order enforcement, and the recipient may appeal to the Texas Supreme Court." *Id.* "So to complain about" OAG's investigative demands before an adverse ruling issues "is to speculate about injuries that have not and may never occur." *Id.*

Nevertheless, on February 28, PFLAG indicated its intention to seek emergency relief in the form of a TRO against enforcement of the Demands. App'x D. That is where OAG made its first of many attempts to defuse the ostensible "emergency." Specifically, OAG represented that it would "withdraw our CID and

demand for sworn statement if PFLAG will put up [CEO] Bond for an Examination under Oath." *Id.* (February 28, 2024 1:03PM email). PFLAG rejected that offer, declined to continue meeting and conferring, and immediately filed its application for a TRO. *Id.* (February 28, 2024 5:01PM email).

On March 1, 2024, the District Court entered a TRO. PFLAG's application for TRO, however, was highly informative to OAG on the nature of PFLAG's substantive objections to the Demands. Namely, PFLAG's TRO application emphasized the principal problem with the Demands was that they "require the disclosure of the identifies of PFLAG's members" and so allegedly "violate PFLAG and its members' right to freedom of association and assembly." App'x E at 34.[2] Based on this information, OAG then made a second attempt to defuse the situation and prevent further unnecessary proceedings. Namely, OAG repeatedly clarified—and indeed, conceded—that the Demands do not in any way seek for PFLAG to identify any members. *See Word of Faith World Outreach Center v. Morales*, 986 F.2d 962, 968-69 (5th Cir. 1993) (Attorney General's stipulation "that he no longer

[2] *See also* App'x E at 33 ("Because the Demands explicitly target the PFLAG member families with transgender adolescents, and the instructions to the Demands do not permit any redactions, requiring PFLAG to provide that information or communications with those members will chill Texas families from becoming members of PFLAG."); *id.* at 35 ("The Demands require PFLAG to 'Identify' its members"); *id.* at 36 ("Forcing PFLAG to disclose its members to the OAG . . . will have a chilling effect on PFLAG's membership."); *id.* at 37 (contending "PFLAG's members have factual, non-speculative evidence that disclosure of their identities will subject them to political reprisal"); *id.* at 38 (contending the "Demands are a continuation of the OAG's systematic efforts to identify and isolate transgender individuals and their families").

seeks to discover the [opponent's] membership or list of contributors" served to "materially alter[] or even eliminate[] the" First Amendment concern). It first did so through a "Motion to Modify" the TRO, informing the Court and PFLAG that OAG did not seek information identifying PFLAG members. Supp. App'x B.[3] The Court never ruled on the Motion to Modify, and the TRO eventually lapsed. Then, as part of a counterclaim for enforcement of the Demands, OAG again emphasized that "[f]or the avoidance of any plausible doubt, the Attorney General's office does hereby acknowledge that its Demands do not seek, and therefore is not entitled to, information that would reveal the identities of PFLAG members." App'x M ¶ 24. PFLAG bizarrely refused this concession because, in PFLAG's words, the concession would "disrupt the status quo." *Id.* ¶ 27.

On March 25, 2024, the District Court issued a temporary injunction that, among other things, enjoined OAG "from demanding information or documents from PFLAG that would reveal the identities or private communications of PFLAG, its officers, members, chapters, agents, servants, employees, attorneys, and associated persons, including but, not limited to, volunteers and donors." App'x C.

On April 12, OAG filed a notice of appeal of the temporary injunction. App'x K. That had the effect of automatically superseding the temporary injunction. *In re*

[3] Mechanically, out of an extreme abundance of caution, the Motion to Modify functionally sought the Court's blessing to that concession.

*Texas Educ. Agency*, 619 S.W.3d 679, 680 (Tex. 2021). On that same day, OAG also filed a counterclaim under Section 17.62(b) of the Business and Commerce Code. App'x L, M.[4] The counterclaim recognized that "the rationale underlying the Court's entry of a temporary injunction equally serves as a basis to deny this [counterclaim]." App'x M ¶ 25. But the counterclaim was compulsory and necessary to preserve all of OAG's rights now and in further appellate proceedings. On April 17, this Court "reinstate[d] the trial court's March 25" temporary injunction "[t]o preserve the status quo while the Court considers" PFLAG's emergency motion.

## ARGUMENT

PFLAG's emergency motion should be denied for three reasons.

*First*, there is no emergency; indeed, there is no possibility of harm warranting relief at all. The status quo is that PFLAG has not given OAG any documents or information, and it is not under any order to give OAG documents or information. Under the Business and Commerce Code, that status quo cannot change absent an intervening court order. There is no indication that such order is forthcoming below; indeed, the District Court's temporary injunction order strongly suggests that it will *never* enter such an order.

[4] The counterclaim was re-filed on April 15 after the District Court indicated that it was first filed in a procedurally defective way on April 12.

*Second*, PFLAG's emergency motion paradoxically invites this Court to *create* an emergency. Namely, PFLAG indicates that it wants an injunction *preventing OAG from even filing certain pleadings in the litigation below*, such as OAG's counterclaim or a motion to reconsider. Such an injunction is unheard of, and would be constitutionally impermissible.

*Third*, PFLAG's merits arguments for withholding information from OAG are all wrong. The reasons why are explained in brief below, and OAG will further develop those arguments at the merits stage in this proceeding.

**A. No relief is necessary to preserve the status quo.**

PFLAG recognizes (at 20) that an injunction would be warranted here only if "necessary to preserve the status quo." It is, however, impossible for PFLAG to make that showing, because PFLAG is at no risk of surrendering its documents or suffering any other adverse harm in the absence of the relief it requests.

The DTPA's provisions governing judicial review, and the conditions under which OAG may require a party to hand over information, show conclusively that PFLAG is under no threat of injury right now—much less is there any emergency. Specifically, the Consumer Protection Division's investigative demands under the DTPA are "not self-enforcing." *Twitter*, 56 F.4th at 1174. Instead, the DTPA sets up a bifurcated process by which (A) recipients of an investigative demand can challenge that demand in Court, Tex. Bus. & Com. Code § 17.61(g), or (B) OAG

can petition a Court to enforce its demands, *id.* § 17.62(b). When recipients of an investigative demand affirmatively challenge the demand, a court has the option to "set aside" the demand if the court finds the demand to be unlawful—such as if it seeks constitutionally protected information. *Id.* § 17.61(g). If a recipient obtains such a "set aside" order, it is as if the demand never existed, and so the recipient is subject to no penalties for having never complied. But even a recipient who fails to obtain such a "set aside" order is still not under a judicially enforceable obligation to produce information to OAG. That obligation arises only if OAG petitions a court to enforce its investigative demands. *Id.* § 17.62(b). And in that instance, the Court will "hear and determine" all arguments that the recipient may make for why it should not have to comply with the investigative demands. Only at the conclusion of this judicial process—after a "final order" is "entered"—would the recipient be under a judicially enforceable obligation to produce documents or information to OAG. *Id.* § 17.62(c).

This framework is exactly why the Ninth Circuit Court of Appeals concluded that a federal challenge to one of the Consumer Protection Division's CIDs was *not even justiciable*. *Twitter*, 56 F.4th at 1170. In that case, Twitter attempted to have the federal courts enjoin enforcement of one of the Division's CIDs. Much like PFLAG here, Twitter there argued that the CID "violated its First Amendment rights." *Id.* at 1172. But the Ninth Circuit concluded the case was not even ripe

because "Twitter faces no [legal] consequence" warranting preliminary relief "because it can raise its First Amendment defense if Paxton moves to enforce the CID." *Id.* at 1177.

The same reasoning controls here as in *Twitter*. No order has been entered compelling PFLAG to produce documents. Indeed, the *opposite* occurred—the District Court's temporary injunction order indicates it will *not* order PFLAG to produce documents. PFLAG is accordingly suffering no injury, no injury is even plausibly imminent, and no emergency relief here is warranted.

Moreover, for essentially all of these reasons, it is nonsensical to speak of a "temporary injunction" in the context of a dispute about DTPA investigative demands. The DTPA provides a full suite of court proceedings and remedies when the parties are at loggerheads on the legality of OAG's demands. *See* Tex. Bus. & Com. Code §§ 17.61(g), 17.62. A private party can never experience any harm until a court has reviewed the demands and has issued an order upholding their legality. *Id.* § 17.62(c). Under that framework, there is never a necessity for an injunction, much less emergency judicial proceedings.

### B. An injunction preventing OAG from making court filings in the proceedings below would be unlawful.

PFLAG's brief does not dispute any of the statutory realities set forth above; nor does it even mention the *Twitter* case. But PFLAG appears to say that relief is warranted ***in order to enjoin OAG from filing pleadings in the proceedings below***.

Namely, PFLAG contends that OAG's "counterclaim" "utterly disregards" the District Court's temporary injunction, and that this was the exact "action against PFLAG that the trial court sought to enjoin." PFLAG's Emergency Motion at 32. PFLAG also indicates that OAG should be enjoined from "seek[ing] reconsideration of the temporary injunctive" order below. *Id.* at 24. Those are remarkable statements, and they indicate that PFLAG is seeking remarkable, unprecedented, and indeed unconstitutional relief.

To begin, the temporary injunction below did not enjoin OAG from filing pleadings, including a counterclaim or a motion to reconsider. All injunctions must "be specific in terms" and "describe in reasonable detail . . . the act or acts sought to be restrained." Tex. R. Civ. P. 683. Nothing in the District Court's injunction specifically nor reasonably describes that OAG is enjoined from filing pleadings. App'x C. Instead, the District Court's order "enjoin[s] and restrain[s]" OAG "from taking any adverse action" in relation to the Demands. *Id.* A court pleading is not "adverse action." Instead, and at most, OAG's pleadings constitute a plea to the court that "adverse action" (such as an order for PFLAG to produce documents) be ordered. Moreover, the District Court's injunction was "not specific enough" to preclude OAG's filing of pleadings. *Whinstone US Inc. v. Rhodium 30MW*, 2024 WL 1301203, at *4 (Tex.App.—Austin Mar. 27, 2024). It did not "define" the proscription on adverse action in a way that could reasonably put OAG on notice

that *pleadings* are enjoined. *Ramirez v. Ignite Holdings*, 2013 WL 4568365, at *3-4 (Tex.App.—Dallas Aug. 26, 2013) (temporary injunction did not adequately "define" key term "with enough specificity" to give enjoined party "adequate notice of the acts they are restrained from doing"). Additionally, after the District Court indicated it would enter the temporary injunction below, it *specifically invited OAG to "file their petition to enforce*." App'x J at 76:13-15.

An injunction preventing OAG from even filing pleadings would also be unlawful for at least the following four reasons.

*First*, "[r]estricting access to the courts is . . . a serious matter." *Ringgold-Lockhart v. Cnty. of Los Angeles*, 761 F.3d 1057, 1061 (9th Cir. 2014). That is so even when the courts restrict the access of private parties, such as vexatious litigants (described more below). To OAG's knowledge, there is no precedent for an injunction restricting an Attorney General's authority to even file pleadings in ongoing litigation initiated by a counter-party.

*Second*, an injunction against OAG can generally enjoin only *ultra vires* actions. *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 161 (Tex. 2016). There is nothing *ultra vires* about the mere filing of pleadings. An *ultra vires* act, by contrast, is where an officer acts "without legal authority." *Id.* But the DTPA specifically provides OAG with legal authority to file a counterclaim such as a petition to enforce investigative demands. Tex. Bus. & Com. Code § 17.62. There

is no plausible argument that such a statutorily authorized filing could also be *ultra vires*. *See Hall v. McRaven*, 508 S.W.3d 232, 242 (Tex. 2017).

*Third*, the counterclaim that PFLAG ostensibly claims was, or should be, enjoined is likely a compulsory counterclaim. It is a petition to enforce the Demands, and so necessarily "arises out of the transaction or occurrence that is the subject matter of" PFLAG's underlying suit. Tex. R. Civ. P. 97. If OAG could not file that counterclaim now, then it would likely be precluded from ever filing it later. *Id.* And so, if an injunction did bar OAG from filing such a pleading now, it would work an irreversible loss of OAG's clear rights and authorities.

*Fourth*, even if a court could ever constitutionally enjoin OAG from filing pleadings in an ongoing suit, such power would have to be specified by the Legislature. Take, for example, the vexatious litigant statutes. There, the Legislature "struck a balance between Texans' right of access to their courts and the public interest in protecting defendants from those who abuse our civil justice system." *Leonard v. Abbott*, 171 S.W.3d 451, 455 (Tex.App.—Austin 2005). Although those statutes impair a vexatious litigant's access to court, they are constitutional because they are narrowly tailored to prevent "repeated filings of frivolous and malicious litigation by litigants." *In re Potts*, 357 S.W.3d 766, 768 (Tex.App.—Houston [14th Dist.] 2011, orig. proceeding). There is nothing like that at issue here, but if the courts were to claim power to preclude OAG's ability to file pleadings in ongoing

litigation, one would expect crystal clear guidance from the Legislature on the conditions where that is allowed. Here, there is no such guidance from the Legislature.

### C. PFLAG's merits arguments for refusing to comply with the Demands all fail.

PFLAG's merits arguments for refusing to comply with the Demands all fail. OAG extensively briefed these arguments below and will further develop them at the merits stage of this appeal. The lack of emergency—indeed, lack of any injury—here is ample grounds for the Court to deny PFLAG's emergency motion. But for the sake of completeness, OAG provides the following summary explanations why PFLAG's merits arguments are flawed.

**1.** PFLAG argues (at 27) that "[a]bsent relief from this Court, nothing precludes the Defendants from demanding that PFLAG reveal the identities of its members or their private communications." PFLAG claims (at 27) that is a problem because these communications are protected by "freedom of speech, association, and assembly." But PFLAG is wrong factually and legally. Factually it is wrong because, as noted above, OAG has already specifically disavowed that its Demands seek the identities of PFLAG's members. *Word of Faith*, 986 F.2d at 968-69 (Attorney General "materially alter[ed] or even eliminate[d] the federal constitutional" problem by stipulating "that he no longer seeks to discover the [party's] membership or list of contributors"). And it is wrong legally because there is no First Amendment

privilege to shield "private communications" beyond those that would identify members. "Membership lists have a long and unique history in our constitutional jurisprudence." *Anderson v. United States*, 298 F.3d 804, 811 (9th Cir. 2002) (Reinhardt, J., dissenting). That is why OAG is not seeking membership lists. But "private communications" enjoy no such protection. *See* Supp. App'x C at 15-17. Moreover, to assert additional First Amendment arguments, PFLAG must show "that disclosure will deter members of the association from ***maintaining membership***," a showing PFLAG cannot make now that OAG has expressly conceded that it does not seek membership information. *Wal-mart Stores, Inc. v. Texas Alcoholic Beverage Comm'n*, 2016 WL 5922315, at *6 (W.D. Tex. Oct. 11, 2016) (emphasis added); *Gueye v. Mike Bloomberg 2020*, 2021 WL 3910341, at *2 (N.D. Tex. Mar. 12, 2021).

In any event, Courts have upheld compelled disclosures that tread far more deeply into associational, or related, concerns. For example, in *John Doe No. 1 v. Reed*, the Supreme Court upheld that a Washington law exposing the identities of persons who "sign[ed] a petition to place" a "referendum on the ballot" regarding "benefits to same-sex couples." 561 U.S. 186, 190 (2010). And in *In re Grand Jury 87-3 Subpoena Duces Tecum*, the Fourth Circuit concluded that "First Amendment rights" were not even "implicated" in a subpoena seeking a pornography distributor's "customer lists." 955 F.2d 229, 232 (4th Cir. 1992). These compelled

disclosure examples go beyond what occurred here, particularly given that OAG has broadly conceded that it is not seeking information that could identify members. Therefore, PFLAG cannot make a showing that their First Amendment rights are implicated.

**2.** PFLAG also argues (at 29) that "[a]bsent relief from this Court, PFLAG and its members will suffer irreparable injury to their right[]" to be "free from unreasonable searches." That is not a serious argument. The Fourth Amendment and associated protections against unreasonable searches "at the most guard[] against abuse only by way of too much indefiniteness or breadth in the things required to be" produced to a subpoena. *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208 (1946); *Schade v. Texas Workers' Compensation Com'n*, 150 S.W.3d 542, 550 (Tex.App.—Austin 2004) ("We find that the Fourth Amendment and its Texas counterpart at most guard against abuse by way of too much indefiniteness or breadth in the things required" to be produced). There is no plausible argument that the Demands suffer from this degree of indefiniteness. Indeed, they are unusually *narrowly* tailored, largely just seeking documentation and information underlying specific statements that PFLAG's CEO made in a specific court filing. App'x A, B. If ***that*** is too indefinite, then it would doom the vast majority of the discovery mechanisms prevalent in civil litigation.

**3.** PFLAG then argues (at 31) that OAG is improperly "investigating PFLAG based on its participation in" other litigation. But that is a naked and fact-free assertion. To the contrary, this is not even an investigation ***of*** PFLAG—rather, PFLAG just appears to have relevant information to *other* investigations. And, as OAG's declarant explained below, the Demands at issue here are based specifically on PFLAG's CEO's sworn statement in other litigation that he appears to be aware of information relevant to OAG's other investigations. Supp. App'x A.

**4.** Finally, PFLAG argues (at 33) that the Demands violate "the existing stays on discovery" in PFLAG's other litigations against the State. That argument has no basis in law or logic. The only Texas authority that appears to address this question provides that there is no problem with OAG investigating an entity that it is separately in litigation against. *Humble Oil & Ref. Co. v. Daniel*, 259 S.W.2d 580 (Tex.App.—Beaumont 1953, writ ref'd n.r.e.). The only limitation is that OAG cannot use information obtained in the investigation in the other litigation. *Id.* at 591.

## CONCLUSION

As no emergencies exist in this case and each of PFLAG's arguments fail, the Court should deny Appellee's Emergency Motion for Temporary Injunctive Relief Pursuant to Rule 29.3.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

*/s/ Ryan S. Baasch*
RYAN S. BAASCH
Chief, Consumer Protection Division
State Bar No. 24129238
Ryan.Baasch@oag.texas.gov

DAVID G. SHATTO
State Bar No. 24104114
Office of the Attorney General
Consumer Protection Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2185
(512) 473-8301 (facsimile)

**ATTORNEYS FOR APPELLANT**

## CERTIFICATE OF SERVICE

I certify that on the 25th day of April 2024, Appellant's Brief was served on Appellee PFLAG, Inc., by and through its attorneys via e-service as indicated below:


PAUL D. CASTILLO
Texas State Bar No. 24049461
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
3500 Oak Lawn Ave, Unit 500
Dallas, Texas 75219
Phone: (214) 219-8585
pcastillo@lambdalegal.org

KAREN L. LOEWY
Dist. of Columbia Bar No. 1722185
kloewy@lambdalegal.org
SASHA J. BUCHERT
Dist. of Columbia Bar No. 90021877
sbuchert@lambdalegal.org
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
111 K Street, N.E., 7th Floor
Washington, DC 20002-8105
Phone: 202-804-6245

OMAR GONZALEZ-PAGAN
New York State Bar No. 5294616
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, New York 10005-3919
Phone: (212) 809-8585
ogonzalez-pagan@lambdalegal.org
LYNLY S. EGYES

ALLISSA POLLARD
Texas State Bar No. 24065915
ARNOLD & PORTER KAYE SCHOLER, LLP
700 Louisiana Street, Suite 4000
Houston, TX 77002-2755
(713) 576-2451 – Phone
(713) 576-2499 – Fax
Allissa.Pollard@arnoldporter.com

LORI B. LESKIN
New York State Bar No. 254088
ARNOLD & PORTER KAYE SCHOLER, LLP
250 West 55th Street
New York, NY 10019-9710
(212) 836-8541 – Phone
(212) 836-6441 – Fax
Lori.Leskin@arnoldporter.com

HARPER SELDIN
Pennsylvania State Bar No. 318455
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, Floor 18
New York, NY 10004
(212) 549-2500
hseldin@aclu.org
ELIZABETH GILL
California State Bar No. 218311

New York State Bar No. 4838025
lynly@transgenderlawcenter.org
MILO INGLEHART
New York State Bar No. 5817937
milo@transgenderlawcenter.org
TRANSGENDER LAW CENTER
594 Dean Street, Suite 11
Brooklyn, NY 11238
Phone: (510) 587-9696 Ext. 353

SHAWN MEERKAMPER
California State Bar No. 296964
shawn@transgenderlawcenter.org
DALE MELCHERT
New York State Bar No. 5366554
dale@transgenderlawcenter.org
TRANSGENDER LAW CENTER
P.O. Box 70976
Oakland, CA 94612
Phone: (510) 587-9696

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111
(415) 343-1237
egill@aclunc.org
BRIAN KLOSTERBOER
Texas State Bar No. 24107833
bklosterboer@aclutx.org
CHLOE KEMPF
Texas State Bar No. 24127325
ckempf@aclutx.org
ADRIANA PINON
Texas State Bar No. 24089768
apinon@aclutx.org
ACLU FOUNDATION OF TEXAS, INC.
P.O. Box 8306
Houston, TX 77288
Tel. (713) 942-8146
Fax. (713) 942-8966

ATTORNEYS FOR APPELLEES

*/s/ Ryan S. Baasch*
RYAN S. BAASCH

## CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this brief contains _____ words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

*/s/ Ryan S. Baasch*
RYAN S. BAASCH

No. 03-24-00241-CV

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

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF TEXAS, et al.,

*Appellant,*

v.

PFLAG, INC.

*Appellee*.

On Appeal from the 261st Judicial District of Travis County, Texas
Cause No. D-1-GN-24-001276, Hon. Amy Clark Meachum

**SUPPLEMENTAL APPENDIX**

Appendix A Affidavit of Sam Weeks.

Appendix B OAG's Motion to Modify and Clarify the Court's March 1, 2024, Temporary Restraining Order, filed March 19, 2024.

Appendix C OAG's Plea to the Jurisdiction, filed March 22, 2024.

# APPENDIX A

**CAUSE NO. D-1-GN-24-001276**

| | | |
|---|---|---|
| **PFLAG, INC.,** | § | **IN THE DISTRICT COURT OF** |
| | § | |
| **Plaintiff,** | § | |
| **v.** | § | **TRAVIS COUNTY, TEXAS** |
| | § | |
| **OFFICE OF THE ATTORNEY GENERAL** | § | |
| **OF THE STATE OF TEXAS; and** | § | |
| **WARREN KENNETH PAXTON, JR.,** | § | |
| **In his official capacity as Attorney General** | § | |
| **Of Texas,** | § | |
| | § | |
| **Defendants.** | § | **261ST JUDICIAL DISTRICT** |

## AFFIDAVIT OF SAM WEEKS

I, Sam Weeks, declare:

1. I am an investigator in the Consumer Protection Division ("CPD") of the Texas Office of the Attorney General ("OAG"). I make this my declaration in this case from personal knowledge of this case and can competently attest to the facts of this declaration.

2. On or around July 7, 2023, the Consumer Protection Division became aware that medical providers may have chosen to use various false, misleading, or deceptive acts to treat children for gender dysphoria.

3. Since August 8, 2023, I have been involved, as an investigator, in an investigation of whether various medical clinics are committing fraud or other false, misleading, or deceptive acts in their treatment of gender dysphoria.

4. As part of my investigation, I have reviewed multiple public-facing pieces of information that suggest that various medical providers are in fact engaged in this conduct. I have also reviewed the secretary of state filings for each of the various medical providers.

5. Attached here, as Exhibit 1, is a true and correct copy of QueerDoc's website "Pharmacy-options" page where QueerDoc states the following: "We usually order prescriptions under the diagnosis of "endocrine disorder" not "gender disorder", but some plans may require paperwork which requires us to disclose gender related treatments." (https://queerdoc.com/pharmacy-options/).

6. Attached hereto, as Exhibit 2, is a true and correct copy of PJ Media's article headlined "Undercover Investigation Reveals How Shockingly Easy It is to Get Transgender Surgeries Approved." (https://pjmedia.com/matt-margolis/2023/06/07/undercover-investigation-reveals-how-shockingly-easy-it-is-to-get-transgender-surgeries-approved-n1701317).

7. On or around November 17, 2023, the Office of the Attorney General issued Demands for Sworn Written Statement and Civil Investigative Demands to various medical providers pursuant to Tex. Bus. & Com. Code §§ 17.60 and 17.61, respectively.

8. Since those demands were issued, our office has since been involved in various discussions with those providers about document production. Certain providers have responded with documents and affidavits, and our office has granted extensions to those providers and negotiated the scope of the demands.

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

Executed on February 29, 2024, at Austin, Texas.

2/29/2024 | 4:35 PM CST

DocuSigned by:
Sam Weeks
16795E9BB289451...

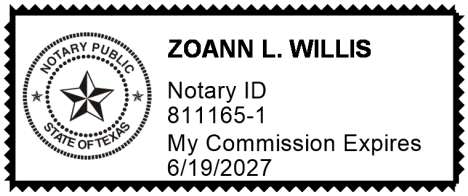
SAM WEEKS

STATE OF TEXAS §
§
COUNTY OF DALLAS /ROCKWALL §

SUBSCRIBED AND SWORN to before me by means of an interactive two-way audio and video communication on February 29, 2024, by Sam Weeks This notarial act was an online notarization.

2/29/2024 | 4:38 PM CST

**Notary Seal**




w/o bond

**Digital Certificate**

DocuSigned by:
Zoann L. Willis
67F256D371A7445...

# EXHIBIT 1

# Pharmacies

QueerDoc prescribes certain therapies which require the use of a pharmacy. Please check with your insurance plan to learn if you are required to use a specific pharmacy. We usually order prescriptions under the diagnosis of "endocrine disorder" not "gender dysphoria", but some plans may require paperwork which requires us to disclose gender related treatments. Some plans automatically reject payment for "gender-incongruent" treatments. We don't agree with this, we just want to help you feel as prepared and knowledgeable as possible.

Sometimes local pharmacies don't carry the medications and/or needles and syringes in their regular stock, so they will have to order them which can cause a a few days of delay. They also might lack cultural sensitivity around gender diversity. The pharmacies belo still aren't as affirming as we want in their paperwork and websites, but they have all worked with QueerDoc and gender diverse fair bit. They all agree to address you and ship meds to the name you chose (although they will still have to confirm your legal and put that on your prescription bottles).

- Honeybee Health is a cash only, mail order pharmacy and our preferred pharmacy partner. Read more about how Honeyb Health works with us.
- New Era Pharmacy does mail order hormones, including injectables, for a ton of gender diverse people if you want to avoid some

# EXHIBIT 2

Advertisement

Need Implants? New 24 hr Teeth
Find out if you're eligible for dental implants with our 1-minute quiz
Nuvia Open >

# Undercover Investigation Reveals How Shockingly Easy It Is to Get Transgender Surgeries Approved

MATT MARGOLIS | 3:05 PM ON JUNE 07, 2023

AP Photo/Armando Franca

The powerful transgender industry has turned our nation's healthcare system into an assembly line of genital mutilation. This is the shocking reality that has been made abundantly clear by an undercover investigation by the Daily Wire.

Advertisement

Need Implants? New 24 hr Teeth
Open
Nuvia

According to the investigation, some of the country's prominent transgender healthcare

Advertisement

Need Implants? New 24 hr Teeth
Nuvia

PJ TRENDING
The Biden Conundrum
Was the Judge Who Booted Trump off the Illinois Ballot a Traffic Court Judge?
Poll: You Won't Believe Which Group Just Jumped on the Trump Train

PJ EDITOR'S CHOICE
Yeah, Biden Has a Michigan Problem
The New Narrative: Illegal Migration Hurts Wages but Helps Federal Revenue
NGO Groomer Arranges to Send 13-Year-Old Girl 'Chest Binder' Behind Parents' Back

Advertisement

Need Implants? New 24 hr Teeth
Nuvia

providers have been hastily approving life-altering "sex-change" procedures. In some cases, they even falsify health information to ensure insurance coverage for these medical expenses. Matt Walsh of The Daily Wire shared these findings in a series of tweets.

During the undercover investigation, Walsh and his team exposed how easily one can obtain approval for sex-change surgery. Remarkably, Gregg Re, Walsh's producer, received a green light for an orchiectomy (a testicle removal procedure) after a mere 22-minute virtual consultation with Plume — the largest transgender healthcare provider in the United States.

Re succeeded in securing a video call appointment with Plume by using a fake name on the intake form. During the call, Re openly admitted that he had not been experiencing gender dysphoria for six months or more, which is technically required for approval. Additionally, he mispronounced the name of the desired surgery and expressed uncertainty about its potential effects on him. While these should have been treated as red flags and grounds for rejection, Plume's nurse practitioner astonishingly expressed her intention to craft the most convincing letter possible to justify Re's surgery.

Advertisement

Need Implants? New 24 hr Teeth

Open

Nuvia

***Related:*** *The Gruesome 'Gender Affirmation' Surgery Photos Proponents of Child Genital Mutilation Should Be Made to See*

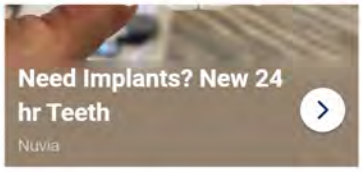
Three days later, Plume sent a letter to Re (posing as "Chelsea Bussey") falsely claiming that Re was experiencing significant and ongoing gender dysphoria, despite Re explicitly stating otherwise. The letter recommended Re for testicle removal. According to Walsh, Plume admitted via text message that the letters of recommendation are generated using a template based on the standards provided by the World Professional Association for Transgender Health (WPATH). Shockingly, Plume charges $150 for selling these letters of recommendation to individuals seeking transgender surgeries.

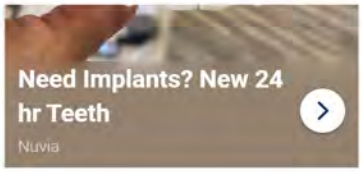
According to Walsh, another well-known transgender telehealth service, Folx, also grants approval for sex-change procedures to patients who are not diagnosed with "gender dysphoria." In fact, Folx openly acknowledges that patients may receive a letter indicating a diagnosis of gender dysphoria, even if they do not genuinely experience it.

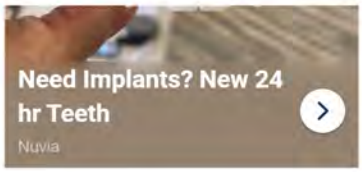
Given the extensive operations of Plume and Folx, Walsh raised concerns about whether medical insurance companies were aware that these corrupt transgender medical providers were issuing letters of recommendation based on blatantly false information. Walsh believes that his investigation exposed yet another dark secret within the "corrupt and fraudulent" transgender medical industry.

Advertisement

"[Trans activists] are furious because they know the 'gender transition' industry is corrupt and fraudulent from the ground up," Walsh said. "Protecting kids is just one piece of the







puzzle. The fight begins there, but it doesn't end there. The whole industry needs to be shut down."

***Editor's Note:*** The destructive transgender ideology is at war with reality. Support PJ Media's conservative reporting.

Join PJ Media VIP and use the promo code **TRANSANITY** to get a 50% discount on VIP membership!

Share Post

Matt Margolis is the author of *Airborne: How The Liberal Media Weaponized The Coronavirus Against Donald Trump*, the bestselling book *The Worst President in History: The Legacy of Barack Obama*, and *The Scandalous Presidency of Barack Obama*.

**News tips, praise, hate mail, and media inquiries can be sent to mattm@pjmedia.com.**

You can follow Matt on Twitter, GETTR, Truth Social, Facebook, MeWe, and Rumble.

Read more by Matt Margolis

Category: NEWS & POLITICS

Tags: TRANSGENDER


PROMOTED CONTENT mgid

Classmates
Look For Any High School Yearbook, It's Free

Smart Asset
7 Mistakes You'll Make Hiring A Financial Advisor

Search Ads
Early Signs Of Tardive Dyskinesia Many Wish They Saw Sooner

Pjmedia.Com
It Looks Like Biden's Goose Is Cooked

Mybestyears
Taylor Swift, 34, Takes Off Makeup, Leaves Us With No Words

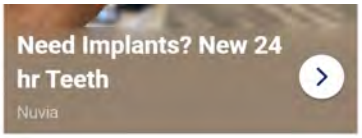
Pjmedia.Com
Haley's Last Stand: A View From Her Campaign Rally

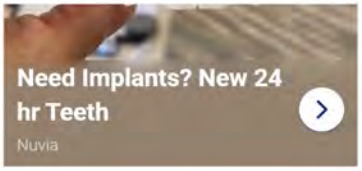
Recommended

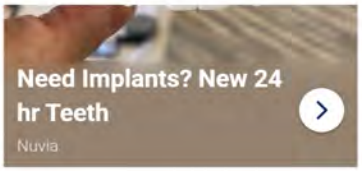
The Biden Conundrum
STEPHEN GREEN

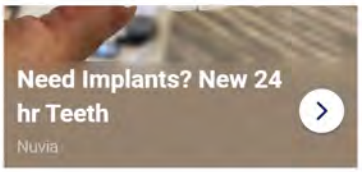
Was the Judge Who Booted Trump off the Illinois Ballot a Traffic Court Judge?
MATT MARGOLIS

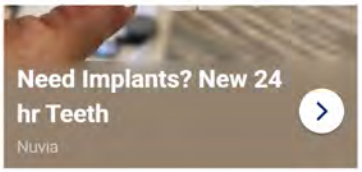
Poll: You Won't Believe Which Group Just Jumped on the Trump Train
KEVIN DOWNEY JR.


Need Implants? New 24 hr Teeth
Nuvia


Need Implants? New 24 hr Teeth
Nuvia


Need Implants? New 24 hr Teeth
Nuvia


Need Implants? New 24 hr Teeth
Nuvia


Need Implants? New 24 hr Teeth
Nuvia

Need Implants? New 24 hr Teeth
Nuvia

Need Implants? New 24 hr Teeth
Nuvia

Need Implants? New 24 hr Teeth
Nuvia

Need Implants? New 24

Could Biden's Love of Ice Cream Be Linked to Alzheimer's?
MATT MARGOLIS

The Morning Briefing: Mitch McConnell Needs to Go Away Harder
STEPHEN KRUISER

I Know How to Fix Our Political System. Hear Me Out.
STEPHEN GREEN

## Trending on PJ Media Videos

Join the conversation as a VIP Member

LOGIN TO LEAVE A COMMENT

PJ Media POLL

Should Joe Biden be investigated for corruption?

Enter Your Email Address

Vote

By entering your email and voting in our poll, you are also subscribing to PJ Media Newsletters. You can unsubscribe at any time.

Need Implants? New 24 hr Teeth
Nuvia

PJ Media

Copyright PJMedia.com/Salem Media. All Rights Reserved. Terms under which this service is provided to you.

Townhall RedState PJ Media twitchy HOTAIR BEARING ARMS

Contact Us | Careers | Privacy Policy
Newsletters | Advertise With Us | California - Do N...
About Us | Terms & Conditi... | California - CCP...

# APPENDIX B

3/19/2024 10:31 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-24-001276
Candy Schmidt

**CAUSE NO. D-1-GN-24-001276**

| | | |
|---|---|---|
| **PFLAG, INC.,** | § | **IN THE DISTRICT COURT OF** |
| | § | |
| **Plaintiff,** | § | |
| **v.** | § | **TRAVIS COUNTY, TEXAS** |
| | § | |
| **OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS; and WARREN KENNETH PAXTON, JR., in his official capacity as Attorney General of Texas,** | § | |
| | § | |
| **Defendants.** | § | **261ST JUDICIAL DISTRICT** |

**THE OFFICE OF THE ATTORNEY GENERAL'S MOTION TO MODIFY AND CLARIFY THE COURT'S MARCH 1, 2024, TEMPORARY RESTRAINING ORDER**

## I. INTRODUCTION

The Office of the Attorney General of the State of Texas and Warren Kenneth Paxton, Jr., in his capacity as the Attorney General of Texas (collectively, the "Attorney General") files the instant Motion to Modify and Clarify the Court's March 1, 2024, Temporary Restraining Order (the "Motion," in reference to the "Order"). The Attorney General respectfully requests that the Court modify the Order to address concerns over overbreadth and ambiguities and to confirm that the Attorney General is permitted (1) to withdraw the original investigative demands challenged by PFLAG, Inc. ("PFLAG") in its application for a temporary restraining order ("TRO") and (2) to serve in their place a new and substantively different Civil Investigative Demand ("CID") and Notice of Demand for Sworn Written Statement ("NDSWS," and collectively with the CID, the "Demands"). *Compare* Exs. 1-2 (proposed new Demands) *with* Exs. 3-4 (showing redlines against original investigative demands).

The Attorney General intends to serve these new and substantively different Demands on PFLAG should the Court provide the requested relief and find they are not subject to the March 1

Order. Indeed, the Attorney General deliberately crafted the Demands to overcome or mitigate the concerns PFLAG raised in the TRO phase in order to demonstrate changed circumstances and that they fall beyond the Order's force and effect. For these reasons and the others explained below, the Court should grant the Motion, clarify the scope of its March 1 Order, and find that the original investigative demands may be withdrawn, and that the proposed Demands may be issued.

## II. LEGAL ARGUMENT

A party can move for modification of an injunction order on the ground that the order is *overbroad* and "grants more relief than a plaintiff is entitled to by enjoining a defendant from conducting lawful activities or from exercising legal rights." *Harbor Perfusion, Inc. v. Floyd*, 45 S.W.3d 713, 718 (Tex. App.—Corpus Christi 2001, no pet) (holding that trial court abused its discretion by entering an "overly-broad injunction" that included "prohibitions [that] go beyond preventing Harbor from enforcing the covenant not to compete"). In addition, "decrees of injunction . . . may be reviewed, opened, vacated or modified by the trial court upon a showing of *changed circumstances*." *Chase Manhattan Bank v. Bowles*, 52 S.W.3d 871, 878-79 (Tex. App.—Waco 2001, no pet.) (citing *Smith v. O'Neill*, 813 S.W.2d 501, 502 (Tex. 1991) (emphasis added). Courts have determined that changed circumstances have occurred where conditions have altered the status quo existing after entry of the injunction or that made the injunction unnecessary or improper. *Kubala Pub. Adjusters, Inc. v. Unauthorized Prac. of L. Comm. for Supreme Ct. of Texas*, 133 S.W.3d 790, 794-95 (Tex. App.—Texarkana 2004, no pet.) ("In other words, the trial court has authority to amend, alter, or dissolve the injunction if either the factual situation or the controlling law has changed since its entry.")

Moreover, a party may seek clarification of an injunction order issued by the presiding court when it contains substantiative ambiguities that creates material risk and uncertainty

concerning its scope and potential application to future conduct. *Thomas v. A*Med Mgmt, Inc.*, No. 01-19-00564-CV, 2020 WL 5269412 (Tex. App.—Houston [1st Dist.] Sept. 3, 2020, no pet.) (discussing how motion to clarify resulted in modifications to the trial court's temporary injunction order that removed from its scope conduct not directly related to enforcement of non-compete agreement at issue); *see generally Sunbeam Prods, Inc. v. W. Bend Co.*, 123 F.3d 246, 249 (5th Cir. 1997) (discussing motion to clarify whether accused infringers new products would violate the court's preliminary injunction order).

Indeed, judicial decrees imposing temporary injunctions often meet the above criteria, warranting modification and clarification. Motions seeking non-final injunction relief are typically litigated in an accelerated fashion and on a limited record, with the resulting judicial relief inherently transient, retrospective in nature, and ill-suited to account for and handle future case developments. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002) ("A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits."). Therefore, is not uncommon for a non-prevailing party to seek and obtain modification or clarification of its legal rights after entry of an injunction order with potentially broad implications. *See generally Trans World Airlines, Inc. v. Mattox*, 897 F.2d 773, 784-85 (5th Cir. 1990).

The Court should modify and clarify the March 1 Order on the grounds that it is overbroad, ambiguous, and does not account for the change in circumstances presented by the Attorney General's decision to withdraw the original investigatory demands and to issue and serve the new Demands. *See* Exs. 1-4 (providing evidence of new Demands and redlines showing changes to originals). The March 1 Order is overbroad insofar as the order can be reasonably construed as barring the Attorney General from issuing the new and distinct Demands (in tandem with

withdrawing original investigatory demands). The Attorney General possesses the statutory authority to issue CIDs and NDSWS and routinely uses these fundamental investigatory tools in performing its duties. Tex. Bus. Com. Code §§ 17.60, 17.61. However, the March 1 Order can be plausibly interpreted to bar the Attorney General from taking conduct potentially unrelated to the enforcement of the original investigative demands, which the Court enjoined. *See id.* at 1 (loosely describing the prohibited conduct as "the facts set forth in Plaintiff's Petition"). Further, the Order explicitly prohibits "taking *any adverse action in relation to*" the original demands—an inherently ambiguous phrase with potential application far beyond their actual enforcement through formal judicial process. *Id.* at 2 (emphasis added).

Amplifying overbreadth concerns, the March 1 Order provides only one example of conduct falling within that phrase's scope—that is "any affirmative step . . . to revoke" PFLAG and its chapters' registrations to transact business in Texas. *Id.* at 2-3 ("such restraint encompasses but is not limited to restraining Defendants from taking any affirmative steps to revoke . . . the ability of PFLAG or any of its chapters to operate in Texas during the pendency of this case."). However, the law provides the Attorney General other legal pathways that could result in revocation of PFLAG's and its chapters' registrations to transact business in Texas without reference to or reliance on the types of investigative demands at issue. Tex. Bus. Org. Code § 12.151, *et seq* (statutory scheme granting the Attorney General the power to revoke registrations of registered entities that fail to comply with the process for written requests for examination and inspection).

In sum, the breadth and ambiguity present in Court's Order has the effect of foreclosing the Attorney General from pursuing legitimate investigatory and enforcement activities against PFLAG beyond the formal enforcement of the original investigatory demands, including issuing

the new Demands in tandem with withdrawing the demands restrained by the March 1 Order. For this reason alone, the Order should be modified and clarified to permit the Attorney General to withdraw the originals and issue the new Demands. *Fairfield Ests. L.P. v. Griffin*, 986 S.W.2d 719, 723-24 (Tex. App.—Eastland 1999) (narrowing injunction on such grounds); *Trans World Airlines*, 897 F.2d. at 784-85 (trial court entered "Substituted Order" clarifying that the Attorney General of Kansas was not subject to the preliminary injunction prohibiting other law enforcement authorities from initiating certain enforcement actions against airline companies).

The Court should also modify the March 1 Order on the grounds that the new Demands represent changed circumstances that have occurred after the issuance of the Order and that render it unnecessary and improper. *Bowles*, 52 S.W.3d at 879. The Attorney General submits true and correct copies of the Demands that it seeks to issue, Exs. 1 & 2, as well as exhibits depicting the differences between the new Demands and the originals in redline, Exs. 3 & 4, as factual support for its claims. The new Demands reflect adjustments designed to alleviate PFLAG and the Court's concerns with the original investigatory demands, including: (1) harm to PFLAG and its members' ability to exercise their rights to free speech and association under the First Amendment; (2) harm to their ability to be secure against unreasonable searches under the Fourth Amendment; (3) harm to their ability to avail themselves of the courts when their constitutional rights are threatened; and (4) gross invasions of both PFLAG's and its members' privacy in an attempt to bypass certain discovery stays. Order at 2.

Broadly speaking, the Demand's substantive adjustments accomplish the following objectives in response to PFLAG's previously stated concerns:

- Expressly allows for redaction and anonymization of information that would otherwise identify PFLAG's members, thereby eliminating concerns that disclosing

member-identifying information or producing documents containing the same, such as membership lists, would threaten First Amendment rights. Plf.'s Orig. Ver. Pet. at 35, 57, 73-4; Ex. 3 at 4, 7-8; Ex. 4 at 3-5.

- Makes clear in the instruction for "redactions" that because "the Division does not seek PFLAG's membership list, either full or partial, in any form. Therefore, at PFLAG's election, information that identifies a member may be redacted or otherwise anonymized." Plf.'s Orig. Ver. Pet. at 47, 57; Ex. 4 at 5; *see also* Ex. 3 at 4.
- Completely omits the previous definition of "identify," thereby eliminating any conceivable concern that the Attorney General intrusively seeks personally identifiable information on extraneous topics, such as social security numbers, occupation, job titles and responsibilities, home and business addresses, and various telephone numbers and email addresses. Plf.'s Orig. Ver. Pet. at 35, 59, 73; Ex. 3 at 7-8; Ex. 4 at 3-6.
- Instructs that "At PFLAG's election, information that identifies a member may be redacted or otherwise anonymized." Ex. 4 at 5; *see also* Ex. 3 at 4.
- The original CID sought information concerning certain individuals that encompassed PFLAG members, thus implicating PFLAG's First Amendment concerns. In contrast, the Attorney General crafted the Demands more narrowly to limit the amount member-specific information potentially within their scope. The Demands defines "members" as "includ[ing] individuals who pay members' dues to one of PFLAG's local chapters or its national chapter and those who PFLAG serves through its programs, events, and services. 'Members' does not include

PFLAG professional staff or entities that PFLAG associate with." Ex. 3 at 8; Ex. 4 at 4-5.

- In tandem, limits certain requests to communications to, or from, any PFLAG professional staff, non-member, or affiliate. Plf.'s Orig. Ver. Pet. at 6; Ex. 3 at 9.
- More narrowly tailor the scope of the demands, thereby alleviating any possible concern that the Demands would fall outside the Consumer Protection Division's legitimate investigatory objectives or raise Fourth Amendment concerns. *See* Plf.'s Orig. Ver. Pet. at 45-46. To this end, the Demands omitted various definitions, instructions, and requests and narrowed others, as described in part immediately above. Ex. 3 at 3, 5, 6-9; Ex. 4 at 3-4, 6. In particular, the new Demands request a substantially smaller set of documents relating to the affidavit of Mr. Brian K. Bond, including removing request number four in original CID entirely. Plf.'s Orig. Ver. Pet at 60; Ex. 3 at 9.
- Taken in their totality, the new Demands in no way interfere with PFLAG and its members access to courts. Plf.'s Orig. Ver. Pet. at 42.

In short, there can be no dispute that the Demands are substantively distinct from and narrower in scope than the previous investigatory tools enjoined by the Court. As demonstrated above, the Attorney General drafted them in a manner that alleviates concerns raised by PFLAG and reflected in the Court's Order. Indeed, the withdrawal of the original investigatory demands and issuance of the Demands would fundamentally alter the factual landscape of this dispute and represents that exact type of "changed circumstances" that warrants modification of the March 1 Order. *Henke v. Peoples State Bank*, 6 S.W.3d 717, 721 (Tex. App.—Corpus Christi 1999, pet. dism. w.o.j.) ("Changed circumstances are conditions that altered the status quo existing after the

temporary injunction was granted or that made the temporary injunction unnecessary or improper."); *Kubala Pub. Adjusters*, 133 S.W.3d at 794 (granting modification of injunction order where, as here, "the factual situation or the controlling law has changed since its entry").

## III. CONCLUSION

For the foregoing reasons, the Court should grant the motion to modify and amend the March 1 Order to clarify that the Attorney General may withdraw the original investigatory demands and issue the new Demands in a form substantially similar to the evidentiary exhibits attached hereto.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

RYAN S. BAASCH
Chief, Consumer Protection Division

/s/ *David G. Shatto*
DAVID G. SHATTO
State Bar No. 24104114
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711
David.Shatto@oag.texas.gov
Tel: 512-475-4656
Fax: 512-473-8301

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of March 2024, a copy of the foregoing document was served via the Court's electronic filing system to all counsel of record.

/s/ *David G. Shatto*
DAVID G. SHATTO
Assistant Attorney General

# EXHIBIT 1

STATE OF TEXAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

# CIVIL INVESTIGATIVE DEMAND

**TO:** Susan Thronson
*President*
Brian K. Bond
*Chief Executive Officer*
PFLAG, Inc.
1625 K Street NW #700
Washington, DC 20006

***via CMRRR:*** [to be completed]
***via First Class Mail***

Registered Agents Inc.
1401 21st Street, Suite R
Sacramento, CA 95811

***via CMRRR:*** [to be completed]
***via First Class Mail***

Pursuant to this Office's specific authority under section 17.61 of the Texas Deceptive Trade Practices—Consumer Protection Act, Texas Business & Commerce Code §§ 17.41–17.63 ("DTPA"), PFLAG, Inc. ("PFLAG"), a nonprofit corporation, is hereby directed to produce the items listed in Exhibit "B" attached hereto. Such production is governed by the Instructions and Definitions set forth in Exhibit "A" on this page and subsequent pages.

You are to make available the documentary material described in Exhibit "B" to the undersigned Assistant Attorney General or other authorized agent(s) identified by the Consumer Protection Division ("Division"). This documentary material shall be produced for inspection and copying during normal business hours at your principal office or place of business, or may be sent electronically or by certified mail to the Office of the Attorney General, 300 W. 15th Street, 9th Floor, Austin, TX 78701 and is due on April __, 2024. If providing documents electronically, please provide them to Sam Weeks at Samuel.Weeks@oag.texas.gov.

The Division believes that you are in possession, custody, or control of documentary material relevant to the subject matter of an investigation of actual or possible violations of DTPA section 17.46 involving potential misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.

This Civil Investigative Demand ("CID") shall formally supersede the CID previously issued on February 5, 2024, by the Division. The original February 5, 2024 CID is officially withdrawn, and the Division waives and relinquishes any and all rights thereunder, including the right of enforcement. The sole CID issued to PFLAG with the force and effect of law is the foregoing.

**TAKE NOTICE THAT pursuant to section 17.62, Texas Business and Commerce Code, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material may be guilty of a misdemeanor and on conviction is punishable by a fine of not more than $5,000.00 or by confinement in the county jail for not more than one year, or both.**

**ISSUED THIS** __th day of _____2024.


_____

DAVID SHATTO, Assistant Attorney General
Consumer Protection Division, OAG
T: (512) 463.2185 | F: (512) 370.9125
David.Shatto@oag.texas.gov

Other Authorized Agent:
Sam Weeks, Investigator
Consumer Protection Division, OAG
T: (512) 936.0501 | F: (512) 370.9125
Samuel.Weeks@oag.texas.gov

# EXHIBIT A:
## INSTRUCTIONS

1. **Read These Instructions and Definitions Carefully.** Your production must comply with these instructions and definitions.

2. Unless the context clearly indicates otherwise, words used in the singular include the plural, the plural includes the singular, and the neutral includes the masculine and feminine.

3. **Duty to Preserve Documents.** All documents and/or other data which relate to the subject matter or requests of this CID must be preserved. ***Any ongoing, scheduled, or other process of document or data destruction involving such documents or data must cease, even if it is your normal or routine course of business to delete or destroy such documents or data or even if you believe such documents or data are privileged or otherwise protected from disclosure.*** Failure to preserve such documents or data may result in legal action and may be regarded as spoliation of evidence under applicable law.

4. **Relevant Time Period.** Unless otherwise noted, the requests herein require production of documents from March 8, 2023, to the date of the last production of documents in made response to this CID.

5. **Custody and Control.** In responding to the CID, you are required to produce all responsive documents in your possession, custody, or control. A document is within your custody or control if it is in the possession of another person and you have a right to possess that document that is equal or superior to that other person's right of possession.

6. **Non-Identical Copies or Drafts.** Any copy or draft of a document that differs in any manner, including the presence of handwritten notations, different senders or recipients, etc., from the original version shall be considered a distinct document and produced.

7. **Permitted Redactions for Member Identifying Information.** In general, all materials or documents responsive to this CID shall be produced in complete unabridged, unedited, and unredacted form, even if portions may contain information not explicitly requested or may reflect interim or final portions of documents or materials.

Unlike the February 5, 2024 CID, the foregoing, operative CID does ***not*** request that PFLAG produce documents and information disclosing the identify of its Members and/or actual membership lists, either in whole or in part, in any form. For this reason, PFLAG may elect to redact or anonymize any portion of a document otherwise within the scope of the CID that contains information disclosing or providing the identity of any Member. Any questions related to the precise information that PFLAG may redact at its own election should be directed the Office of the Attorney General representatives above.

8. **Document Organization.** Each document and other tangible thing produced shall be clearly designated as to which request, and each sub-part of a request, that it satisfies. The documents produced shall be identified and segregated to correspond with the number and

subsection of the request.

9. **Production Format.** You may submit photocopies (with color photocopies where necessary to interpret the document) in lieu of original hard-copy documents if the photocopies provided are true, correct, and complete copies of the original documents. If the requested information is electronically stored information, it shall be produced in electronic form. Electronically stored information shall be produced with the accompanying metadata, TIFF images, native files, load files, and programs necessary for processing into a usable form. For any questions related to the production of documents you may consult with the Office of the Attorney General representatives above.

10. **Privilege Log.** For each document or other requested information that you assert is privileged or otherwise protected from disclosure, please provide a privilege log with a numerical list of the document(s), thing(s), or information for which privilege or protection from disclosure is claimed is claim, and for each item detailed and non-conclusory information that demonstrates a prima facie claim for privilege and protection, including but not limited to, the following:

a. The name of the custodian of the withheld materials;

b. The name of each author, writer, sender, and creator of the materials;

c. The name of each recipient, addressee, and copyee for whom the materials were intended, if any;

d. The date the materials were created;

e. The general subject matter of the materials; and

f. The factual and legal bases for the claim.

## DEFINITIONS

1. **"You," "your," and "PFLAG"** means the entity named on page one of this CID, with an address of 1625 K Street NW #700, Washington, DC 20006, and a registered agent at Registered Agents Inc., at 1401 21st Street, Suite R, Sacramento, CA 95811, and includes its past and present directors, officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the control of or on behalf of any of the above. The terms "subsidiary," "affiliate," and "joint venture" refer to any entity in which there is total or partial ownership (25 percent or more) or control between PFLAG and any other person or entity.

2. The terms **"and/or," "and,"** and **"or"** refer to all listed categories inclusively, not exclusively (i.e., not the option of producing one group of documents, or another, nor of producing documents for one group of the listed persons, but not others). The conjunctive "and" shall be deemed to include the disjunctive "or" and vice versa.

3. **"Affiliate(s)"** includes, but is not limited to, PFLAG Tyler/ East Texas; PFLAG Houston; PFLAG Dallas, Inc.; PFLAG Fort Worth, Inc.; PFLAG San Antonio; PFLAG Odessa; PFLAG Denton; PFLAG Seguin; PFLAG Longview; PFLAG Boerne; PFLAG Corpus Christi; PFLAG Midland-Odessa; PFLAG Georgetown; PFLAG Amarillo; PFLAG Mesquite; PFLAG of the Big Country; PFLAG-Kerr County; PFLAG Brownsville Chapter; PFLAG Beaumont Chapter; PFLAG San Marcos, Inc.; PFLAG Brenham Chapter; PFLAG San Angelo; PFLAG Huntsville TX; PFLAG Corpus Christi, Texas, Chapter; PFLAG/HATCH YOUR SCHOLARSHIP FOUNDATION; PFLAG San Juan, Chapter of PFLAG; PFLAG of Montgomery (Parents, Families and Friends of Lesbians and Gays); and any other similarly related entity registered in Texas, either domestic or foreign.

4. "**Communication**" means any conversation, discussion, letter, email, correspondence, memorandum, meeting, note, or other transmittal of information or message, whether transmitted in writing, orally, electronically, or by any other means.

5. **"Document"** shall be construed in the broadest sense possible and encompasses any electronically stored information, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by PFLAG into a reasonably usable form. Although it does not limit the scope of this CID, the definition and interpretation of "document" under the Texas Rules of Civil Procedural provides a useful reference point.

6. **"Gender Transitioning and Reassignment Treatments and Procedures"** means any and all procedures or treatments for the purpose of "transitioning" a child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex. This definition includes, but is not limited to, surgeries or procedures that result in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue, the provision of medications that induce transient or permanent infertility (such as puberty suppressing and blocking drugs or supraphysiologic doses of testosterone to females and estrogen to males),

and any other treatments, therapies, or procedures provided to address gender identity disorder, gender dysphoria, and any other similar or related conditions.

7. **"Members"** includes individuals who pay dues for purposes of joining or associating with PFLAG's national chapter or any local chapter. For purposes of this CID, the term shall be broadly construed to encompass donors to PFLAG and individuals who directly participated in PFLAG's official programs, events, and services. However, "Members" does not include PFLAG's professional staff and non-PFLAG entities with whom the organization associates.

8. "**Person**" includes you and encompasses an entity or natural person.

# EXHIBIT B:
## DOCUMENTS TO BE PRODUCED

In accordance with the requirements set forth above and provided for under Texas law, PFLAG must respond in writing and produce documents responsive the following Requests within twenty (20) days.

1. All documents and communications that form the basis of, or otherwise relate to, Brian K. Bond's personal knowledge of the information stated in paragraphs 7 and 13 of the affidavit attached hereto as "EXHIBIT B1."

2. All communications to, or from, PFLAG's professional staff, non-members, or Affiliates regarding, relating to, or referencing, "contingency plans" and/or "alternative avenues to maintain care," as those phrases are used in the affidavit attached hereto as "EXHIBIT B1."

3. All recommendations, referrals, and/or lists of pediatric and/or adolescent health care providers in Texas that PFLAG (or any of its professional staff or affiliates) has created, maintained, received, or distributed since March 8, 2023.

4. In reference to the affidavit attached hereto as "EXHIBIT B1," produce documents, meeting minutes, and communications sufficient to show the factual basis for the statement that "PFLAG families with transgender and nonbinary adolescents … have been asking chapters for alternative avenues to maintain care in Texas" (with PFLAG having the option to redact identifying member information in the manner described in Instruction No. 7).

5. All communications to, or from, PFLAG's professional staff, non-members, or Affiliates regarding, relating to, or referencing any of the individuals or entities identified in the document attached hereto as "EXHIBIT B2" since March 8, 2023.

6. All contractual and charter agreements between PFLAG's Texas chapters and national chapter.

7. The governing documents and bylaws of PFLAG's Texas chapters and national chapter.

| | | |
|---|---|---|
| **LAZARO LOE, *et al.*** | § | **IN THE DISTRICT COURT OF** |
| **Plaintiffs** | § | **TRAVIS COUNTY, TEXAS** |
| **v.** | § | **_____ JUDICIAL DISTRICT** |
| **STATE OF TEXAS, *et. al*,** | § | |
| **Defendants.** | § | |

## AFFIDAVIT OF BRIAN K. BOND

I, Brian K. Bond, hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am the Executive Director of PFLAG, Inc. ("PFLAG"). Founded in 1973, PFLAG is the first and largest organization for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") people, their parents and families, and allies. We are a 501(c)(3) non-profit organization.

3. PFLAG has over 350 chapters across the country and approximately 325,000 members and supporters nationwide. Our members and supporters cross multiple generations of families in major urban centers, small cities, and rural areas across America. PFLAG envisions an equitable and inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved. Our mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them.

4. Our founder, Jeanne Manford, marched with her son Morty in the 1972 Christopher Street Liberation Day March in New York City and created the very first support group for parents and families of LGBTQ+ people in 1973. Supporting LGBTQ+ young people by supporting and strengthening their families has been a core part of our work ever since. Today, the gold-standard advocated by PFLAG parents and families—and set forth by pediatricians and therapists—is to accept, support, and affirm LGBTQ+ people's sexual orientation and/or gender identity and expression; parental rejection is widely understood to be abusive and damaging.

5. We know, too, that LGBTQ+ youth thrive when supported in their schools and community. So, our work also includes ending bullying, discrimination, and harassment in educational settings by providing training for teachers, administrators, and district leaders, and advocating in the public square to ensure LGBTQ+ people are treated fairly and equally when accessing public accommodations and health care.

6. We know that change happens and support grows one interaction at a time, one family at a time.

7. PFLAG is a national membership organization and we have local chapters in 49 states and the District of Columbia. Our chapters in Texas include PFLAG Amarillo, PFLAG Austin, PFLAG Beaumont, PFLAG Boerne, PFLAG Brenham, PFLAG Dallas, PFLAG El Paso, PFLAG Fort Worth, PFLAG Georgetown, PFLAG Houston, PFLAG Lubbock, PFLAG Mesquite, PFLAG Midland/Odessa, PFLAG Montgomery, PFLAG San Antonio, PFLAG San Marcos, PFLAG Seguin, and PFLAG Tyler/East Texas.

8. PFLAG's membership is comprised of chapter members and national members. Individuals can become a PFLAG member by joining the national organization directly or by

joining their local chapter, which sends a portion of the member's dues to PFLAG National, also making them national members. In addition to our formal members, PFLAG serves thousands of community members through our programs, events, and services every year.

9. PFLAG's members play a central role in electing our organizational leadership. Of the 21 members of the PFLAG National Board of Directors, seven are elected directly by our membership. Seven more are elected by the Regional Directors Council, a body of 13 volunteers who are themselves each elected by the members of one of PFLAG's thirteen regions to work with PFLAG National staff to provide support, resources, training, and help to start new affiliates, and to share the perspectives and activities of members with PFLAG National staff. The remaining seven are elected by the Board itself.

10. As Executive Director, I am the leader of the professional staff who carry out the work of the PFLAG National office, including supporting the development and work of the PFLAG Chapter Network and promoting PFLAG's presence in the national arena, including through policy advocacy, coalitions with organizations who share our goals, developing trainings and educational materials, and engaging with the media. Supporting the PFLAG Chapter Network is PFLAG National's largest program and our national staff works closely with chapter leaders and members across the country to reinforce their efforts to establish and grow their chapters, providing them with infrastructure, publications, online learning tools, advocacy support, media training, and countless other services and supports.

11. Because promoting the wellbeing of LGBTQ+ youth through encouraging and supporting love and affirmation by their families is a core part of our mission and because we have an extensive network of chapters and nearly 1500 members who live in Texas, we have been actively involved in supporting and providing resources to our members and constituents in

light of the increasingly hostile climate for transgender youth and their families in the state over the last few years. This includes PFLAG joining litigation on behalf of our members in order to protect them from Governor Abbott's directive deeming all affirming health care for transgender adolescents, regardless of medical necessity, to be "child abuse" and the Texas Department of Family and Protective Services' ("DFPS") subsequent adoption and implementation of that directive to investigate parents alleged to be helping their children access such care. Suddenly the very thing we know to be good for LGBTQ+ children—supporting and loving your child for who they are and ensuring they receive care they need to thrive—was a reason to be reported and subjected to an intrusive and traumatic investigation.

12. In September 2022, the Travis County District Court issued an injunction blocking DFPS from carrying out this directive, protecting PFLAG member families from investigation. Although the State appealed that injunction, the Court of Appeals reinstated its protections shortly thereafter. That case is still pending, but at least PFLAG families are presently protected from being investigated for child abuse based solely on allegations they sought medically necessary care for their transgender or nonbinary child.

13. This brief sigh of relief we felt from the DFPS Rule being enjoined ended when SB 14 was signed into law on June 2, 2023. PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposition regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and

nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming medical care or leave the state as a result of SB14. Requests for mental health care providers have skyrocketed, as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents' existing mental health issues connected to their gender dysphoria. Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date. And chapter leaders have heard concerns about the impacts on transgender and non-binary youth in the foster care system, who receive health care coverage through Medicaid and will lose coverage for their medical care for gender dysphoria if SB14 goes into effect.

14. SB 14 subjects PFLAG's Texas members with a transgender or nonbinary child in need of gender-affirming medical care to a substantial risk of harm. PFLAG has members in Texas whose children are being or will be monitored for the appropriate time to begin puberty blockers, are currently or soon will be on puberty blockers, and are currently or soon will be on hormone therapy, all as part of a medically prescribed course of care for gender dysphoria. Some of those families are being harmed right now by SB 14's passage, whether because they have had appointments for scheduled care cancelled, are losing access to healthcare providers who are moving their practice out of state or ending their provisions of gender-affirming care for fear of

losing their medical licenses or state funding, or have otherwise had their imminent plans to obtain the established course of medically necessary care for their transgender or nonbinary children disrupted or foreclosed.

15. Other current and future PFLAG members with transgender or nonbinary children face a substantial risk of being harmed if SB 14 goes into effect, including being denied the right to make medical decisions for their child because the care their child's healthcare providers have declared medically necessary for them has been deemed unlawful, being prevented from obtaining the puberty blockers or hormone therapy their child needs solely because they are treatment for gender dysphoria, or losing coverage for care that has previously been covered under state funded health plans. SB 14 will force PFLAG families who have seen their children thrive as a result of medical care to treat their gender dysphoria to stop providing that care, putting those children at risk of serious mental and physical harm—the very reasons those families sought medical care in the first place.

16. While SB 14 has caused or will cause some PFLAG families to leave Texas entirely or to have to access the medically necessary care their transgender or nonbinary child needs in another state, the logistical and financial costs of doing so are incredibly high. No family should be forced to leave their home, jobs, or community or to split up their family to access the established course of medical care for their child's health condition, but SB14 is putting Texas PFLAG families in exactly that position. For countless others, those costs are simply too high; thus SB 14 leaves those transgender and nonbinary Texas youth and their families with no way to access the medically necessary care they need. Parents are prioritizing their children's mental and physical health, but SB14 will strip them of the ability to make the

decisions that they, their children, and their children's medical providers know are in their best interests. SB14 will put these adolescents' lives at risk.

17. Although these members could challenge SB 14 in their own right—as the other Plaintiff families are doing—PFLAG brings claims on behalf of its members to represent their interests to shield them from harm, to vindicate their rights to make the medical decisions they, their child, and their medical providers know to be in their child's best interests, and to allow them to maintain their focus on their child's health and wellbeing rather than litigation.

18. Representing the interests of these members in challenging SB 14 is directly connected to PFLAG's mission in two ways. First, that mission includes encouraging and supporting parents and families of transgender and gender non-conforming people in affirming their children and helping them access the social, psychological, and medical supports they need. We work with our families to encourage love and support of their transgender and gender non-conforming children and to help them ensure that the children's needs are met. The provisions of SB 14 send the opposite message and prevent families from meeting their child's needs. SB 14 bars families from supporting their child's affirmation of their gender identity by seeking the established medically necessary care that has been prescribed for them, depriving youth of medically necessary gender-affirming care, resulting in anxiety, depression, and other negative health outcomes associated with denying or cutting off medically necessary care. In order to fulfill our mission to our members, we must fight back against a law that prevents them from doing the very thing we encourage because we know it is in the best interests of the children.

19. Second, we teach our members to advocate for a caring, just, and affirming world where LGBTQ+ people are safe, celebrated, empowered, and loved, and to advocate for equitable laws and policies that protect them. We have spoken out against bans on medically

necessary care for youth with gender dysphoria such as SB 14 because they directly conflict with parents' abilities to act in their children's best interest and do nothing to protect the health and well-being of youth or anyone who needs access to medical care. SB 14 is the antithesis of an equitable law, interfering with and obstructing decisions made between PFLAG parents, their child, and their child's provider to deprive that child of care that is proven to be safe, medically sound, and necessary for treating gender dysphoria. As an organization dedicated to parents and families of LGBTQ+ youth, we cannot in good faith sit back as our members' fundamental rights to make decisions about their child's medical care are infringed solely because their child is transgender or nonbinary.

20. PFLAG exists to foster a world where LGBTQ+ children can become thriving, healthy, and happy LGBTQ+ adults. Our members depend on us to provide support and community for them in a society that often still treats their children as second-class citizens, attempts to silence them, or denies their very existence. For our members who have transgender and nonbinary children and are doing nothing more than loving them and following the advice of qualified medical professionals, PFLAG is here to do all we can to support them in those efforts and protect them from harmful, invasive laws like SB 14.

Brian K. Bond
Executive Director, PFLAG, Inc.

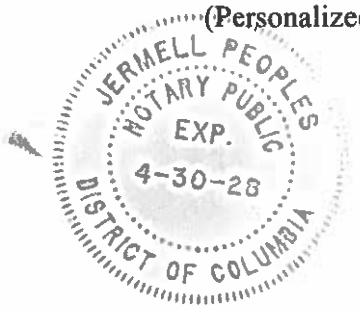
**Notary Verification**

District of Columbia

Brian K. Bond personally appeared before me, and being first duly sworn declared that he signed this declaration in the capacity designated, if any, and further states that he has read the above declaration and the statements therein contained are true.

Sworn to and subscribed before me on the 11th day of July 2023, by Brian K. Bond.

(Personalized Seal)




Notary Public's Signature

**EXHIBIT B2**

Texas Children's Hospital

Baylor College of Medicine

Seattle Children's Hospital

QMed/QueerMed

QueerDoc

Plume Health, P.C.

# EXHIBIT 2

STATE OF TEXAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

**NOTICE OF DEMAND FOR SWORN WRITTEN STATEMENT**

**TO:** Susan Thronson
*President*
Brian K. Bond
*Chief Executive Officer*
PFLAG, Inc.
1625 K Street NW #700
Washington, DC 20006

***via CMRRR:* [to be completed]**
***via First Class Mail***

Registered Agents Inc.
1401 21st Street, Suite R
Sacramento, CA 95811

***via CMRRR:* [to be completed]**
***via First Class Mail***

The Consumer Protection Division has reason to believe that a "person," as defined by the DTPA, is engaging in, has engaged in, or is about to engage in an act or practice declared unlawful by the DTPA. Pursuant to section 17.60 of the Texas Deceptive Trade Practices—Consumer Protection Act, §§ 17.41 *et seq.*, Tex. Bus. & Com. Code ("DTPA"), PFLAG, Inc. ("PFLAG") is hereby directed to file on the prescribed form provided herein written answers under oath to the requests found in Exhibit "B."

The information requests must be answered fully, correctly, and under oath, in accordance with the "Definitions and Instructions" set forth in Exhibit "A." Your sworn written answers must be returned to the undersigned attorney general on or before April __, 2024. You may change the terms of this notice of demand for sworn written statement only by written agreement with an authorized Texas assistant attorney general or by court order. If providing documents electronically, please provide them to Sam Weeks at Samuel.Weeks@oag.texas.gov.

This demand for sworn written statement is relevant to the subject matter of an investigation regarding possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures.

**TAKE NOTICE THAT pursuant to § 17.62, Texas Business & Commerce Code, any person who with intent to avoid, evade, or prevent compliance, in whole or in part, with this examination under oath, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any relevant documentary material may be guilty of a misdemeanor that, upon conviction, is punishable by a fine of not more than $5,000.00 or by confinement in the county jail for not more than one year, or both.**

This Demand for Sworn Written Statement ("DSWS") formally supersedes the DSWS issued by the Division on February 5, 2024. The Division officially withdraws the February 5, 2024 DSWS and waives any and all rights thereunder, including enforcement. The sole DSWS issued to PFLAG with the current force and effect of law is the following.

**ISSUED THIS** __th day of _____ 2024.

DAVID SHATTO, Assistant Attorney General
Consumer Protection Division, OAG
T: (512) 463.2185 | F: (512) 370.9125
David.Shatto@oag.texas.gov

Other Authorized Agent:
Sam Weeks, Investigator
Consumer Protection Division, OAG
T: (512) 936.0501 | F: (512) 370.9125
Samuel.Weeks@oag.texas.gov

# EXHIBIT A:
## DEFINITIONS AND INSTRUCTIONS

1. **"You," "Your," and "PFLAG"** means the entity named on page one of this Demand for Sworn Written Statement, with an address at 1625 K Street NW #700, Washington, DC 20006, and a registered agent at Registered Agents Inc., at 1401 21st Street, Suite R, Sacramento, CA 95811, and includes its past and present officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidance or on behalf of any of the above. The terms "subsidiary," "affiliate," and "joint venture" refer to any firm in which there is total or partial ownership (25 percent or more) or control between the Company and any other person or entity.

2. The terms **"and/or," "and,"** and **"or"** refer to all listed categories inclusively, not exclusively (i.e., not the option of producing one group of documents, or another, nor of producing documents for one group of the listed persons, but not others). The conjunctive "and" shall be deemed to include the disjunctive "or" and vice versa.

3. **"Affiliate(s)"** includes, but is not limited to, PFLAG Tyler/ East Texas; PFLAG Houston; PFLAG Dallas, Inc.; PFLAG Fort Worth, Inc.; PFLAG San Antonio; PFLAG Odessa; PFLAG Denton; PFLAG Seguin; PFLAG Longview; PFLAG Boerne; PFLAG Corpus Christi; PFLAG Midland-Odessa; PFLAG Georgetown; PFLAG Amarillo; PFLAG Mesquite; PFLAG of the Big Country; PFLAG-Kerr County; PFLAG Brownsville Chapter; PFLAG Beaumont Chapter; PFLAG San Marcos, Inc.; PFLAG Brenham Chapter; PFLAG San Angelo; PFLAG Huntsville TX; PFLAG Corpus Christi, Texas, Chapter; PFLAG/HATCH YOUR SCHOLARSHIP FOUNDATION; PFLAG San Juan, Chapter of PFLAG; PFLAG of Montgomery (Parents, Families and Friends of Lesbians and Gays; and any other similarly related entity registered in Texas, either domestic or foreign.

4. **"Gender Transitioning and Reassignment Treatments and Procedures"** means any and all procedures or treatments for the purpose of "transitioning" a Child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex. This definition includes, but is not limited to, surgeries or procedures that result in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue, the provision of medications that induce transient or permanent infertility (including puberty suppressing and blocking drugs or supraphysiologic doses of testosterone to females and estrogen to males), and any other treatments, therapies, or procedures that are provided to address gender identity disorder, gender dysphoria, and any other similar or related conditions.

5. **"Including"** means including, but not limited to.

6. **"Person"** includes you and means any entity or natural person.

7. **"Relevant Time Period"** Unless otherwise noted, the requests in this Civil Investigative Demand require production of documents from March 8, 2023, to the date of the production of documents in response to this Sworn Written Statement, herein called the "Relevant Time Period."

8. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

9. In answering the information requests contained in Exhibit B, you shall furnish such information as is available to you, not merely such information within your officers' or employees' personal knowledge. You are to furnish any and all responsive information to each information request in Exhibit B after diligent inquiry into all sources of information available to you.

10. In the event any matter in Exhibit B cannot be fully or precisely answered after the exercise of reasonable diligence, you shall furnish as complete and precise an answer as you can and explain in detail the reasons why you cannot give a full or precise answer, what is needed to be done in order to be in a position to fully and precisely provide the answer, and a time estimate as to when you will be able to provide a full and precise answer.

11. Each response in this sworn written statement must include all relevant information from the Relevant Time Period. If changes in the relevant information, Including processes, procedures, or policies, occurred during the Relevant Time Period, describe the manner and timeframe in which the relevant information changed.

12. **"Members"** includes individuals who pay dues or purposes of joining or associating with PFLAG's national chapter or any local chapter. For purposes of this Demand for Sworn Written Statement, the term shall be broadly construed to encompass donors to PFLAG and individuals who directly participated in PFLAG's official programs, events and services.

13. The Division does not seek PFLAG's membership list, either full or partial, in any form. Therefore, at PFLAG's election, information that identifies a member may be redacted or otherwise anonymized.

14. At the end of your answers, you are required, under oath, to make and sign the following statement before a licensed notary:

STATE OF _____
COUNTY OF _____

My name is [FULL NAME]. I am over the age of 18 and capable of making this sworn statement. The preceding answers are within my personal knowledge and are true and correct.

_____
[FULL NAME]

Sworn and subscribed to before me this _____ day of _____, 2024.

[NOTARY STAMP AND NOTARY'S DATED SIGNATURE]

# EXHIBIT B
## INFORMATION REQUESTS TO BE ANSWERED UNDER OATH

1. In reference to the affidavit attached hereto as “EXHIBIT B1,” identify any "contingency plans" or “alternative avenues” that PFLAG identified, created, or shared with its members relating to obtaining and/or maintaining “gender-affirming medical care” in Texas.

2. In reference to the affidavit attached hereto as “EXHIBIT B1,” identify any "contingency plans" or “alternative avenues” that PFLAG has discovered or learned about relating to “gender-affirming medical care” in Texas.

3. Identify every health care provider and/or facility, in Texas, to whom PFLAG has referred members since March 8, 2023.

4. Identify every health care provider and/or facility, in Texas, from whom PFLAG has been referred members since March 8, 2023.

| | | |
|---|---|---|
| **LAZARO LOE, *et al.*** | § | **IN THE DISTRICT COURT OF** |
| **Plaintiffs** | § | **TRAVIS COUNTY, TEXAS** |
| **v.** | § | **_____ JUDICIAL DISTRICT** |
| **STATE OF TEXAS, *et. al*,** | § | |
| **Defendants.** | § | |

## AFFIDAVIT OF BRIAN K. BOND

I, Brian K. Bond, hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am the Executive Director of PFLAG, Inc. ("PFLAG"). Founded in 1973, PFLAG is the first and largest organization for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") people, their parents and families, and allies. We are a 501(c)(3) non-profit organization.

3. PFLAG has over 350 chapters across the country and approximately 325,000 members and supporters nationwide. Our members and supporters cross multiple generations of families in major urban centers, small cities, and rural areas across America. PFLAG envisions an equitable and inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved. Our mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them.

4. Our founder, Jeanne Manford, marched with her son Morty in the 1972 Christopher Street Liberation Day March in New York City and created the very first support group for parents and families of LGBTQ+ people in 1973. Supporting LGBTQ+ young people by supporting and strengthening their families has been a core part of our work ever since. Today, the gold-standard advocated by PFLAG parents and families—and set forth by pediatricians and therapists—is to accept, support, and affirm LGBTQ+ people's sexual orientation and/or gender identity and expression; parental rejection is widely understood to be abusive and damaging.

5. We know, too, that LGBTQ+ youth thrive when supported in their schools and community. So, our work also includes ending bullying, discrimination, and harassment in educational settings by providing training for teachers, administrators, and district leaders, and advocating in the public square to ensure LGBTQ+ people are treated fairly and equally when accessing public accommodations and health care.

6. We know that change happens and support grows one interaction at a time, one family at a time.

7. PFLAG is a national membership organization and we have local chapters in 49 states and the District of Columbia. Our chapters in Texas include PFLAG Amarillo, PFLAG Austin, PFLAG Beaumont, PFLAG Boerne, PFLAG Brenham, PFLAG Dallas, PFLAG El Paso, PFLAG Fort Worth, PFLAG Georgetown, PFLAG Houston, PFLAG Lubbock, PFLAG Mesquite, PFLAG Midland/Odessa, PFLAG Montgomery, PFLAG San Antonio, PFLAG San Marcos, PFLAG Seguin, and PFLAG Tyler/East Texas.

8. PFLAG's membership is comprised of chapter members and national members. Individuals can become a PFLAG member by joining the national organization directly or by

joining their local chapter, which sends a portion of the member's dues to PFLAG National, also making them national members. In addition to our formal members, PFLAG serves thousands of community members through our programs, events, and services every year.

9. PFLAG's members play a central role in electing our organizational leadership. Of the 21 members of the PFLAG National Board of Directors, seven are elected directly by our membership. Seven more are elected by the Regional Directors Council, a body of 13 volunteers who are themselves each elected by the members of one of PFLAG's thirteen regions to work with PFLAG National staff to provide support, resources, training, and help to start new affiliates, and to share the perspectives and activities of members with PFLAG National staff. The remaining seven are elected by the Board itself.

10. As Executive Director, I am the leader of the professional staff who carry out the work of the PFLAG National office, including supporting the development and work of the PFLAG Chapter Network and promoting PFLAG's presence in the national arena, including through policy advocacy, coalitions with organizations who share our goals, developing trainings and educational materials, and engaging with the media. Supporting the PFLAG Chapter Network is PFLAG National's largest program and our national staff works closely with chapter leaders and members across the country to reinforce their efforts to establish and grow their chapters, providing them with infrastructure, publications, online learning tools, advocacy support, media training, and countless other services and supports.

11. Because promoting the wellbeing of LGBTQ+ youth through encouraging and supporting love and affirmation by their families is a core part of our mission and because we have an extensive network of chapters and nearly 1500 members who live in Texas, we have been actively involved in supporting and providing resources to our members and constituents in

light of the increasingly hostile climate for transgender youth and their families in the state over the last few years. This includes PFLAG joining litigation on behalf of our members in order to protect them from Governor Abbott's directive deeming all affirming health care for transgender adolescents, regardless of medical necessity, to be "child abuse" and the Texas Department of Family and Protective Services' ("DFPS") subsequent adoption and implementation of that directive to investigate parents alleged to be helping their children access such care. Suddenly the very thing we know to be good for LGBTQ+ children—supporting and loving your child for who they are and ensuring they receive care they need to thrive—was a reason to be reported and subjected to an intrusive and traumatic investigation.

12. In September 2022, the Travis County District Court issued an injunction blocking DFPS from carrying out this directive, protecting PFLAG member families from investigation. Although the State appealed that injunction, the Court of Appeals reinstated its protections shortly thereafter. That case is still pending, but at least PFLAG families are presently protected from being investigated for child abuse based solely on allegations they sought medically necessary care for their transgender or nonbinary child.

13. This brief sigh of relief we felt from the DFPS Rule being enjoined ended when SB 14 was signed into law on June 2, 2023. PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposition regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and

nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming medical care or leave the state as a result of SB14. Requests for mental health care providers have skyrocketed, as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents' existing mental health issues connected to their gender dysphoria. Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date. And chapter leaders have heard concerns about the impacts on transgender and non-binary youth in the foster care system, who receive health care coverage through Medicaid and will lose coverage for their medical care for gender dysphoria if SB14 goes into effect.

14. SB 14 subjects PFLAG's Texas members with a transgender or nonbinary child in need of gender-affirming medical care to a substantial risk of harm. PFLAG has members in Texas whose children are being or will be monitored for the appropriate time to begin puberty blockers, are currently or soon will be on puberty blockers, and are currently or soon will be on hormone therapy, all as part of a medically prescribed course of care for gender dysphoria. Some of those families are being harmed right now by SB 14's passage, whether because they have had appointments for scheduled care cancelled, are losing access to healthcare providers who are moving their practice out of state or ending their provisions of gender-affirming care for fear of

losing their medical licenses or state funding, or have otherwise had their imminent plans to obtain the established course of medically necessary care for their transgender or nonbinary children disrupted or foreclosed.

15. Other current and future PFLAG members with transgender or nonbinary children face a substantial risk of being harmed if SB 14 goes into effect, including being denied the right to make medical decisions for their child because the care their child's healthcare providers have declared medically necessary for them has been deemed unlawful, being prevented from obtaining the puberty blockers or hormone therapy their child needs solely because they are treatment for gender dysphoria, or losing coverage for care that has previously been covered under state funded health plans. SB 14 will force PFLAG families who have seen their children thrive as a result of medical care to treat their gender dysphoria to stop providing that care, putting those children at risk of serious mental and physical harm—the very reasons those families sought medical care in the first place.

16. While SB 14 has caused or will cause some PFLAG families to leave Texas entirely or to have to access the medically necessary care their transgender or nonbinary child needs in another state, the logistical and financial costs of doing so are incredibly high. No family should be forced to leave their home, jobs, or community or to split up their family to access the established course of medical care for their child's health condition, but SB14 is putting Texas PFLAG families in exactly that position. For countless others, those costs are simply too high; thus SB 14 leaves those transgender and nonbinary Texas youth and their families with no way to access the medically necessary care they need. Parents are prioritizing their children's mental and physical health, but SB14 will strip them of the ability to make the

decisions that they, their children, and their children's medical providers know are in their best interests. SB14 will put these adolescents' lives at risk.

17. Although these members could challenge SB 14 in their own right—as the other Plaintiff families are doing—PFLAG brings claims on behalf of its members to represent their interests to shield them from harm, to vindicate their rights to make the medical decisions they, their child, and their medical providers know to be in their child's best interests, and to allow them to maintain their focus on their child's health and wellbeing rather than litigation.

18. Representing the interests of these members in challenging SB 14 is directly connected to PFLAG's mission in two ways. First, that mission includes encouraging and supporting parents and families of transgender and gender non-conforming people in affirming their children and helping them access the social, psychological, and medical supports they need. We work with our families to encourage love and support of their transgender and gender non-conforming children and to help them ensure that the children's needs are met. The provisions of SB 14 send the opposite message and prevent families from meeting their child's needs. SB 14 bars families from supporting their child's affirmation of their gender identity by seeking the established medically necessary care that has been prescribed for them, depriving youth of medically necessary gender-affirming care, resulting in anxiety, depression, and other negative health outcomes associated with denying or cutting off medically necessary care. In order to fulfill our mission to our members, we must fight back against a law that prevents them from doing the very thing we encourage because we know it is in the best interests of the children.

19. Second, we teach our members to advocate for a caring, just, and affirming world where LGBTQ+ people are safe, celebrated, empowered, and loved, and to advocate for equitable laws and policies that protect them. We have spoken out against bans on medically

necessary care for youth with gender dysphoria such as SB 14 because they directly conflict with parents' abilities to act in their children's best interest and do nothing to protect the health and well-being of youth or anyone who needs access to medical care. SB 14 is the antithesis of an equitable law, interfering with and obstructing decisions made between PFLAG parents, their child, and their child's provider to deprive that child of care that is proven to be safe, medically sound, and necessary for treating gender dysphoria. As an organization dedicated to parents and families of LGBTQ+ youth, we cannot in good faith sit back as our members' fundamental rights to make decisions about their child's medical care are infringed solely because their child is transgender or nonbinary.

20. PFLAG exists to foster a world where LGBTQ+ children can become thriving, healthy, and happy LGBTQ+ adults. Our members depend on us to provide support and community for them in a society that often still treats their children as second-class citizens, attempts to silence them, or denies their very existence. For our members who have transgender and nonbinary children and are doing nothing more than loving them and following the advice of qualified medical professionals, PFLAG is here to do all we can to support them in those efforts and protect them from harmful, invasive laws like SB 14.

Brian K. Bond
Executive Director, PFLAG, Inc.

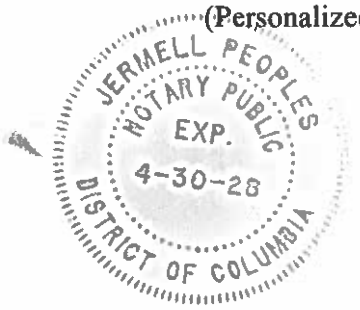
**Notary Verification**

District of Columbia

Brian K. Bond personally appeared before me, and being first duly sworn declared that he signed this declaration in the capacity designated, if any, and further states that he has read the above declaration and the statements therein contained are true.

Sworn to and subscribed before me on the 11th day of July 2023, by Brian K. Bond.

(Personalized Seal)




Notary Public's Signature

# EXHIBIT 3

STATE OF TEXAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

# CIVIL INVESTIGATIVE DEMAND

**TO:** Susan Thronson
*President*
Brian K. Bond
*Chief Executive Officer*
PFLAG, Inc.
1625 K Street NW #700
Washington, DC 20006

***via CMRRR:*** ~~*[ADD HERE*~~[to be completed]
***via First Class Mail***

Registered Agents Inc.
1401 21st Street, Suite R
Sacramento, CA 95811

***via CMRRR:*** ~~*[ADD HERE*~~[to be completed]
***via First Class Mail***

Pursuant to this Office's specific authority under section 17.61 of the Texas Deceptive Trade Practices—Consumer Protection Act, Texas Business & Commerce Code §§ 17.41–17.63 ("DTPA"), PFLAG, Inc. ("PFLAG"), a ~~Nonprofit Corporation~~nonprofit corporation, is hereby directed to produce the items listed in Exhibit "B" attached hereto. Such production is governed by the Instructions and Definitions set forth in Exhibit "A" on this page and subsequent pages.

You are to make available the documentary material described in Exhibit "B" to the undersigned Assistant Attorney General or other authorized agent(s) identified by the Consumer Protection Division ("Division"). This documentary material shall be produced for inspection and copying during normal business hours at your principal office or place of business, or may be sent electronically or by certified mail to the Office of the Attorney General, 300 W. 15th Street, 9th Floor, Austin, TX 78701 and is due on ~~**Monday, February 26,**~~April __, 2024. If providing documents electronically, please provide them to Sam Weeks at Samuel.Weeks@oag.texas.gov.

The Division believes that you are in possession, custody, or control of documentary material relevant to the subject matter of an investigation of actual or possible violations of DTPA section 17.46 ~~for issues related to~~involving potential misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.

~~**TAKE NOTICE THAT pursuant to section 17.62, Texas Business and Commerce Code, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material is guilty of a misdemeanor and, on conviction, is punishable by a fine of not more than $5,000.00, by confinement in the county jail for not more than one year, or both.**~~

This Civil Investigative Demand ("CID") shall formally supersede the CID previously issued on February 5, 2024 by the Division. The original February 5, 2024 CID is officially withdrawn and the sole CID issued to PFLAG with the force and effect of law is the foregoing.

**TAKE NOTICE THAT pursuant to section 17.62, Texas Business and Commerce Code, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material may be guilty of a misdemeanor and on conviction is punishable by a fine of not more than $5,000.00 or by confinement in the county jail for not more than one year, or both.**

**ISSUED THIS** ~~5th~~ th day of ~~February~~ _____2024.

~~/s/ *David Shatto*~~

_____

DAVID SHATTO, Assistant Attorney General
Consumer Protection Division, OAG
T: (512) 463.2185 | F: (512) 370.9125
David.Shatto@oag.texas.gov

Other Authorized Agent:
Sam Weeks, Investigator
Consumer Protection Division, OAG
T: (512) 936.0501 | F: (512) 370.9125
Samuel.Weeks@oag.texas.gov

# EXHIBIT A:
## INSTRUCTIONS

1. **Read These Instructions~~/~~ and Definitions Carefully.** Your production must comply with these instructions and definitions.

2. Unless the context clearly indicates otherwise, words used in the singular include the plural, the plural includes the singular, and the neutral includes the masculine and feminine.

3. **Duty to Preserve Documents.** All documents and/or other data which relate to the subject matter or requests of this ~~Civil Investigative Demand~~CID must be preserved. ***Any ongoing, scheduled, or other process of document or data destruction involving such documents or data must cease, even if it is your normal or routine course of business ~~for you~~ to delete or destroy such documents or data ~~and~~or even if you believe such documents or data are privileged or otherwise protected from ~~discovery by privilege or otherwise~~disclosure.*** Failure to preserve such documents or data may result in legal action and may be regarded as spoliation of evidence under applicable law.

4. **Relevant Time Period.** Unless otherwise noted, the requests ~~in this Civil Investigative Demand~~herein require production of documents from March 8, 2023, to the date of the last production of documents in made response to this ~~Civil Investigative Demand, herein called the "Relevant Time Period."~~CID.

5. **Custody and Control.** In responding to ~~this Civil Investigative Demand~~the CID, you are required to produce ~~not only~~ all ~~requested~~responsive documents in your ~~physical~~ possession, ~~but also all requested documents within your custody and~~custody, or control. A document is ~~in~~within your custody ~~and~~or control if it is in the possession of another person and you have a right to possess that document that is equal or superior to that other person's right of possession. ~~On the rare occasion that you cannot obtain the document, you must provide an explanation as to why you cannot obtain the document which includes the following information:~~

~~a. the name of each author, sender, creator, and initiator of such document;~~
~~b. the name of each recipient, addressee, or party for whom such document was intended;~~
~~c. the date the document was created;~~
~~d. the date(s) the document was in use;~~
~~e. a detailed description of the content of the document;~~
~~f. the reason it is no longer in your possession, custody, or control; and~~

~~g. the document's present whereabouts.~~

~~If the document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the document was destroyed or otherwise disposed of, and the date and manner of the destruction or disposal.~~

6. **Non-~~identical~~Identical Copies ~~to be Produced.~~ or Drafts.** Any copy or draft of a document that differs in any manner, including the presence of handwritten notations, different senders or recipients, etc~~. must be~~., from the original version shall be considered a distinct document and produced.

7. ~~**No Redaction**. All~~**Permitted Redactions for Member Identifying Information.** In general, all materials or documents ~~produced in response~~responsive to this ~~Civil Investigative Demand~~CID shall be produced in complete unabridged, unedited, and unredacted form, even if portions may contain information not explicitly requested~~,~~ or ~~might include~~may reflect interim or final ~~editions~~portions of ~~a document.~~documents or materials.

Unlike the February 5, 2024 CID, the foregoing, operative CID does ***not*** request that PFLAG produce documents and information disclosing the identify of its Members and/or actual membership lists, either in whole or in part, in any form. For this reason, PFLAG may elect to redact or anonymize any portion of a document otherwise within the scope of the CID that contains information disclosing or providing the identity of any Member. Any questions related to the precise information that PFLAG may redact at its own election should be directed the Office of the Attorney General representatives above.

8. **Document Organization.** Each document and other tangible thing produced shall be clearly designated as to which request, and each sub-part of a request, that it satisfies. The documents produced shall be identified and segregated to correspond with the number and subsection of the request.

9. **Production ~~of Documents.~~ Format.** You may submit photocopies (with color photocopies where necessary to interpret the document) in lieu of original hard-copy documents if the photocopies provided are true, correct, and complete copies of the original documents. If the requested information is electronically stored information, it shall be produced in electronic form. Electronically stored information shall be produced with the accompanying metadata, ~~codes~~TIFF images, native files, load files, and programs necessary for ~~translating it~~processing into ~~usable form, or the information shall be produced in a finished~~ usable form. For any questions related to the production of documents you may consult with the Office of the Attorney General representatives above.

~~10.~~ **Privilege Log.** ~~For each Document and any~~document or other requested information that you assert is privileged or ~~for any other reason excludable~~otherwise protected from ~~production~~disclosure, please provide a privilege log~~, wherein you:~~

~~a. Identify that Document and other requested~~ with a numerical list of the document(s), thing(s), or information~~;~~

~~b. State each specific ground~~ for ~~the claim of~~which privilege or ~~other ground for exclusion and the facts supporting each claim of privilege or other ground for exclusion;~~

~~11.~~10. ~~State the date of the Document or other requested~~protection from disclosure is claimed is claim, and for each item detailed and non-conclusory information~~; the name, job title, and address (~~ that demonstrates a prima facie claim for privilege and protection, including ~~city, state and ZIP Code) of the person who prepared it; the name, address (including city, state, and ZIP Code), and job title of the person to whom it was addressed or circulated or who saw it; and the name, job title, and address (including city, state, and ZIP Code) of the person now in possession of it; and~~but not limited to, the following:

a. ~~Describe~~The name of the ~~type~~custodian of the withheld materials;

b. The name of each author, writer, sender, and creator of the materials;

c. The name of each recipient, addressee, and copyee for whom the materials were intended, if any;

d. The date the materials were created;

e. The general subject matter of the ~~Document or other requested information~~materials; and

~~a.~~f. The factual and legal bases for the claim.

## DEFINITIONS

1. **"You," "your," and "Your," "PFLAG, Inc.," (also referred to herein as the "Company")** means the entity named on page one of this Civil Investigative DemandCID, with an address of 1625 K Street NW #700, Washington, DC 20006, and a registered agent at Registered Agents Inc., at 1401 21st Street, Suite R, Sacramento, CA 95811, and includes its past and present directors, officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, Affiliatesaffiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidancecontrol of or on behalf of any of the above. The terms "subsidiary," "Affiliateaffiliate," and "joint venture" refer to any firmentity in which there is total or partial ownership (25 percent or more) or control between the CompanyPFLAG and any other person or entity.

2. The words **"and"** and **"or"** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.

2. The terms **"and/or," "and,"** and **"or"** refer to all listed categories inclusively, not exclusively (i.e., not the option of producing one group of documents, or another, nor of producing documents for one group of the listed persons, but not others). The conjunctive "and" shall be deemed to include the disjunctive "or" and vice versa.

3. **"Affiliate(s)"** includes, but is not limited to, PFLAG Tyler/ East Texas; PFLAG Houston; PFLAG Dallas, Inc.; PFLAG Fort Worth, Inc.; PFLAG San Antonio; PFLAG Odessa; PFLAG Denton; PFLAG Seguin; PFLAG Longview; PFLAG Boerne; PFLAG Corpus Christi; PFLAG Midland-Odessa; PFLAG Georgetown; PFLAG Amarillo; PFLAG Mesquite; PFLAG of the Big Country; PFLAG-Kerr County; PFLAG Brownsville Chapter; PFLAG Beaumont Chapter; PFLAG San Marcos, Inc.; PFLAG Brenham Chapter; PFLAG San Angelo; PFLAG Huntsville TX; PFLAG Corpus Christi, Texas, Chapter; PFLAG/HATCH YOUR SCHOLARSHIP FOUNDATION; PFLAG San Juan, Chapter of PFLAG; PFLAG of Montgomery (Parents, Families and Friends of Lesbians and Gays;); and any other similarly related entity registered in Texas, either domestic or foreign.

4. "**Communication**" means any conversation, discussion, letter, email, correspondence, memorandum, meeting, note, or other transmittal of information or message, whether transmitted in writing, orally, electronically, or by any other means.

5. "**Document**" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced, or stored (manually, mechanically, electronically, or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail (e-

~~mail), instant messages, text messages or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices, and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof.~~

5. **"Document"** shall be construed in the broadest sense possible and encompasses any electronically stored information, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by PFLAG into a reasonably usable form. Although it does not limit the scope of this CID, the definition and interpretation of "document" under the Texas Rules of Civil Procedural provides a useful reference point.

6. **"Gender Transitioning and Reassignment Treatments and Procedures"** means any and all procedures or treatments for the purpose of "transitioning" a ~~Child's~~child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex~~, including~~. This definition includes, but is not limited to, surgeries or procedures that result in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue, the provision of medications that induce transient or permanent infertility (~~including~~such as puberty suppressing and blocking drugs or supraphysiologic doses of testosterone to females and estrogen to males), and any other treatments, therapies, or procedures ~~that are~~ provided to address gender identity disorder, gender dysphoria, and any other similar or related conditions.

~~7. "**Identify**" means the following:~~

~~a. With respect to a natural Person, the complete name, any alias(es), social security number, date of birth, occupation, title(s), job responsibilities, street and mailing address for both home and business at the time in question and at the time of responding (if different), home, cellular, and business telephone numbers, and personal and business email addresses;~~

~~b. With respect to a business or an entity, its name(s), business address(es), legal address(es), state(s) of incorporation, registered or unregistered tradename(s), name(s) under which it does business, or any other associated name(s), electronic email domains and websites operated by the entity, tax identification number(s), and the identity of its agent(s) for the service of process; and~~

~~c. With respect to a Document, its Bates or other sequential notation, title, date, location, author(s), signatory(ies), recipient(s), description (*e.g.*, memorandum, letter, contract, form), the number of pages, and a summary of the contents.~~

~~8. "**Person**" includes You and means any entity or natural person.~~

7. **"Members"** includes individuals who pay dues for purposes of joining or associating with PFLAG's national chapter or any local chapter. For purposes of this CID, the term shall be broadly construed to encompass donors to PFLAG and individuals who directly participated in PFLAG's official programs, events, and services. However, "Members" does not include PFLAG's professional staff and non-PFLAG entities with whom the organization associates.

8. "**Person**" includes you and encompasses an entity or natural person.

# EXHIBIT B:
## DOCUMENTS TO BE PRODUCED

In accordance with the requirements set forth ~~in the "Definitions"~~above and ~~"Instructions" sections of this Civil Investigative Demand, You are specifically required to~~provided for under Texas law, PFLAG must respond in writing ~~to each of~~and produce documents responsive the following Requests within ~~the time frame set forth below:~~twenty (20) days.

~~**Produce within 20 days:**~~

1. ~~-~~All ~~Documents~~documents and ~~Communications~~communications that form the basis of, or otherwise relate to, Brian K. Bond's personal knowledge of the information ~~contained in~~stated in paragraphs 7 and 13 of the affidavit attached hereto as "EXHIBIT B1."

2. All ~~Communications~~communications to, or from, ~~any PFLAG representative~~PFLAG's professional staff, non-members, or Affiliates regarding, relating to, or referencing, "contingency plans" and/or "alternative avenues to maintain care," as those phrases are used in the affidavit attached hereto as "EXHIBIT B1."

3. All recommendations, referrals, and/or lists of pediatric and/or adolescent ~~"~~health care providers~~" (as that term is used in paragraph 13 of the affidavit attached hereto as "EXHIBIT B1")~~ in Texas~~,~~ that PFLAG (or any of its ~~representatives~~professional staff or affiliates) has created, maintained, received, or distributed since March 8, 2023.

~~4. All Communications to, or from, Brian K. Bond regarding, or relating to, the contents and preparation of the affidavit attached hereto as "EXHIBIT B1."~~

~~5.~~4. In reference to the affidavit attached hereto as "EXHIBIT B1," produce ~~all Documents~~documents, meeting minutes, and ~~Communications that support Brian K. Bond's sworn~~communications sufficient to show the factual basis for the statement that "PFLAG families with transgender and nonbinary adolescents … have been asking chapters for alternative avenues to maintain care in Texas.~~""~~" (with PFLAG having the option to redact identifying member information in the manner described in Instruction No. 7).

~~6.~~5. All ~~Communications~~communications to, or from, ~~any PFLAG representative~~PFLAG's professional staff, non-members, or Affiliates regarding, relating to, or referencing any of the individuals or entities identified in the document attached ~~here to~~hereto as "EXHIBIT B2" since March 8, 2023.

~~7.~~6. ~~Any and all~~All contractual and charter agreements between PFLAG's Texas chapters and national chapter.

~~8.~~7. The governing documents and bylaws of PFLAG's Texas chapters and national chapter.

| | | |
|---|---|---|
| **LAZARO LOE, *et al.*** | § | **IN THE DISTRICT COURT OF** |
| **Plaintiffs** | § | **TRAVIS COUNTY, TEXAS** |
| **v.** | § | **_____ JUDICIAL DISTRICT** |
| **STATE OF TEXAS, *et. al*,** | § | |
| **Defendants.** | § | |

## AFFIDAVIT OF BRIAN K. BOND

I, Brian K. Bond, hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am the Executive Director of PFLAG, Inc. ("PFLAG"). Founded in 1973, PFLAG is the first and largest organization for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") people, their parents and families, and allies. We are a 501(c)(3) non-profit organization.

3. PFLAG has over 350 chapters across the country and approximately 325,000 members and supporters nationwide. Our members and supporters cross multiple generations of families in major urban centers, small cities, and rural areas across America. PFLAG envisions an equitable and inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved. Our mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them.

4. Our founder, Jeanne Manford, marched with her son Morty in the 1972 Christopher Street Liberation Day March in New York City and created the very first support group for parents and families of LGBTQ+ people in 1973. Supporting LGBTQ+ young people by supporting and strengthening their families has been a core part of our work ever since. Today, the gold-standard advocated by PFLAG parents and families—and set forth by pediatricians and therapists—is to accept, support, and affirm LGBTQ+ people's sexual orientation and/or gender identity and expression; parental rejection is widely understood to be abusive and damaging.

5. We know, too, that LGBTQ+ youth thrive when supported in their schools and community. So, our work also includes ending bullying, discrimination, and harassment in educational settings by providing training for teachers, administrators, and district leaders, and advocating in the public square to ensure LGBTQ+ people are treated fairly and equally when accessing public accommodations and health care.

6. We know that change happens and support grows one interaction at a time, one family at a time.

7. PFLAG is a national membership organization and we have local chapters in 49 states and the District of Columbia. Our chapters in Texas include PFLAG Amarillo, PFLAG Austin, PFLAG Beaumont, PFLAG Boerne, PFLAG Brenham, PFLAG Dallas, PFLAG El Paso, PFLAG Fort Worth, PFLAG Georgetown, PFLAG Houston, PFLAG Lubbock, PFLAG Mesquite, PFLAG Midland/Odessa, PFLAG Montgomery, PFLAG San Antonio, PFLAG San Marcos, PFLAG Seguin, and PFLAG Tyler/East Texas.

8. PFLAG's membership is comprised of chapter members and national members. Individuals can become a PFLAG member by joining the national organization directly or by

joining their local chapter, which sends a portion of the member's dues to PFLAG National, also making them national members. In addition to our formal members, PFLAG serves thousands of community members through our programs, events, and services every year.

9. PFLAG's members play a central role in electing our organizational leadership. Of the 21 members of the PFLAG National Board of Directors, seven are elected directly by our membership. Seven more are elected by the Regional Directors Council, a body of 13 volunteers who are themselves each elected by the members of one of PFLAG's thirteen regions to work with PFLAG National staff to provide support, resources, training, and help to start new affiliates, and to share the perspectives and activities of members with PFLAG National staff. The remaining seven are elected by the Board itself.

10. As Executive Director, I am the leader of the professional staff who carry out the work of the PFLAG National office, including supporting the development and work of the PFLAG Chapter Network and promoting PFLAG's presence in the national arena, including through policy advocacy, coalitions with organizations who share our goals, developing trainings and educational materials, and engaging with the media. Supporting the PFLAG Chapter Network is PFLAG National's largest program and our national staff works closely with chapter leaders and members across the country to reinforce their efforts to establish and grow their chapters, providing them with infrastructure, publications, online learning tools, advocacy support, media training, and countless other services and supports.

11. Because promoting the wellbeing of LGBTQ+ youth through encouraging and supporting love and affirmation by their families is a core part of our mission and because we have an extensive network of chapters and nearly 1500 members who live in Texas, we have been actively involved in supporting and providing resources to our members and constituents in

light of the increasingly hostile climate for transgender youth and their families in the state over the last few years. This includes PFLAG joining litigation on behalf of our members in order to protect them from Governor Abbott's directive deeming all affirming health care for transgender adolescents, regardless of medical necessity, to be "child abuse" and the Texas Department of Family and Protective Services' ("DFPS") subsequent adoption and implementation of that directive to investigate parents alleged to be helping their children access such care. Suddenly the very thing we know to be good for LGBTQ+ children—supporting and loving your child for who they are and ensuring they receive care they need to thrive—was a reason to be reported and subjected to an intrusive and traumatic investigation.

12. In September 2022, the Travis County District Court issued an injunction blocking DFPS from carrying out this directive, protecting PFLAG member families from investigation. Although the State appealed that injunction, the Court of Appeals reinstated its protections shortly thereafter. That case is still pending, but at least PFLAG families are presently protected from being investigated for child abuse based solely on allegations they sought medically necessary care for their transgender or nonbinary child.

13. This brief sigh of relief we felt from the DFPS Rule being enjoined ended when SB 14 was signed into law on June 2, 2023. PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposition regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and

nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming medical care or leave the state as a result of SB14. Requests for mental health care providers have skyrocketed, as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents' existing mental health issues connected to their gender dysphoria. Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date. And chapter leaders have heard concerns about the impacts on transgender and non-binary youth in the foster care system, who receive health care coverage through Medicaid and will lose coverage for their medical care for gender dysphoria if SB14 goes into effect.

14. SB 14 subjects PFLAG's Texas members with a transgender or nonbinary child in need of gender-affirming medical care to a substantial risk of harm. PFLAG has members in Texas whose children are being or will be monitored for the appropriate time to begin puberty blockers, are currently or soon will be on puberty blockers, and are currently or soon will be on hormone therapy, all as part of a medically prescribed course of care for gender dysphoria. Some of those families are being harmed right now by SB 14's passage, whether because they have had appointments for scheduled care cancelled, are losing access to healthcare providers who are moving their practice out of state or ending their provisions of gender-affirming care for fear of

losing their medical licenses or state funding, or have otherwise had their imminent plans to obtain the established course of medically necessary care for their transgender or nonbinary children disrupted or foreclosed.

15. Other current and future PFLAG members with transgender or nonbinary children face a substantial risk of being harmed if SB 14 goes into effect, including being denied the right to make medical decisions for their child because the care their child's healthcare providers have declared medically necessary for them has been deemed unlawful, being prevented from obtaining the puberty blockers or hormone therapy their child needs solely because they are treatment for gender dysphoria, or losing coverage for care that has previously been covered under state funded health plans. SB 14 will force PFLAG families who have seen their children thrive as a result of medical care to treat their gender dysphoria to stop providing that care, putting those children at risk of serious mental and physical harm—the very reasons those families sought medical care in the first place.

16. While SB 14 has caused or will cause some PFLAG families to leave Texas entirely or to have to access the medically necessary care their transgender or nonbinary child needs in another state, the logistical and financial costs of doing so are incredibly high. No family should be forced to leave their home, jobs, or community or to split up their family to access the established course of medical care for their child's health condition, but SB14 is putting Texas PFLAG families in exactly that position. For countless others, those costs are simply too high; thus SB 14 leaves those transgender and nonbinary Texas youth and their families with no way to access the medically necessary care they need. Parents are prioritizing their children's mental and physical health, but SB14 will strip them of the ability to make the

decisions that they, their children, and their children's medical providers know are in their best interests. SB14 will put these adolescents' lives at risk.

17. Although these members could challenge SB 14 in their own right—as the other Plaintiff families are doing—PFLAG brings claims on behalf of its members to represent their interests to shield them from harm, to vindicate their rights to make the medical decisions they, their child, and their medical providers know to be in their child's best interests, and to allow them to maintain their focus on their child's health and wellbeing rather than litigation.

18. Representing the interests of these members in challenging SB 14 is directly connected to PFLAG's mission in two ways. First, that mission includes encouraging and supporting parents and families of transgender and gender non-conforming people in affirming their children and helping them access the social, psychological, and medical supports they need. We work with our families to encourage love and support of their transgender and gender non-conforming children and to help them ensure that the children's needs are met. The provisions of SB 14 send the opposite message and prevent families from meeting their child's needs. SB 14 bars families from supporting their child's affirmation of their gender identity by seeking the established medically necessary care that has been prescribed for them, depriving youth of medically necessary gender-affirming care, resulting in anxiety, depression, and other negative health outcomes associated with denying or cutting off medically necessary care. In order to fulfill our mission to our members, we must fight back against a law that prevents them from doing the very thing we encourage because we know it is in the best interests of the children.

19. Second, we teach our members to advocate for a caring, just, and affirming world where LGBTQ+ people are safe, celebrated, empowered, and loved, and to advocate for equitable laws and policies that protect them. We have spoken out against bans on medically

necessary care for youth with gender dysphoria such as SB 14 because they directly conflict with parents' abilities to act in their children's best interest and do nothing to protect the health and well-being of youth or anyone who needs access to medical care. SB 14 is the antithesis of an equitable law, interfering with and obstructing decisions made between PFLAG parents, their child, and their child's provider to deprive that child of care that is proven to be safe, medically sound, and necessary for treating gender dysphoria. As an organization dedicated to parents and families of LGBTQ+ youth, we cannot in good faith sit back as our members' fundamental rights to make decisions about their child's medical care are infringed solely because their child is transgender or nonbinary.

20. PFLAG exists to foster a world where LGBTQ+ children can become thriving, healthy, and happy LGBTQ+ adults. Our members depend on us to provide support and community for them in a society that often still treats their children as second-class citizens, attempts to silence them, or denies their very existence. For our members who have transgender and nonbinary children and are doing nothing more than loving them and following the advice of qualified medical professionals, PFLAG is here to do all we can to support them in those efforts and protect them from harmful, invasive laws like SB 14.

Brian K. Bond
Executive Director, PFLAG, Inc.

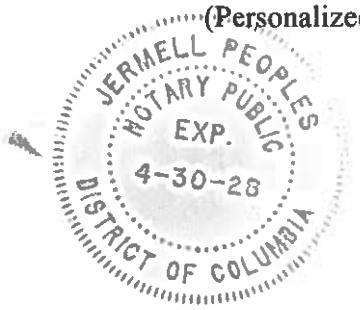
**Notary Verification**

District of Columbia

Brian K. Bond personally appeared before me, and being first duly sworn declared that he signed this declaration in the capacity designated, if any, and further states that he has read the above declaration and the statements therein contained are true.

Sworn to and subscribed before me on the 11th day of July 2023, by Brian K. Bond.

(Personalized Seal)




Notary Public's Signature

**EXHIBIT B2**

Texas Children's Hospital

Baylor College of Medicine

Seattle Children's Hospital

QMed/QueerMed

QueerDoc

Plume Health, P.C.

# EXHIBIT 4

STATE OF TEXAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

**NOTICE OF DEMAND FOR SWORN WRITTEN STATEMENT**

**TO:** Susan Thronson
*President*
Brian K. Bond
*Chief Executive Officer*
PFLAG, Inc.
1625 K Street NW #700
Washington, DC 20006

***via CMRRR:*** **[~~*ADD HERE*~~to be completed]**
***via First Class Mail***

Registered Agents Inc.
1401 21st Street, Suite R
Sacramento, CA 95811

***via CMRRR:*** **[~~*ADD HERE*~~to be completed]**
***via First Class Mail***

The Consumer Protection Division has reason to believe that a "person," as defined by the DTPA, is engaging in, has engaged in, or is about to engage in an act or practice declared unlawful by the DTPA. Pursuant to section 17.60 of the Texas Deceptive Trade Practices—Consumer Protection Act, §§ 17.41 *et seq.*, Tex. Bus. & Com. Code ("DTPA"), PFLAG, Inc. ("PFLAG") is hereby directed to file on the prescribed form provided herein written answers under oath to the requests found in Exhibit "B."

The information requests must be answered fully, correctly, and under oath, in accordance with the "Definitions and Instructions" set forth in Exhibit "A." Your sworn written answers must be returned to the undersigned attorney general on or before ~~**Monday, February 26,**~~April __, 2024. You may change the terms of this notice of demand for sworn written statement only by written agreement with an authorized Texas assistant attorney general or by court order. If providing documents electronically, please provide them to Sam Weeks at Samuel.Weeks@oag.texas.gov.

This demand for sworn written statement is relevant to the subject matter of an investigation regarding possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures.

~~**TAKE NOTICE THAT pursuant to § 17.62, Texas Business & Commerce Code, any person who with intent to avoid, evade, or prevent compliance, in whole or in part, with this examination under oath, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any relevant documentary material may be guilty of a misdemeanor that, upon conviction, is punishable by a fine of not more than $5,000.00 or by confinement in the county jail for not more than one year, or both.**~~

This Demand for Sworn Written Statement ("DSWS") formally supersedes the DSWS issued by the Division on February 5, 2024. The Division officially withdraws the February 5, 2024 DSWS and waives any and all rights thereunder, including enforcement. The sole DSWS issued to PFLAG with the current force and effect of law is the following.

**ISSUED THIS** ~~5th~~ __th day of ~~February~~ _____ 2024.

~~*/s/ David Shatto*~~

DAVID SHATTO, Assistant Attorney General
Consumer Protection Division, OAG
T: (512) 463.2185 | F: (512) 370.9125
David.Shatto@oag.texas.gov

Other Authorized Agent:
Sam Weeks, Investigator
Consumer Protection Division, OAG
T: (512) 936.0501 | F: (512) 370.9125
Samuel.Weeks@oag.texas.gov

# EXHIBIT A:
## DEFINITIONS AND INSTRUCTIONS

1. **"You," "Your,"** ~~**"PFLAG, Inc.," and/or "PFLAG," (also referred to herein as the "Company")**~~ **and "PFLAG"** means the entity named on page one of this Demand for Sworn Written Statement, with an address at 1625 K Street NW #700, Washington, DC 20006, and a registered agent at Registered Agents Inc., at 1401 21st Street, Suite R, Sacramento, CA 95811, and includes its past and present officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, ~~Affiliates~~affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidance or on behalf of any of the above. The terms "subsidiary," "~~Affiliate~~affiliate," and "joint venture" refer to any firm in which there is total or partial ownership (25 percent or more) or control between the Company and any other person or entity.

~~2. The words **"and"** and **"or"** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.~~

2. The terms **"and/or," "and,"** and **"or"** refer to all listed categories inclusively, not exclusively (i.e., not the option of producing one group of documents, or another, nor of producing documents for one group of the listed persons, but not others). The conjunctive "and" shall be deemed to include the disjunctive "or" and vice versa.

3. **"Affiliate(s)"** includes, but is not limited to, PFLAG Tyler/ East Texas; PFLAG Houston; PFLAG Dallas, Inc.; PFLAG Fort Worth, Inc.; PFLAG San Antonio; PFLAG Odessa; PFLAG Denton; PFLAG Seguin; PFLAG Longview; PFLAG Boerne; PFLAG Corpus Christi; PFLAG Midland-Odessa; PFLAG Georgetown; PFLAG Amarillo; PFLAG Mesquite; PFLAG of the Big Country; PFLAG-Kerr County; PFLAG Brownsville Chapter; PFLAG Beaumont Chapter; PFLAG San Marcos, Inc.; PFLAG Brenham Chapter; PFLAG San Angelo; PFLAG Huntsville TX; PFLAG Corpus Christi, Texas, Chapter; PFLAG/HATCH YOUR SCHOLARSHIP FOUNDATION; PFLAG San Juan, Chapter of PFLAG; PFLAG of Montgomery (Parents, Families and Friends of Lesbians and Gays; and any other similarly related entity registered in Texas, either domestic or foreign.

4. **"Gender Transitioning and Reassignment Treatments and Procedures"** means any and all procedures or treatments for the purpose of "transitioning" a Child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex~~, including~~. This definition includes, but is not limited to, surgeries or procedures that result in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue, the provision of medications that induce transient or permanent infertility (including puberty suppressing and blocking drugs or supraphysiologic doses of testosterone to females and estrogen to males), and any other treatments, therapies, or procedures that are provided to address gender identity disorder, gender dysphoria, and any other similar or related conditions.

~~5. "**Identify**" means the following:~~

~~a. With respect to a natural Person, the complete name, any alias(es), social security number, date of birth, occupation, title(s), job responsibilities, street and mailing address for both~~

~~home and business at the time in question and at the time of responding (if different), home, cellular, and business telephone numbers, and personal and business email addresses;~~

~~b. With respect to an entity, its name(s), business address(es), legal address(es), state(s) of incorporation, registered or unregistered tradename(s), name(s) under which it does business, or any other associated name(s), electronic email domains and websites operated by the entity, tax identification number(s), and the identity of its agent(s) for the service of process;~~

~~c. With respect to a Document, its Bates or other sequential notation, title, date, location, author(s), signatory(ies), recipient(s), description (*e.g.*, memorandum, letter, contract, form), the number of pages, and a summary of the contents;~~

~~d. With respect to a Communication, the persons participating in the Communication, state the date, time, manner, place, means and substance of the Communication, and also the Document or Documents which refer to the Communication; and~~

~~e. With respect to an event or sequence of events, the date, place, and time of the event or sequence of events, the persons involved, and the facts related to the substance of the particular interrogatory.~~

~~6.~~5. **"Including"** means including, but not limited to.

~~7.~~6. **"Person"** includes ~~You~~you and means any entity or natural person.

~~8.~~7. **"Relevant Time Period"** Unless otherwise noted, the requests in this Civil Investigative Demand require production of documents from March 8, 2023, to the date of the production of documents in response to this Sworn Written Statement, herein called the "Relevant Time Period."

~~9.~~8. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

~~10.~~9. In answering the information requests contained in Exhibit B, you shall furnish such information as is available to you, not merely such information within your officers' or employees' personal knowledge. You are to furnish any and all responsive information to each information request in Exhibit B after diligent inquiry into all sources of information available to you.

~~11.~~10. In the event any matter in Exhibit B cannot be fully or precisely answered after the exercise of reasonable diligence, you shall furnish as complete and precise an answer as you can and explain in detail the reasons why you cannot give a full or precise answer, what is needed to be done in order to be in a position to fully and precisely provide the answer, and a time estimate as to when you will be able to provide a full and precise answer.

~~12.~~11. Each response in this sworn written statement must include all relevant information from the Relevant Time Period. If changes in the relevant information, Including processes, procedures, or policies, occurred during the Relevant Time Period, describe the manner and timeframe in which the relevant information changed.

12. **"Members"** includes individuals who pay dues or purposes of joining or associating with PFLAG's national chapter or any local chapter. For purposes of this Demand for Sworn Written Statement, the

term shall be broadly construed to encompass donors to PFLAG and individuals who directly participated in PFLAG's official programs, events and services.

13. The Division does not seek PFLAG's membership list, either full or partial, in any form. Therefore, at PFLAG's election, information that identifies a member may be redacted or otherwise anonymized.

~~13.~~14. At the end of your answers, you are required, under oath, to make and sign the following statement before a licensed notary:

STATE OF _____
COUNTY OF _____

My name is [FULL NAME]. I am over the age of 18 and capable of making this sworn statement. The preceding answers are within my personal knowledge and are true and correct.

_____
[FULL NAME]

Sworn and subscribed to before me this _____ day of _____, 2024.

[NOTARY STAMP AND NOTARY'S DATED SIGNATURE]

# EXHIBIT B
## INFORMATION REQUESTS TO BE ANSWERED UNDER OATH

~~1. Define the meaning of "gender-affirming medical care" as that phrase is used in the affidavit attached hereto as "EXHIBIT B1."~~

~~2. Define the meaning of "affirming general practitioners" as that phrase is used in the affidavit attached hereto as "EXHIBIT B1."~~

~~3.~~1. In reference to the affidavit attached hereto as "EXHIBIT B1," ~~Identify~~identify any "contingency plans" or "alternative avenues" that PFLAG identified, created, or shared with its members relating to obtaining and/or maintaining "gender-affirming medical care" in Texas.

~~4.~~ In reference to ~~Your response to Information Request No. 3 above, and separately for each "contingency plan" or "alternative avenue," Identify from whom PFLAG learned about such "contingency plans" or "alternative avenues."~~

~~5.~~2. ~~In reference to~~ the affidavit attached hereto as "EXHIBIT B1," ~~Identify~~identify any "contingency plans" or "alternative avenues" that PFLAG has discovered or learned about relating to "gender-affirming medical care" in Texas.

~~6. In reference to the affidavit attached hereto as "EXHIBIT B1," Identify all factual bases upon which Brian K. Bond made the sworn statement that he had personal knowledge that "PFLAG families with transgender and nonbinary adolescents shared their contingency plans – those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas."~~

~~In reference to the affidavit attached hereto as "EXHIBIT B1," Identify all factual bases upon which Brian K. Bond made the sworn statement that he had personal knowledge that "Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners…"~~

~~8.~~3. Identify every health care provider and/or facility, in Texas, to whom PFLAG has referred members since March 8, 2023.

~~9.~~4. Identify every health care provider and/or facility, in Texas, from whom PFLAG has been referred members since March 8, 2023.

| | | |
|---|---|---|
| **LAZARO LOE, *et al.*** | § | **IN THE DISTRICT COURT OF** |
| **Plaintiffs** | § | **TRAVIS COUNTY, TEXAS** |
| **v.** | § | **_____ JUDICIAL DISTRICT** |
| **STATE OF TEXAS, *et. al*,** | § | |
| **Defendants.** | § | |

## AFFIDAVIT OF BRIAN K. BOND

I, Brian K. Bond, hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am the Executive Director of PFLAG, Inc. ("PFLAG"). Founded in 1973, PFLAG is the first and largest organization for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") people, their parents and families, and allies. We are a 501(c)(3) non-profit organization.

3. PFLAG has over 350 chapters across the country and approximately 325,000 members and supporters nationwide. Our members and supporters cross multiple generations of families in major urban centers, small cities, and rural areas across America. PFLAG envisions an equitable and inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved. Our mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them.

4. Our founder, Jeanne Manford, marched with her son Morty in the 1972 Christopher Street Liberation Day March in New York City and created the very first support group for parents and families of LGBTQ+ people in 1973. Supporting LGBTQ+ young people by supporting and strengthening their families has been a core part of our work ever since. Today, the gold-standard advocated by PFLAG parents and families—and set forth by pediatricians and therapists—is to accept, support, and affirm LGBTQ+ people's sexual orientation and/or gender identity and expression; parental rejection is widely understood to be abusive and damaging.

5. We know, too, that LGBTQ+ youth thrive when supported in their schools and community. So, our work also includes ending bullying, discrimination, and harassment in educational settings by providing training for teachers, administrators, and district leaders, and advocating in the public square to ensure LGBTQ+ people are treated fairly and equally when accessing public accommodations and health care.

6. We know that change happens and support grows one interaction at a time, one family at a time.

7. PFLAG is a national membership organization and we have local chapters in 49 states and the District of Columbia. Our chapters in Texas include PFLAG Amarillo, PFLAG Austin, PFLAG Beaumont, PFLAG Boerne, PFLAG Brenham, PFLAG Dallas, PFLAG El Paso, PFLAG Fort Worth, PFLAG Georgetown, PFLAG Houston, PFLAG Lubbock, PFLAG Mesquite, PFLAG Midland/Odessa, PFLAG Montgomery, PFLAG San Antonio, PFLAG San Marcos, PFLAG Seguin, and PFLAG Tyler/East Texas.

8. PFLAG's membership is comprised of chapter members and national members. Individuals can become a PFLAG member by joining the national organization directly or by

joining their local chapter, which sends a portion of the member's dues to PFLAG National, also making them national members. In addition to our formal members, PFLAG serves thousands of community members through our programs, events, and services every year.

9. PFLAG's members play a central role in electing our organizational leadership. Of the 21 members of the PFLAG National Board of Directors, seven are elected directly by our membership. Seven more are elected by the Regional Directors Council, a body of 13 volunteers who are themselves each elected by the members of one of PFLAG's thirteen regions to work with PFLAG National staff to provide support, resources, training, and help to start new affiliates, and to share the perspectives and activities of members with PFLAG National staff. The remaining seven are elected by the Board itself.

10. As Executive Director, I am the leader of the professional staff who carry out the work of the PFLAG National office, including supporting the development and work of the PFLAG Chapter Network and promoting PFLAG's presence in the national arena, including through policy advocacy, coalitions with organizations who share our goals, developing trainings and educational materials, and engaging with the media. Supporting the PFLAG Chapter Network is PFLAG National's largest program and our national staff works closely with chapter leaders and members across the country to reinforce their efforts to establish and grow their chapters, providing them with infrastructure, publications, online learning tools, advocacy support, media training, and countless other services and supports.

11. Because promoting the wellbeing of LGBTQ+ youth through encouraging and supporting love and affirmation by their families is a core part of our mission and because we have an extensive network of chapters and nearly 1500 members who live in Texas, we have been actively involved in supporting and providing resources to our members and constituents in

light of the increasingly hostile climate for transgender youth and their families in the state over the last few years. This includes PFLAG joining litigation on behalf of our members in order to protect them from Governor Abbott's directive deeming all affirming health care for transgender adolescents, regardless of medical necessity, to be "child abuse" and the Texas Department of Family and Protective Services' ("DFPS") subsequent adoption and implementation of that directive to investigate parents alleged to be helping their children access such care. Suddenly the very thing we know to be good for LGBTQ+ children—supporting and loving your child for who they are and ensuring they receive care they need to thrive—was a reason to be reported and subjected to an intrusive and traumatic investigation.

12. In September 2022, the Travis County District Court issued an injunction blocking DFPS from carrying out this directive, protecting PFLAG member families from investigation. Although the State appealed that injunction, the Court of Appeals reinstated its protections shortly thereafter. That case is still pending, but at least PFLAG families are presently protected from being investigated for child abuse based solely on allegations they sought medically necessary care for their transgender or nonbinary child.

13. This brief sigh of relief we felt from the DFPS Rule being enjoined ended when SB 14 was signed into law on June 2, 2023. PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposition regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and

nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming medical care or leave the state as a result of SB14. Requests for mental health care providers have skyrocketed, as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents' existing mental health issues connected to their gender dysphoria. Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date. And chapter leaders have heard concerns about the impacts on transgender and non-binary youth in the foster care system, who receive health care coverage through Medicaid and will lose coverage for their medical care for gender dysphoria if SB14 goes into effect.

14. SB 14 subjects PFLAG's Texas members with a transgender or nonbinary child in need of gender-affirming medical care to a substantial risk of harm. PFLAG has members in Texas whose children are being or will be monitored for the appropriate time to begin puberty blockers, are currently or soon will be on puberty blockers, and are currently or soon will be on hormone therapy, all as part of a medically prescribed course of care for gender dysphoria. Some of those families are being harmed right now by SB 14's passage, whether because they have had appointments for scheduled care cancelled, are losing access to healthcare providers who are moving their practice out of state or ending their provisions of gender-affirming care for fear of

losing their medical licenses or state funding, or have otherwise had their imminent plans to obtain the established course of medically necessary care for their transgender or nonbinary children disrupted or foreclosed.

15. Other current and future PFLAG members with transgender or nonbinary children face a substantial risk of being harmed if SB 14 goes into effect, including being denied the right to make medical decisions for their child because the care their child's healthcare providers have declared medically necessary for them has been deemed unlawful, being prevented from obtaining the puberty blockers or hormone therapy their child needs solely because they are treatment for gender dysphoria, or losing coverage for care that has previously been covered under state funded health plans. SB 14 will force PFLAG families who have seen their children thrive as a result of medical care to treat their gender dysphoria to stop providing that care, putting those children at risk of serious mental and physical harm—the very reasons those families sought medical care in the first place.

16. While SB 14 has caused or will cause some PFLAG families to leave Texas entirely or to have to access the medically necessary care their transgender or nonbinary child needs in another state, the logistical and financial costs of doing so are incredibly high. No family should be forced to leave their home, jobs, or community or to split up their family to access the established course of medical care for their child's health condition, but SB14 is putting Texas PFLAG families in exactly that position. For countless others, those costs are simply too high; thus SB 14 leaves those transgender and nonbinary Texas youth and their families with no way to access the medically necessary care they need. Parents are prioritizing their children's mental and physical health, but SB14 will strip them of the ability to make the

decisions that they, their children, and their children's medical providers know are in their best interests. SB14 will put these adolescents' lives at risk.

17. Although these members could challenge SB 14 in their own right—as the other Plaintiff families are doing—PFLAG brings claims on behalf of its members to represent their interests to shield them from harm, to vindicate their rights to make the medical decisions they, their child, and their medical providers know to be in their child's best interests, and to allow them to maintain their focus on their child's health and wellbeing rather than litigation.

18. Representing the interests of these members in challenging SB 14 is directly connected to PFLAG's mission in two ways. First, that mission includes encouraging and supporting parents and families of transgender and gender non-conforming people in affirming their children and helping them access the social, psychological, and medical supports they need. We work with our families to encourage love and support of their transgender and gender non-conforming children and to help them ensure that the children's needs are met. The provisions of SB 14 send the opposite message and prevent families from meeting their child's needs. SB 14 bars families from supporting their child's affirmation of their gender identity by seeking the established medically necessary care that has been prescribed for them, depriving youth of medically necessary gender-affirming care, resulting in anxiety, depression, and other negative health outcomes associated with denying or cutting off medically necessary care. In order to fulfill our mission to our members, we must fight back against a law that prevents them from doing the very thing we encourage because we know it is in the best interests of the children.

19. Second, we teach our members to advocate for a caring, just, and affirming world where LGBTQ+ people are safe, celebrated, empowered, and loved, and to advocate for equitable laws and policies that protect them. We have spoken out against bans on medically

necessary care for youth with gender dysphoria such as SB 14 because they directly conflict with parents' abilities to act in their children's best interest and do nothing to protect the health and well-being of youth or anyone who needs access to medical care. SB 14 is the antithesis of an equitable law, interfering with and obstructing decisions made between PFLAG parents, their child, and their child's provider to deprive that child of care that is proven to be safe, medically sound, and necessary for treating gender dysphoria. As an organization dedicated to parents and families of LGBTQ+ youth, we cannot in good faith sit back as our members' fundamental rights to make decisions about their child's medical care are infringed solely because their child is transgender or nonbinary.

20. PFLAG exists to foster a world where LGBTQ+ children can become thriving, healthy, and happy LGBTQ+ adults. Our members depend on us to provide support and community for them in a society that often still treats their children as second-class citizens, attempts to silence them, or denies their very existence. For our members who have transgender and nonbinary children and are doing nothing more than loving them and following the advice of qualified medical professionals, PFLAG is here to do all we can to support them in those efforts and protect them from harmful, invasive laws like SB 14.

Brian K. Bond
Executive Director, PFLAG, Inc.

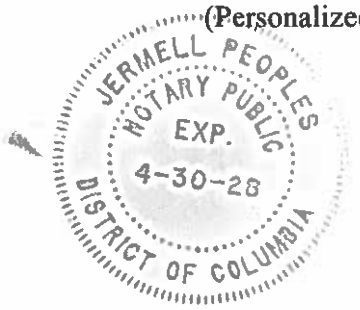
**Notary Verification**

District of Columbia

Brian K. Bond personally appeared before me, and being first duly sworn declared that he signed this declaration in the capacity designated, if any, and further states that he has read the above declaration and the statements therein contained are true.

Sworn to and subscribed before me on the 11th day of July 2023, by Brian K. Bond.

(Personalized Seal)




Notary Public's Signature

## Automated Certificate of eService

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

David Shatto on behalf of David Shatto
Bar No. 24104114
david.shatto@oag.texas.gov
Envelope ID: 85735730
Filing Code Description: Motion to Modify
Filing Description: THE OFFICE OF THE ATTORNEY GENERAL'S MOTION TO MODIFY AND CLARIFY THE COURT'S MARCH 1, 2024, TEMPORARY RESTRAINING ORDER
Status as of 3/20/2024 1:50 PM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Grace Ojionuka | | grace.ojionuka@arnoldporter.com | 3/19/2024 10:31:28 PM | SENT |
| Michele Clanton-Lockhart | | mclanton@lambdalegal.org | 3/19/2024 10:31:28 PM | SENT |
| Allissa Pollard | | Allissa.Pollard@arnoldporter.com | 3/19/2024 10:31:28 PM | SENT |
| Harper Seldin | | hseldin@aclu.org | 3/19/2024 10:31:28 PM | SENT |
| Paul Castillo | | pcastillo@lambdalegal.org | 3/19/2024 10:31:28 PM | SENT |
| Omar Gonzalez-Pagan | | ogonzalez-pagan@lambdalegal.org | 3/19/2024 10:31:28 PM | SENT |
| Elizabeth Gill | | egill@aclunc.org | 3/19/2024 10:31:28 PM | SENT |
| Karen Loewy | | kloewy@lambdalegal.org | 3/19/2024 10:31:28 PM | SENT |
| Brian Klosterboer | | bklosterboer@aclutx.org | 3/19/2024 10:31:28 PM | SENT |
| Lynly Egyes | | lynly@transgenderlawcenter.org | 3/19/2024 10:31:28 PM | SENT |
| Shawn Meerkamper | | shawn@transgenderlawcenter.org | 3/19/2024 10:31:28 PM | SENT |
| Ryan Baasch | | Ryan.Baasch@oag.texas.gov | 3/19/2024 10:31:28 PM | SENT |
| Pauline Sisson | | Pauline.Sisson@oag.texas.gov | 3/19/2024 10:31:28 PM | SENT |
| David Shatto | | David.Shatto@oag.texas.gov | 3/19/2024 10:31:28 PM | SENT |
| Sam Weeks | | Sam.Weeks@oag.texas.gov | 3/19/2024 10:31:28 PM | SENT |
| Elizabeth Gill | | egill@aclunc.org | 3/19/2024 10:31:28 PM | SENT |
| Harper Seldin | | hseldin@aclu.org | 3/19/2024 10:31:28 PM | SENT |

Associated Case Party: OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|

## Automated Certificate of eService

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

David Shatto on behalf of David Shatto
Bar No. 24104114
david.shatto@oag.texas.gov
Envelope ID: 85735730
Filing Code Description: Motion to Modify
Filing Description: THE OFFICE OF THE ATTORNEY GENERAL'S MOTION TO MODIFY AND CLARIFY THE COURT'S MARCH 1, 2024, TEMPORARY RESTRAINING ORDER
Status as of 3/20/2024 1:50 PM CST

Associated Case Party: OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Pauline Sisson | | pauline.sisson@oag.texas.gov | 3/19/2024 10:31:28 PM | SENT |
| David G. Shatto | | david.shatto@oag.texas.gov | 3/19/2024 10:31:28 PM | SENT |
| Ryan Baasch | | ryan.baasch@oag.texas.gov | 3/19/2024 10:31:28 PM | SENT |
| Rob Farquharson | | rob.farquharson@oag.texas.gov | 3/19/2024 10:31:28 PM | SENT |
| Elizabeth Martin | | elizabeth.martin@oag.texas.gov | 3/19/2024 10:31:28 PM | SENT |

# APPENDIX C

3/22/2024 1:29 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-24-001276
Susan Schmidt

**CAUSE NO. D-1-GN-24-001276**

| | | |
|---|---|---|
| **PFLAG, INC.,** | § | **IN THE DISTRICT COURT OF** |
| **Plaintiff,** | § | |
| | § | |
| **v.** | § | **TRAVIS COUNTY, TEXAS** |
| | § | |
| **OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS; and WARREN KENNETH PAXTON, JR., In his official capacity as Attorney General of Texas,** | § | |
| **Defendants.** | § | **261ST JUDICIAL DISTRICT** |

**THE OFFICE OF THE ATTORNEY GENERAL'S**
**PLEA TO THE JURISDICTION**

The Office of the Attorney General files this Plea to the Jurisdiction and Supplemental Response to Plaintiff's Application for Temporary Restraining Order

## I. INTRODUCTION

1. PFLAG's application for temporary injunction is barred by sovereign immunity, and is fatally flawed for multiple reasons.

2. As background, PFLAG likely contains information that is relevant to the Office of the Attorney General's Consumer Protection Division's investigations into false, misleading, or deceptive acts under the Deceptive Trade Practices Act (DTPA). One potentially fraudulent practice that the Consumer Protection Division is investigating is whether medical providers are prescribing hormones under the pretext of treating an "endocrine disorder" rather than "gender dysphoria." The incentive for this fraud is that some insurers automatically reject payment for gender-incongruent treatments, and marking the treatment as "endocrine disorder" is a way to get around that. During this investigation, the Consumer Protection Division learned that PFLAG may have information about this particular fraudulent practice or perhaps other, related fraudulent practices. Namely, its CEO filed an affidavit in separate litigation indicating that he has awareness

of certain "contingency plans" or "alternative avenues" to gender dysphoria care that seem to contemplate the exact practice that the Consumer Protection Division is looking at. PFLAG has no valid basis to withhold information relevant to the Consumer Protection Division's investigations into other parties' fraudulent practices.

3. In addition, although this Court on March 1 entered a Temporary Restraining Order against the investigatory demands that the Consumer Protection Division served on PFLAG, the following changed circumstances fundamentally alter the factual landscape of this dispute and categorically show that PFLAG is not entitled to withhold the information the Consumer Protection Division is seeking. Through its Motion to Modify and Clarify filed on March 19, the Consumer Protection Division is seeking to withdraw the Civil Investigative Demand and Demand for Sworn Written Statement (the Original Demands) that PFLAG contended were unlawful. And, pursuant to that Motion to Modify and Clarify, the Consumer Protection Division seeks to issue "New Demands" that are substantively distinct from the Original Demands and significantly narrower in scope. That narrowness was deliberately crafted to respond to and alleviate PFLAG's concerns that it raised in its application for Temporary Restraining Order. Notably, whereas the lion's share of PFLAG's complaints about the Original Demands were that they would force PFLAG to disclose sensitive information that would identify individual members, the New Demands clarify that PFLAG ***is not required*** to provide any such information.

4. Against this backdrop, PFLAG cannot overcome the Attorney General's sovereign immunity.

5. ***First,*** the Original Demands are now moot. In addition, PFLAG is time-barred from complaining about those Demands because it failed to timely file its Petition. The statutorily mandated timeline to file is at any time "before the return date *specified in the demand*, or within

20 days after the demand has been served." Tex. Bus. & Com. § Code 17.61(g). The specified return date in the Original Demands was February 26, 2024, but PFLAG filed suit on February 28, 2024—two days too late. Although PFLAG contends that the Consumer Protection Division gave it an extension within which to file its petition, that is a legal impossibility—the deadline is jurisdictional, and under well-established case law could not be waived or modified by the Consumer Protection Division.

6. ***Second***, PFLAGs' complaint that the State is powerless to investigate it because it is already in litigation against the State is meritless. The State's power to investigate an entity, even when the State is actively involved in litigation with that entity, is quite clear. At most the State may not be able to use the information gathered from an investigation in that specific ongoing litigation. However, the Consumer Protection Division is not involved in any of PFLAG's other ongoing litigation against the State and will not use the material obtained as part of its New Demands in that other litigation.

7. ***Finally***, as explained in more detail below, the New Demands do not plausibly infringe upon any of PFLAG's constitutional rights. To the contrary, the New Demands were deliberately crafted to address the specific problems that PFLAG identified with the Original Demands in its application for Temporary Restraining Order.

8. For these reasons, the Court should deny Plaintiff's application for temporary injunction.

## II. BACKGROUND

9. On June 2, 2023, SB-14 was signed into law (effective September 1, 2023). Broadly speaking, SB-14 prohibits certain medical procedures and treatments when performed "[f]or the

purpose of transitioning a child's biological sex" including through surgery and by drugs. Tex. Health & Safety Code § 161.702.

10. SB-14's constitutionality is currently pending before the Supreme Court of Texas in *Texas v. Loe*, 23-0697. In the meantime, however, the Consumer Protection Division of the Attorney General's office has become aware of information suggesting that medical providers and other persons are evading SB-14's strictures by committing various forms of fraud, including insurance fraud. Declaration of Sam Weeks ¶ 5.[1] Specifically, in order to avoid SB-14's prohibition on drug-induced gender transitions, the Attorney General is aware of information showing that providers may be fraudulently prescribing hormones under the guise of treating an "endocrine disorder," or something else separate from gender dysphoria. *Id*.

11. For example, a group of medical providers known as "QueerDoc" has admitted that some insurers "automatically reject payment for 'gender-incongruent' treatments." *Id*., Ex 1. QueerDoc, however, "do[es] [not] agree with this." *Id.* Therefore, QueerDoc issues "prescriptions under the diagnosis of 'endocrine disorder'" instead of "gender dysphoria." *Id.* Other investigative reporting appears to indicate that at least some medical providers are misrepresenting their own patients' statuses in order to prescribe a gender-transition related treatment. For example, one medical provider known as "Plume" allegedly met with a patient who denied he had been "experiencing gender dysphoria for six months or more," but Plume nevertheless "falsely claim[ed] [in a letter] that [he] was experiencing significant and ongoing gender dysphoria" and recommended "testicle removal." *Id*., Ex. 2.

12. It is squarely within the Consumer Protection Division's (the "Division") authority to police this activity. Namely, the Division is charged with enforcing against "[f]alse, misleading,

[1] The Weeks Declaration and accompanying exhibits were filed as part of the Attorney General's February 29, 2024 Response to Plaintiff's Application for Temporary Restraining Order and are incorporated by reference here.

or deceptive acts or practice in the conduct of any trade or commerce" under the DTPA. Tex. Bus. & Com. Code § 17.46(a). If medical providers are providing fraudulent information to either consumers or insurers about why they are prescribing certain treatments, such as hormones, that is classic false, misleading, or deceptive behavior actionable under the DTPA. Accordingly, the Consumer Protection Division has already commenced investigations into various medical providers who may be committing these kinds of acts. *Id*. ¶ 3.

13. On or around January 30, 2024, the Consumer Protection Division became aware that Plaintiff PFLAG likely had information relevant to whether specific providers were in fact engaged in this false, misleading, or deceptive activity. Namely, in litigation challenging SB-14, PFLAG's CEO Brian K. Bond provided an affidavit dated July 11, 2023, stating that he has spoken to parties about "contingency plans," "alternative avenues to maintain care in Texas," and "affirming general practitioners." (The Consumer Protection Division was not involved in defending the suit where Mr. Bond's affidavit was submitted which is at least in part why the Consumer Protection Division did not become aware of the affidavit earlier.) The relevant text of Mr. Bond's affidavit is reproduced in Plaintiff's Original Verified Petition To Set Aside Civil Investigative Demands, For Declaratory Judgment, and Application For A Temporary Restraining Order and Temporary And Permanent Injunctive Relief ("Petition") at page 18.

14. Mr. Bond's statements appear to indicate that PFLAG has knowledge of various entities seeking to use subterfuge to evade SB-14 (*i.e.*, through a "contingency plan" or "alternative avenue" for treatment). Accordingly, on February 5, 2024, the Consumer Protection Division issued a Civil Investigative Demand (CID) under DTPA Section 17.61 to PFLAG demanding documents relevant to Mr. Bond's statements. Although the Consumer Protection Division does not currently believe that PFLAG *itself* is violating the DTPA, the Division nevertheless had the

authority to issue the CID because the Division can demand documents from "***any*** person"—not just those suspected of a violation. Tex. Bus. & Com. Code § 17.61(a). The CID is attached as Exhibit A to Plaintiff's Petition filed February 28, 2024.

15. On the same day, the Consumer Protection Division also issued a Demand for Sworn Written Statement (DSWS) under DTPA Section 17.60(1). The DSWS demands that PFLAG provide written answers to certain questions, much like response to interrogatories. The DSWS is attached as Exhibit B to Plaintiff's Petition filed February 28, 2024. Collectively, the CID and DSWS are referred to as "the Original Demands."

16. When the Consumer Protection Division issues a CID, it must "prescribe a return date within which the documentary material is to be produced." Tex. Bus. & Com. Code 17.61(3). The "return date" for the CID issued to PFLAG is **February 26, 2024.** *See* Exhibit A to Plaintiff's Petition (first page). The DSWS likewise contained a deadline of February 26, 2024.

17. On February 19, Plaintiff's counsel sought an "extension of both response dates until at least Monday, March 4, 2024." *See* Petition, Ex. C (email dated February 19, 2024). Out of professional courtesy, Defendants' counsel granted a "one-week extension." *Id.* (email dated February 20, 2024). Importantly, however, and as described below, this extension did not ***and could not*** extend the deadline that Plaintiff was under to file suit (which has now lapsed).

18. On February 28, 2024, PFLAG filed its Original Verified Petition to Set Aside Civil Investigative Demands, for Declaratory Judgment, and Application for Temporary Restraining Order and Temporary and Permanent Injunctive Relief. That filing alleged four core bases for the requested relief.

19. ***First***, and most prominently, PFLAG's filing claimed that the Original Demands "violate[d] PFLAG and its members' rights to freedom of association and speech." PFLAG's

Petition at 33. This theory occupied 15 pages of (pages 33-45) of the 22 pages of argument (pages 24-46) in PFLAG's Petition.

20. ***Second***, PFLAG contended that the Original Demands were "not authorized" under the DTPA. Petition at 25-27; 29-32.

21. ***Third***, PFLAG contended that the Original Demands were an impermissible attempt to "seek discovery" in separate, stayed litigation. Petition at 27-29.

22. ***Fourth***, PFLAG contended that the Original Demands "violate the freedom from unlawful search and seizure." Petition at 45-46.

23. On March 1, the Court heard arguments from counsel and later that afternoon, issued its Order Granting Plaintiff's Application For A Temporary Restraining Order ("Order").

24. On March 20, the Consumer Protection Division filed The Office of The Attorney General's Motion To Modify And Clarify The Court's March 1, 2024, Temporary Restraining Order ("Motion to Modify and Clarify"). This motion included a proposed new Civil Investigative Demand and a new Demand for Sworn Written Statement (collectively, "New Demands") which are substantively distinct from and narrower in scope than the Original Demands.[2] The New Demands were deliberately crafted to resolve PFLAG's free speech and free association concerns, and the Motion to Modify and Clarify requests the court clarify that the Attorney General may withdraw the Original Demands and issue the New Demands.

25. Broadly speaking, and as explained in further detail in the Motion to Modify and Clarify (at 5-7 of that filing), the New Demands' substantive adjustments completely moot PFLAG's free speech and free association concerns because they expressly permit PFLAG to redact and anonymize information that would otherwise identify PFLAG members. That was the

[2] The New Demands and redlines of those Demands against the Original Demands are attached for the Court's convenience. *See* Attachments 1-4.

thrust of PFLAG's entire free speech and free association objections in its Petition. *See, e.g.*, Petition at 33 ("Because the Demands explicitly target the PFLAG member families with transgender adolescents, and the instructions to the Demands do not permit any redactions, requiring PFLAG to provide that information or communications with those members will chill Texas families from becoming members of PFLAG."); *id.* at 34 ("The Demands violate PFLAG and its members' right to freedom of association and assembly because they require the disclosure of the identifies of PFLAG's members."); *id.* at 35 ("The Demands require PFLAG to 'Identify' its members"); *id.* at 36 ("Forcing PFLAG to disclose its members to the OAG . . . will have a chilling effect on PFLAG's membership."); *id.* at 37 (contending "PFLAG's members have factual, non-speculative evidence that disclosure of their identities will subject them to political reprisal"); *Id.* at 38 (contending the Original "Demands are a continuation of the OAG's systematic efforts to identify and isolate transgender individuals and their families").

## III. PFLAG'S APPLICATION FOR TEMPORARY INJUNCTION IS BARRED BY SOVEREIGN IMMUNITY

26. PFLAG's application for a temporary injunction cannot proceed because it is barred by sovereign immunity.

27. "Absent the State's consent to suit, a trial court has no jurisdiction over claims against the State." *Texas A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840 (Tex. 2007). The only plausible exception that could permit PFLAG to proceed with its application for a temporary injunction is the "*ultra vires* exception," which requires PFLAG to "ultimately prove[] that [an] officer acted without legal authority, or failed to perform a purely ministerial act." *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 161 (Tex. 2016). As explained below, PFLAG cannot make that showing.

## A. The court should limit its consideration to only the New Demands.

28. The Court should only consider the New Demands, and not the Original Demands, as part of its analysis whether PFLAG is entitled to a temporary injunction. That is because, first, the New Demands submitted in the Motion to Modify and Clarify moot the Original Demands. And second, PFLAG's challenge to the Original Demands is jurisdictionally time-barred.

### i. The OAG offered to withdraw its Original Demands and reissue the New Demands.

29. PFLAG's challenge to the Original Demands is moot. Pending the Court's leave, the Consumer Protection Division has attempted to withdraw the Original Demands and replace them with only the substantively narrowed New Demands. There is, accordingly, no longer a live controversy as to the Original Demands. Moreover, as of this filing PFLAG has not objected to the withdrawal of the Original Demands and replacement with the New Demands. PFLAG also would have no basis to make that particular objection, because the New Demands only *narrow* the scope of information that the Consumer Protection Division requests.

### ii. PFLAG's challenge to the Original Demands is jurisdictionally time-barred.

30. ***Second***, Plaintiff's challenge to the Original Demands is jurisdictionally time-barred. For this reason, the court lacks subject matter jurisdiction. PFLAG failed to invoke the jurisdiction of the court by failing to meet the prerequisite of filing suit within the prescribed timeframe.

31. Tex. Bus. & Com. Code § 17.61(g) is clear:

> At any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside the demand, stating good cause, may be filed in the district court in the county where the parties reside, or a district court of Travis County.

The return date on the demand, February 26, 2024, is undisputed. *See* PFLAG's Petition, Ex. A at 1 (return date specifying response due on or before "February 26, 2024"). Additionally, PFLAG received the Demands on February 9, 2024. Petition at ¶ 52. Therefore, the earlier of the return date (February 26, 2024) or 20 days after the demand has been served (February 29, 2024) is February 26, 2024. But PFLAG filed its Petition on February 28, 2024 – two days too late.

32. The Consumer Protection Division's grant of a "one-week extension for PFLAG to provide information, documents, communications, and statements" (*see* Petition at ¶ 63) changes nothing. "When the defendant is a governmental entity, the failure to timely file is a jurisdictional bar to suit." *Texas A&M Univ. v. Starks*, 500 S.W.3d 560, 568 (Tex. App.—Houston, 2016); Tex. Gov't Code § 311.034 ("Statutory prerequisites to suit . . . are jurisdictional requirements in all suits against a governmental entity."). PFLAG's position on timing is apparently that the Consumer Protection Division granted PFLAG a one-week extension of the time to file suit. But that is a legal impossibility; "[a] jurisdictional prerequisite to judicial review by the district court . . . **cannot be waived** by action of the parties." *Lindsay v. Sterling*, 690 S.W.2d 560, 563 (Tex. 1985). And the "court is completely without power to hear the case, even by agreement of the parties." *Gamblin v. Town of Ponder*, 494 S.W.2d 808, 810 (Tex. 1973). Therefore, the return date was not and could not be extended.

33. Moreover, the Consumer Protection Division as a matter of fact ***did not*** give PFLAG an extension *on the time to file suit*. Rather, the Division gave PFLAG an extension on the time to produce documents and responses. *See* Petition at ¶ 63. The extension was in effect a representation that the *Division* would not sue *PFLAG* so long as Plaintiff provided documents and a response by March 4, 2024. *Cf.* Tex. Bus. & Com. Code § 17.62(b) (if person fails to respond

to demands, Consumer Protection Division "may file in the district court . . . a petition for an order of the court for enforcement").

34. Moreover, the Division ***could not*** give Plaintiff an extension on time to file suit because the statute says that the deadline for suit is "before the return date *specified in the demand." Id.* § 17.61(g). The Division's courtesy-email extension is completely separate from the date "specified in the demand." Instead, if PFLAG wanted relief, such as an extension, that would give it more time to file suit, its remedy was to "petition to extend the return date" with this Court before the return date of February 26 lapsed. *Id.*

**B. The New Demands are not *Ultra Vires*.**

35. PFLAG cannot show that the New Demands are *ultra vires* so as to come within the exception to sovereign immunity.

36. To make out the *ultra vires* showing, PFLAG would need to show that the Consumer Protection Division issued the Demands "without legal authority." *Hall v. McRaven*, 508 S.W.3d 232, 241 (Tex. 2017) (that, and failure to "perform a purely ministerial act" are the only two bases for the *ultra vires* exception). But it cannot do that.

37. The Consumer Protection Division had plain—indeed, absolute—authority to issue both the Original Demands and the New Demands. "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 or a possible violation" of the DTPA, it may issue a "civil investigative demand requiring the person to produce the documentary material." Tex. Bus. & Com. Code § 17.61. So too, each corporate entity that does business in Texas "shall permit the attorney general to inspect, examine, and makes copies, as the attorney general considers necessary . . . any record of the entity." Tex. Bus. Org. Code § 12.151;

*Humble Oil & Ref. Co. v. Daniel*, 259 S.W.2d 580, 589 (Tex.App.—Beaumont 1953) (Attorney General has "full and unlimited and unrestricted right to examination of the corporation's books").

38. At most, PFLAG argues that some collateral law—such as the First Amendment, or the stay of litigation in other matters—restricted the Consumer Protection Division's authority to issue the Demands. But that does not work either. When a government actor makes a "misinterpretation" of some "collateral law" that limits his authority, that misinterpretation is not an "overstepping" of his original authority. *McRaven*, 508 S.W.3d at 242. His action is "compliant . . . even if ultimately erroneous." *Id.* And this does not give rise to the *ultra vires* exception. *Id.*

39. Against this backdrop, it is impossible for PFLAG to show *ultra vires* conduct, and so its application for temporary injunction is barred by sovereign immunity. In addition, as set forth below, PFLAG is also wrong on the merits.

**i. The State's investigatory power is not diminished by ongoing litigation matters.**

**a. The State may investigate an entity while the State and that entity are elsewhere engaged in litigation.**

40. PFLAG's Petition asserted that the Division may not utilize its investigatory demands with PFLAG because PFLAG is currently engaged in litigation against other governmental entities. Petition at 27 (citing *Loe v. Texas* and *PFLAG v. Abbott*). That is wrong.

41. ***First***, the Attorney General's authority to investigate entities is broad, he can "investigate merely on suspicion that the law is being violated, or even just because [he] wants assurance that it is not." *United States v. Morton Salt*, 338 U.S. 632, 642-43 (1950). Moreover, the DTPA is to be liberally construed. Tex. Bus. & Com. Code § 17.44. To that end, the Division may examine ***any person***. Tex. Bus. & Com. Code §§ 17.60 & 17.61. Additionally, under the Texas

Business Organizations code, *any* "entity" doing business in Texas "***shall*** permit the attorney general to inspect, examine, and make copies, as the attorney general considers necessary in the performance of a power or duty of the attorney general, of any record of the entity." Tex. Bus. Org. Code § 12.151 (emphasis added). Nothing about this broad authority suddenly comes to an end simply based on the happenstance that an investigatory target has sued the State.

42. The court's decision in *Humble Oil & Ref. Co. v. Daniel*, directly addresses this circumstance and establishes beyond dispute that PFLAG's litigation against the State elsewhere has no effect on its investigatory authority here. 259 S.W.2d 580 (Tex. App.—Beaumont 1953, writ ref'd n.r.e.). In that case, the Attorney General intervened in tax litigation between Humble Oil and the County of Montgomery, Texas. *Id*. at 581. After intervening, the Attorney General separately demanded an inspection of Humble Oil's books and records pursuant to its investigative powers. *Id.* Humble Oil sued the Attorney General, alleging, among other things, that the "demand by the Attorney General was for the sole purpose of obtaining evidence to be used against Humble in the tax suit pending between Montgomery County, its officers, and the State of Texas on the one hand, and Humble Oil & Refining Company on the other." *Id.* at 583.

43. But the appeals court concluded that "[t]he State, by its authorized officers, has the undoubted right to require full information as to all of the business of a private corporation created by it or which it has permitted to come into the State". *Id.* at 589. Ultimately, the court held the Attorney General to be acting beyond the scope of his lawful powers ***only*** in "taking such copies of such books, records and files" when it was "***for use*** in the tax suit ***now pending***" *Id.* at 591 (emphasis added). But the court made clear that the Attorney General "was acting within the scope of his lawful powers in making the demand for inspection and making the inspection of the records, books and files of the appellant Humble Oil." *Id.*

44. *Humble Oil* is clear. The Attorney General has the right "to make an unlimited and unrestricted examination of" an entities books and records. *Id.* at 590. And at most, the Attorney General's power is limited only when attempting to use those books and records for use in a pending case, an event that – despite Plaintiff's assertions – has not arisen here. *Id.*

45. ***Second***, PFLAG's argument is based on a flawed premise. It claims that the Attorney General's office is using the "Demands to Seek Discovery in a Stayed Civil Matter"—namely, PFLAG's pending suits against the State regarding SB-14's constitutionality and a Department of Family and Protective Services policy about child abuse. Petition at 27. But neither the Original Demands nor the New Demands seek "discovery" related to those issues. Rather, the Division is investigating independent violations *of the* DTPA, by parties *other than PFLAG*—namely for committing false, misleading, or deceptive acts. PFLAG simply holds the distinction of potentially having information relevant to those potential violations.

**b. No agreement by the parties to PFLAG's other litigations precluded issuance of the Demands.**

46. PFLAG's Petition also contended that the Original Demands were barred by a Rule 11 agreement in one of those cases: *PFLAG, Inc. v. Abbott*, D-1-GN-22-0002569 (Travis County). Petition at 27. But that Rule 11 had no effect on the Consumer Protection Division's investigative authority.

47. The Rule 11 agreement in *PFLAG, Inc. v. Abbott* provides only an "Informal Stay of Trial Court Proceedings" ***in that case***—not a stay that could plausibly reach to an independent investigation of the Division. Attachment 5 at 1.

48. Moreover, the Attorney General's office is not a party to the *PFLAG v. Abbott* litigation—only the Governor, Department of Family and Protective Services ("DFPS"), and DFPS's Commissioner are named defendants. And, although certain Office of the Attorney

General attorneys are counsel for Defendants in that case, they are not employed with the Consumer Protection Division.

49. Finally, if PFLAG believes that the Rule 11 agreement in *PFLAG v. Abbott* has been breached (it has not), this is not the proper venue to hear that dispute. Instead, breaches of the agreement are to be heard by "the [*PFLAG, Inc. v. Abbott*] trial court." *Id*. at 2. Therefore, the Divisions investigation is separate and wholly unaffected.

**ii. The New Demands do not infringe upon PFLAG's constitutional rights.**

50. The New Demands do not plausibly violate PFLAG's constitutional rights.

**a. The New Demands remedy PFLAG's concerns over member identification.**

51. PFLAG's petition asserted that the Original Demands violated its constitutional rights of freedom of association and speech. Petition at 33-45. As explained *supra* at ¶ 25, that argument is premised on the idea that the Original Demands sought information that would reveal PFLAG's members' identities.

52. Following the Court's March 1 Temporary Restraining Order, the Consumer Protection Division filed a Motion to Modify and Clarify seeking to withdraw the Original Demands and issue New Demands. As noted *supra* at ¶¶ 25 & 29, the New Demands completely moot PFLAG's concern about identifying its members. To avoid even the semblance of any remaining doubt: the New Demands ***do not require PFLAG to identify a single member***.

53. The changes reflected in the New Demands remedy PFLAG's First Amendment concerns because, to the extent the First Amendment impacts any part of the Demands, it is only insofar as they would have required the identification of specific members. Namely, the expressive First Amendment right to withhold documents that PFLAG asserts is derived from *NAACP v. Alabama*, 357 U.S. 449 (1958), and a host of other precedents from the Jim Crow south.

*Ambassador Coll. v. Geotzke*, 675 F.2d 662, 665 (5th Cir. 1982). These cases originated with governmental investigation into the NAACP, "the goal of which was to obtain ***membership lists***." *Id.* (emphasis added). In sum, "[m]embership lists have a long and unique history in our constitutional jurisprudence." *Anderson v. United States*, 298 F.3d 804, 811 (9th Cir. 2002) (Reinhardt, J., dissenting).

54. But the Division has offered to withdraw the Original Demands to moot the concern about membership or identities. The Division has now, in its Motion to Modify and Clarify, provided New Demands that have clear instructions that the Division does not seek membership lists, full or partial, in any context and allows for the redaction or anonymization of any member. PFLAG's First Amendment argument is accordingly moot.

55. Moreover, even if PFLAG wanted to continue asserting First Amendment arguments, it could not do so without "show[ing] that disclosure will deter members of the association from ***maintaining membership***." *Wal-Mart Stores, Inc. v. Texas Alcoholic Beverage Comm'n*, 2016 WL 5922315, at *6 (W.D. Tex. Oct. 11, 2016) (emphasis added); *Gueye v. Mike Bloomberg 2020*, 2021 WL 3910341, at *2 (N.D. Tex. Mar. 12, 2021). And PFLAG has not summoned any evidence necessary to make that showing (nor could it now that the New Demands no longer seek membership information).

56. In any event, Courts have upheld compelled disclosures that tread far more deeply into associational, or related, concerns in a way that shows that PFLAG's argument must fail here. For example, in *John Doe No. 1. v. Reed*, the Supreme Court upheld a Washington law exposing the identities of persons who "sign[ed] a petition to place" a "referendum on the ballot" regarding "benefits to same-sex couples." 561 U.S. 186, 190 (2010). And in *In re Grand Jury 87-3 Subpoena*, the Fourth Circuit concluded that "First Amendment rights" were not even "implicated" in

subpoena seeking pornography distributor's "customer lists," 955 F.2d 229, 232 (4th Cir. 1992). Each of these intrude far deeper than the New Demands currently at issue.

**b. Investigatory Demands are not retaliation.**

57. PFLAG also contended that the Demands were a form of proscribed "retaliation." Petition at 41-45. That is meritless.

58. As PFLAG recognizes (Petition at 42), to prevail on its retaliation claim it must show it "engaged in constitutionally protected activity" and that the Attorney General's office took "adverse actions [that] were substantially motivated against" PFLAG's "exercise of constitutionally protected conduct." *Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002).

59. PFLAG cannot make this showing because, as explained *supra* at ¶ 13, the Attorney General's Demands were served to learn more about the statements made by PFLAG's CEO (Mr. Bond), where he appeared to indicate in a sworn court filing that he had knowledge of persons who were attempting to use fraud to violate Texas law. That is not "constitutionally protected activity," *contra Keenan*, 290 F.3d at 258, and the Demands were quite plainly not "substantially motivated against" constitutionally protected activity, *contra id.* at 258.

60. PFLAG seems to recognize this, because it sidesteps Mr. Bond's peculiar statements and instead focuses the Court on the fact that, shortly before it received the Original Demands, certain actions had occurred in the Texas appellate courts regarding PFLAG's *Loe v. Texas* and *PFLAG v. Abbott* cases. Petition at 44. Namely, PFLAG notes that the Consumer Protection Division issued the Original Demands "***less than a week*** after the Texas Supreme Court heard argument in *Loe*," Petition at 44 (emphasis in original), and "the ***first business day after*** the briefs in *PFLAG v. Abbott* were set for submission . . . to the Third Court of Appeals," Petition at

44 (emphasis in original). PFLAG claims that the Original Demands were thus "causally linked to PFLAG's participation as plaintiffs" in these cases.

61. PFLAG's theory is flawed—indeed, it is frankly schizophrenic—multiple times over. As noted, in order to succeed, PFLAG's retaliation theory needs to show that the Consumer Protection Division issued the Demands as retaliation for ***PFLAG's*** constitutionally protected conduct. *Keenan*, 290 F.3d at 258. But here, PFLAG claims that the Demands were "causally linked" to actions taken ***by the Texas court system*** (namely, the Texas Supreme Court's hearing of oral argument, and the Third Court's setting of briefing deadlines). In other words, PFLAG's theory is that the Consumer Protection Division retaliated against PFLAG for actions that the *courts* took. That entire concept is hard to fathom.

62. Instead, the Division issued the Demands shortly after it became aware of Mr. Bond's affidavit in late January 2024. The only reason that the Division did not issue the Demands earlier is because the Division had no knowledge of Mr. Bond's affidavit—after all, it is not involved in the case where Mr. Bond's affidavit was submitted.

63. Moreover, it is not clear that PFLAG could maintain a retaliation claim where, as here, the government is not investigating *PFLAG* but is instead merely seeking information in PFLAG's possession that would show legal violations by other actors. To the contrary, all of PFLAG's case law involves instances where the plaintiff was the subject of the investigation or otherwise targeted. *See, e.g.*, *Hartman v. Moore*, 547 U.S. 250, 252 (2006) ("This is a *Bivens* action against criminal investigators for inducing prosecution in retaliation for speech."); *Keenan v. Tejeda*, 290 F.3d 252, 256, 258 (5th Cir. 2002) (Two deputy constables filed a first amendment action after they alerted the local district attorney and television station to possible wrongdoing by another constable and then, following the media coverage, were subject to a "felony" traffic stop

where one of the constables was unsuccessfully prosecuted.); *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 886 (1984) (Where the National Labor Relations Board investigated an employer for "unfair labor practice by reporting to the Immigration and Naturalization Service certain employees known to be undocumented aliens in retaliation for their engaging in union activity").

64. Finally, the Demands do not constitute retaliation as no harm has occurred. The United States Court of Appeals, Ninth Circuit, recently dealt with a similar issue in *Twitter, Inc. v. Paxton*, where Twitter filed suit against the Texas Attorney General. 56 F.4th 1170, 1172 (9th Cir. 2022). Soon after Twitter banned President Trump, the Texas Attorney General served Twitter with a Civil Investigative Demand. *Id.* Twitter claimed this was government retaliation for speech protected by the First Amendment. *Id.* Without responding to the CID or waiting for the Attorney General to enforce that demand, Twitter sued the Attorney General in the Northern District of California alleging that both the act of sending the CID and the entire investigation were unlawful retaliation that would chill Twitters protected speech (i.e., content moderation decisions). *Id.* at 1172-73. Twitter requested the Court to enjoin the Attorney General and to declare the investigation unlawful. *Id.* Ultimately the Court dismissed the case because Twitter failed to show that the issuance of the CID chilled its speech or caused other cognizable injury. *Id.* at 1179. The court found that both Twitter's allegations and declarations were too indefinite to show chilled speech. *Id.* at 1175. The Court also specifically focused on the fact that the CID is not self-enforcing. *Id.* at 1176. In fact, the Court found that

> pre-enforcement, Twitter never faced any penalties for its refusal to comply with the CID. And enforcement is no rubber stamp: If OAG seeks to enforce the CID, it must serve the recipient with the petition, the state court can conduct hearings to determine whether to order enforcement, and the recipient may appeal to the Texas Supreme Court.

*Id.* at 1176. The Court continued

> So to complain about the CID in this posture is to speculate about injuries that have not and may never occur. And to the extent Twitter argues that any actions it has taken in response to the CID create an . . . injury, those injuries are self-inflicted because the actions were voluntary.

*Id.* The reasoning is the same here. The Division issued Demands. But rather than negotiate regarding scope, PFLAG chose to seek an order to temporarily restrain the Division. That was premature; PFLAG would always have had the opportunity to raise any objections to the Demands if the Division had ever filed suit to enforce them.

**c. The Division Demands do not violate the Fourth Amendment.**

65. PFLAG claims a Fourth Amendment protection from producing the documents. *See* Petition at 45-46. The Supreme Court has said the exact opposite. "[T]he Fifth Amendment affords no protection" to "corporate records and papers in response to a subpoena" and the "Fourth, if applicable, at the most guards against abuse only by way of too much indefiniteness or breadth in the things required to be" produced. *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208 (1946). Moreover, "[i]t is not necessary . . . that a specific charge or complaint of violation of law be pending." *Id.* at 208-09; *see also Schade v. Texas Workers' Compensation Com'n*, 150 SW. 3d 542, 550 (Tex. App.—Austin 2004) ("[W]e find that the Fourth Amendment and its Texas counterpart at most guard against abuse only by way of too much indefiniteness or breadth in the things required" to be produced).

## IV. PRAYER

For the reasons stated above, the Office of the Attorney General of the State of Texas prays that the Court deny PFLAG's application for temporary injunction.

Dated: March 22, 2024

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

RYAN S. BAASCH
Chief, Consumer Protection Division

/s/ *David G. Shatto*
DAVID G. SHATTO
State Bar No. 24104114
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711
David.Shatto@oag.texas.gov
Tel: 512-475-4656
Fax: 512-473-8301

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of March 2024, a copy of the foregoing document was served via the Court's electronic filing system to all counsel of record.

/s/ *David G. Shatto*
DAVID G. SHATTO
Assistant Attorney General

# ATTACHMENT 1

STATE OF TEXAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

# CIVIL INVESTIGATIVE DEMAND

**TO:** Susan Thronson
*President*
Brian K. Bond
*Chief Executive Officer*
PFLAG, Inc.
1625 K Street NW #700
Washington, DC 20006

***via CMRRR:*** [to be completed]
***via First Class Mail***

Registered Agents Inc.
1401 21st Street, Suite R
Sacramento, CA 95811

***via CMRRR:*** [to be completed]
***via First Class Mail***

Pursuant to this Office's specific authority under section 17.61 of the Texas Deceptive Trade Practices—Consumer Protection Act, Texas Business & Commerce Code §§ 17.41–17.63 ("DTPA"), PFLAG, Inc. ("PFLAG"), a nonprofit corporation, is hereby directed to produce the items listed in Exhibit "B" attached hereto. Such production is governed by the Instructions and Definitions set forth in Exhibit "A" on this page and subsequent pages.

You are to make available the documentary material described in Exhibit "B" to the undersigned Assistant Attorney General or other authorized agent(s) identified by the Consumer Protection Division ("Division"). This documentary material shall be produced for inspection and copying during normal business hours at your principal office or place of business, or may be sent electronically or by certified mail to the Office of the Attorney General, 300 W. 15th Street, 9th Floor, Austin, TX 78701 and is due on April __, 2024. If providing documents electronically, please provide them to Sam Weeks at Samuel.Weeks@oag.texas.gov.

The Division believes that you are in possession, custody, or control of documentary material relevant to the subject matter of an investigation of actual or possible violations of DTPA section 17.46 involving potential misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.

This Civil Investigative Demand ("CID") shall formally supersede the CID previously issued on February 5, 2024, by the Division. The original February 5, 2024 CID is officially withdrawn, and the Division waives and relinquishes any and all rights thereunder, including the right of enforcement. The sole CID issued to PFLAG with the force and effect of law is the foregoing.

**TAKE NOTICE THAT pursuant to section 17.62, Texas Business and Commerce Code, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material may be guilty of a misdemeanor and on conviction is punishable by a fine of not more than $5,000.00 or by confinement in the county jail for not more than one year, or both.**

**ISSUED THIS** __th day of _____2024.


_____

DAVID SHATTO, Assistant Attorney General
Consumer Protection Division, OAG
T: (512) 463.2185 | F: (512) 370.9125
David.Shatto@oag.texas.gov

Other Authorized Agent:
Sam Weeks, Investigator
Consumer Protection Division, OAG
T: (512) 936.0501 | F: (512) 370.9125
Samuel.Weeks@oag.texas.gov

# EXHIBIT A:
## INSTRUCTIONS

1. **Read These Instructions and Definitions Carefully.** Your production must comply with these instructions and definitions.

2. Unless the context clearly indicates otherwise, words used in the singular include the plural, the plural includes the singular, and the neutral includes the masculine and feminine.

3. **Duty to Preserve Documents.** All documents and/or other data which relate to the subject matter or requests of this CID must be preserved. ***Any ongoing, scheduled, or other process of document or data destruction involving such documents or data must cease, even if it is your normal or routine course of business to delete or destroy such documents or data or even if you believe such documents or data are privileged or otherwise protected from disclosure.*** Failure to preserve such documents or data may result in legal action and may be regarded as spoliation of evidence under applicable law.

4. **Relevant Time Period.** Unless otherwise noted, the requests herein require production of documents from March 8, 2023, to the date of the last production of documents in made response to this CID.

5. **Custody and Control.** In responding to the CID, you are required to produce all responsive documents in your possession, custody, or control. A document is within your custody or control if it is in the possession of another person and you have a right to possess that document that is equal or superior to that other person's right of possession.

6. **Non-Identical Copies or Drafts.** Any copy or draft of a document that differs in any manner, including the presence of handwritten notations, different senders or recipients, etc., from the original version shall be considered a distinct document and produced.

7. **Permitted Redactions for Member Identifying Information.** In general, all materials or documents responsive to this CID shall be produced in complete unabridged, unedited, and unredacted form, even if portions may contain information not explicitly requested or may reflect interim or final portions of documents or materials.

Unlike the February 5, 2024 CID, the foregoing, operative CID does ***not*** request that PFLAG produce documents and information disclosing the identify of its Members and/or actual membership lists, either in whole or in part, in any form. For this reason, PFLAG may elect to redact or anonymize any portion of a document otherwise within the scope of the CID that contains information disclosing or providing the identity of any Member. Any questions related to the precise information that PFLAG may redact at its own election should be directed the Office of the Attorney General representatives above.

8. **Document Organization.** Each document and other tangible thing produced shall be clearly designated as to which request, and each sub-part of a request, that it satisfies. The documents produced shall be identified and segregated to correspond with the number and

subsection of the request.

9. **Production Format.** You may submit photocopies (with color photocopies where necessary to interpret the document) in lieu of original hard-copy documents if the photocopies provided are true, correct, and complete copies of the original documents. If the requested information is electronically stored information, it shall be produced in electronic form. Electronically stored information shall be produced with the accompanying metadata, TIFF images, native files, load files, and programs necessary for processing into a usable form. For any questions related to the production of documents you may consult with the Office of the Attorney General representatives above.

10. **Privilege Log.** For each document or other requested information that you assert is privileged or otherwise protected from disclosure, please provide a privilege log with a numerical list of the document(s), thing(s), or information for which privilege or protection from disclosure is claimed is claim, and for each item detailed and non-conclusory information that demonstrates a prima facie claim for privilege and protection, including but not limited to, the following:

a. The name of the custodian of the withheld materials;

b. The name of each author, writer, sender, and creator of the materials;

c. The name of each recipient, addressee, and copyee for whom the materials were intended, if any;

d. The date the materials were created;

e. The general subject matter of the materials; and

f. The factual and legal bases for the claim.

## DEFINITIONS

1. **"You," "your," and "PFLAG"** means the entity named on page one of this CID, with an address of 1625 K Street NW #700, Washington, DC 20006, and a registered agent at Registered Agents Inc., at 1401 21st Street, Suite R, Sacramento, CA 95811, and includes its past and present directors, officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the control of or on behalf of any of the above. The terms "subsidiary," "affiliate," and "joint venture" refer to any entity in which there is total or partial ownership (25 percent or more) or control between PFLAG and any other person or entity.

2. The terms **"and/or," "and,"** and **"or"** refer to all listed categories inclusively, not exclusively (i.e., not the option of producing one group of documents, or another, nor of producing documents for one group of the listed persons, but not others). The conjunctive "and" shall be deemed to include the disjunctive "or" and vice versa.

3. **"Affiliate(s)"** includes, but is not limited to, PFLAG Tyler/ East Texas; PFLAG Houston; PFLAG Dallas, Inc.; PFLAG Fort Worth, Inc.; PFLAG San Antonio; PFLAG Odessa; PFLAG Denton; PFLAG Seguin; PFLAG Longview; PFLAG Boerne; PFLAG Corpus Christi; PFLAG Midland-Odessa; PFLAG Georgetown; PFLAG Amarillo; PFLAG Mesquite; PFLAG of the Big Country; PFLAG-Kerr County; PFLAG Brownsville Chapter; PFLAG Beaumont Chapter; PFLAG San Marcos, Inc.; PFLAG Brenham Chapter; PFLAG San Angelo; PFLAG Huntsville TX; PFLAG Corpus Christi, Texas, Chapter; PFLAG/HATCH YOUR SCHOLARSHIP FOUNDATION; PFLAG San Juan, Chapter of PFLAG; PFLAG of Montgomery (Parents, Families and Friends of Lesbians and Gays); and any other similarly related entity registered in Texas, either domestic or foreign.

4. "**Communication**" means any conversation, discussion, letter, email, correspondence, memorandum, meeting, note, or other transmittal of information or message, whether transmitted in writing, orally, electronically, or by any other means.

5. **"Document"** shall be construed in the broadest sense possible and encompasses any electronically stored information, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by PFLAG into a reasonably usable form. Although it does not limit the scope of this CID, the definition and interpretation of "document" under the Texas Rules of Civil Procedural provides a useful reference point.

6. **"Gender Transitioning and Reassignment Treatments and Procedures"** means any and all procedures or treatments for the purpose of "transitioning" a child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex. This definition includes, but is not limited to, surgeries or procedures that result in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue, the provision of medications that induce transient or permanent infertility (such as puberty suppressing and blocking drugs or supraphysiologic doses of testosterone to females and estrogen to males),

and any other treatments, therapies, or procedures provided to address gender identity disorder, gender dysphoria, and any other similar or related conditions.

7. **"Members"** includes individuals who pay dues for purposes of joining or associating with PFLAG's national chapter or any local chapter. For purposes of this CID, the term shall be broadly construed to encompass donors to PFLAG and individuals who directly participated in PFLAG's official programs, events, and services. However, "Members" does not include PFLAG's professional staff and non-PFLAG entities with whom the organization associates.

8. "**Person**" includes you and encompasses an entity or natural person.

# EXHIBIT B:
## DOCUMENTS TO BE PRODUCED

In accordance with the requirements set forth above and provided for under Texas law, PFLAG must respond in writing and produce documents responsive the following Requests within twenty (20) days.

1. All documents and communications that form the basis of, or otherwise relate to, Brian K. Bond's personal knowledge of the information stated in paragraphs 7 and 13 of the affidavit attached hereto as "EXHIBIT B1."

2. All communications to, or from, PFLAG's professional staff, non-members, or Affiliates regarding, relating to, or referencing, "contingency plans" and/or "alternative avenues to maintain care," as those phrases are used in the affidavit attached hereto as "EXHIBIT B1."

3. All recommendations, referrals, and/or lists of pediatric and/or adolescent health care providers in Texas that PFLAG (or any of its professional staff or affiliates) has created, maintained, received, or distributed since March 8, 2023.

4. In reference to the affidavit attached hereto as "EXHIBIT B1," produce documents, meeting minutes, and communications sufficient to show the factual basis for the statement that "PFLAG families with transgender and nonbinary adolescents … have been asking chapters for alternative avenues to maintain care in Texas" (with PFLAG having the option to redact identifying member information in the manner described in Instruction No. 7).

5. All communications to, or from, PFLAG's professional staff, non-members, or Affiliates regarding, relating to, or referencing any of the individuals or entities identified in the document attached hereto as "EXHIBIT B2" since March 8, 2023.

6. All contractual and charter agreements between PFLAG's Texas chapters and national chapter.

7. The governing documents and bylaws of PFLAG's Texas chapters and national chapter.

| | | |
|---|---|---|
| **LAZARO LOE, *et al.*** | § | **IN THE DISTRICT COURT OF** |
| **Plaintiffs** | § | **TRAVIS COUNTY, TEXAS** |
| **v.** | § | **_____ JUDICIAL DISTRICT** |
| **STATE OF TEXAS, *et. al*,** | § | |
| **Defendants.** | § | |

## AFFIDAVIT OF BRIAN K. BOND

I, Brian K. Bond, hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am the Executive Director of PFLAG, Inc. ("PFLAG"). Founded in 1973, PFLAG is the first and largest organization for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") people, their parents and families, and allies. We are a 501(c)(3) non-profit organization.

3. PFLAG has over 350 chapters across the country and approximately 325,000 members and supporters nationwide. Our members and supporters cross multiple generations of families in major urban centers, small cities, and rural areas across America. PFLAG envisions an equitable and inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved. Our mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them.

4. Our founder, Jeanne Manford, marched with her son Morty in the 1972 Christopher Street Liberation Day March in New York City and created the very first support group for parents and families of LGBTQ+ people in 1973. Supporting LGBTQ+ young people by supporting and strengthening their families has been a core part of our work ever since. Today, the gold-standard advocated by PFLAG parents and families—and set forth by pediatricians and therapists—is to accept, support, and affirm LGBTQ+ people's sexual orientation and/or gender identity and expression; parental rejection is widely understood to be abusive and damaging.

5. We know, too, that LGBTQ+ youth thrive when supported in their schools and community. So, our work also includes ending bullying, discrimination, and harassment in educational settings by providing training for teachers, administrators, and district leaders, and advocating in the public square to ensure LGBTQ+ people are treated fairly and equally when accessing public accommodations and health care.

6. We know that change happens and support grows one interaction at a time, one family at a time.

7. PFLAG is a national membership organization and we have local chapters in 49 states and the District of Columbia. Our chapters in Texas include PFLAG Amarillo, PFLAG Austin, PFLAG Beaumont, PFLAG Boerne, PFLAG Brenham, PFLAG Dallas, PFLAG El Paso, PFLAG Fort Worth, PFLAG Georgetown, PFLAG Houston, PFLAG Lubbock, PFLAG Mesquite, PFLAG Midland/Odessa, PFLAG Montgomery, PFLAG San Antonio, PFLAG San Marcos, PFLAG Seguin, and PFLAG Tyler/East Texas.

8. PFLAG's membership is comprised of chapter members and national members. Individuals can become a PFLAG member by joining the national organization directly or by

joining their local chapter, which sends a portion of the member's dues to PFLAG National, also making them national members. In addition to our formal members, PFLAG serves thousands of community members through our programs, events, and services every year.

9. PFLAG's members play a central role in electing our organizational leadership. Of the 21 members of the PFLAG National Board of Directors, seven are elected directly by our membership. Seven more are elected by the Regional Directors Council, a body of 13 volunteers who are themselves each elected by the members of one of PFLAG's thirteen regions to work with PFLAG National staff to provide support, resources, training, and help to start new affiliates, and to share the perspectives and activities of members with PFLAG National staff. The remaining seven are elected by the Board itself.

10. As Executive Director, I am the leader of the professional staff who carry out the work of the PFLAG National office, including supporting the development and work of the PFLAG Chapter Network and promoting PFLAG's presence in the national arena, including through policy advocacy, coalitions with organizations who share our goals, developing trainings and educational materials, and engaging with the media. Supporting the PFLAG Chapter Network is PFLAG National's largest program and our national staff works closely with chapter leaders and members across the country to reinforce their efforts to establish and grow their chapters, providing them with infrastructure, publications, online learning tools, advocacy support, media training, and countless other services and supports.

11. Because promoting the wellbeing of LGBTQ+ youth through encouraging and supporting love and affirmation by their families is a core part of our mission and because we have an extensive network of chapters and nearly 1500 members who live in Texas, we have been actively involved in supporting and providing resources to our members and constituents in

light of the increasingly hostile climate for transgender youth and their families in the state over the last few years. This includes PFLAG joining litigation on behalf of our members in order to protect them from Governor Abbott's directive deeming all affirming health care for transgender adolescents, regardless of medical necessity, to be "child abuse" and the Texas Department of Family and Protective Services' ("DFPS") subsequent adoption and implementation of that directive to investigate parents alleged to be helping their children access such care. Suddenly the very thing we know to be good for LGBTQ+ children—supporting and loving your child for who they are and ensuring they receive care they need to thrive—was a reason to be reported and subjected to an intrusive and traumatic investigation.

12. In September 2022, the Travis County District Court issued an injunction blocking DFPS from carrying out this directive, protecting PFLAG member families from investigation. Although the State appealed that injunction, the Court of Appeals reinstated its protections shortly thereafter. That case is still pending, but at least PFLAG families are presently protected from being investigated for child abuse based solely on allegations they sought medically necessary care for their transgender or nonbinary child.

13. This brief sigh of relief we felt from the DFPS Rule being enjoined ended when SB 14 was signed into law on June 2, 2023. PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposition regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and

nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming medical care or leave the state as a result of SB14. Requests for mental health care providers have skyrocketed, as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents' existing mental health issues connected to their gender dysphoria. Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date. And chapter leaders have heard concerns about the impacts on transgender and non-binary youth in the foster care system, who receive health care coverage through Medicaid and will lose coverage for their medical care for gender dysphoria if SB14 goes into effect.

14. SB 14 subjects PFLAG's Texas members with a transgender or nonbinary child in need of gender-affirming medical care to a substantial risk of harm. PFLAG has members in Texas whose children are being or will be monitored for the appropriate time to begin puberty blockers, are currently or soon will be on puberty blockers, and are currently or soon will be on hormone therapy, all as part of a medically prescribed course of care for gender dysphoria. Some of those families are being harmed right now by SB 14's passage, whether because they have had appointments for scheduled care cancelled, are losing access to healthcare providers who are moving their practice out of state or ending their provisions of gender-affirming care for fear of

losing their medical licenses or state funding, or have otherwise had their imminent plans to obtain the established course of medically necessary care for their transgender or nonbinary children disrupted or foreclosed.

15. Other current and future PFLAG members with transgender or nonbinary children face a substantial risk of being harmed if SB 14 goes into effect, including being denied the right to make medical decisions for their child because the care their child's healthcare providers have declared medically necessary for them has been deemed unlawful, being prevented from obtaining the puberty blockers or hormone therapy their child needs solely because they are treatment for gender dysphoria, or losing coverage for care that has previously been covered under state funded health plans. SB 14 will force PFLAG families who have seen their children thrive as a result of medical care to treat their gender dysphoria to stop providing that care, putting those children at risk of serious mental and physical harm—the very reasons those families sought medical care in the first place.

16. While SB 14 has caused or will cause some PFLAG families to leave Texas entirely or to have to access the medically necessary care their transgender or nonbinary child needs in another state, the logistical and financial costs of doing so are incredibly high. No family should be forced to leave their home, jobs, or community or to split up their family to access the established course of medical care for their child's health condition, but SB14 is putting Texas PFLAG families in exactly that position. For countless others, those costs are simply too high; thus SB 14 leaves those transgender and nonbinary Texas youth and their families with no way to access the medically necessary care they need. Parents are prioritizing their children's mental and physical health, but SB14 will strip them of the ability to make the

decisions that they, their children, and their children's medical providers know are in their best interests. SB14 will put these adolescents' lives at risk.

17. Although these members could challenge SB 14 in their own right—as the other Plaintiff families are doing—PFLAG brings claims on behalf of its members to represent their interests to shield them from harm, to vindicate their rights to make the medical decisions they, their child, and their medical providers know to be in their child's best interests, and to allow them to maintain their focus on their child's health and wellbeing rather than litigation.

18. Representing the interests of these members in challenging SB 14 is directly connected to PFLAG's mission in two ways. First, that mission includes encouraging and supporting parents and families of transgender and gender non-conforming people in affirming their children and helping them access the social, psychological, and medical supports they need. We work with our families to encourage love and support of their transgender and gender non-conforming children and to help them ensure that the children's needs are met. The provisions of SB 14 send the opposite message and prevent families from meeting their child's needs. SB 14 bars families from supporting their child's affirmation of their gender identity by seeking the established medically necessary care that has been prescribed for them, depriving youth of medically necessary gender-affirming care, resulting in anxiety, depression, and other negative health outcomes associated with denying or cutting off medically necessary care. In order to fulfill our mission to our members, we must fight back against a law that prevents them from doing the very thing we encourage because we know it is in the best interests of the children.

19. Second, we teach our members to advocate for a caring, just, and affirming world where LGBTQ+ people are safe, celebrated, empowered, and loved, and to advocate for equitable laws and policies that protect them. We have spoken out against bans on medically

necessary care for youth with gender dysphoria such as SB 14 because they directly conflict with parents' abilities to act in their children's best interest and do nothing to protect the health and well-being of youth or anyone who needs access to medical care. SB 14 is the antithesis of an equitable law, interfering with and obstructing decisions made between PFLAG parents, their child, and their child's provider to deprive that child of care that is proven to be safe, medically sound, and necessary for treating gender dysphoria. As an organization dedicated to parents and families of LGBTQ+ youth, we cannot in good faith sit back as our members' fundamental rights to make decisions about their child's medical care are infringed solely because their child is transgender or nonbinary.

20. PFLAG exists to foster a world where LGBTQ+ children can become thriving, healthy, and happy LGBTQ+ adults. Our members depend on us to provide support and community for them in a society that often still treats their children as second-class citizens, attempts to silence them, or denies their very existence. For our members who have transgender and nonbinary children and are doing nothing more than loving them and following the advice of qualified medical professionals, PFLAG is here to do all we can to support them in those efforts and protect them from harmful, invasive laws like SB 14.

Brian K. Bond
Executive Director, PFLAG, Inc.

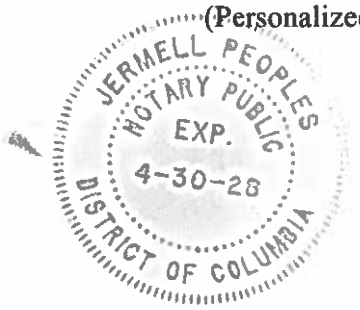
**Notary Verification**

District of Columbia

Brian K. Bond personally appeared before me, and being first duly sworn declared that he signed this declaration in the capacity designated, if any, and further states that he has read the above declaration and the statements therein contained are true.

Sworn to and subscribed before me on the 11th day of July 2023, by Brian K. Bond.

(Personalized Seal)




Notary Public's Signature

**EXHIBIT B2**

Texas Children's Hospital

Baylor College of Medicine

Seattle Children's Hospital

QMed/QueerMed

QueerDoc

Plume Health, P.C.

# ATTACHMENT 2

STATE OF TEXAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

**NOTICE OF DEMAND FOR SWORN WRITTEN STATEMENT**

**TO:** Susan Thronson
*President*
Brian K. Bond
*Chief Executive Officer*
PFLAG, Inc.
1625 K Street NW #700
Washington, DC 20006

***via CMRRR:* [to be completed]**
***via First Class Mail***

Registered Agents Inc.
1401 21st Street, Suite R
Sacramento, CA 95811

***via CMRRR:* [to be completed]**
***via First Class Mail***

The Consumer Protection Division has reason to believe that a "person," as defined by the DTPA, is engaging in, has engaged in, or is about to engage in an act or practice declared unlawful by the DTPA. Pursuant to section 17.60 of the Texas Deceptive Trade Practices—Consumer Protection Act, §§ 17.41 *et seq.*, Tex. Bus. & Com. Code ("DTPA"), PFLAG, Inc. ("PFLAG") is hereby directed to file on the prescribed form provided herein written answers under oath to the requests found in Exhibit "B."

The information requests must be answered fully, correctly, and under oath, in accordance with the "Definitions and Instructions" set forth in Exhibit "A." Your sworn written answers must be returned to the undersigned attorney general on or before April __, 2024. You may change the terms of this notice of demand for sworn written statement only by written agreement with an authorized Texas assistant attorney general or by court order. If providing documents electronically, please provide them to Sam Weeks at Samuel.Weeks@oag.texas.gov.

This demand for sworn written statement is relevant to the subject matter of an investigation regarding possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures.

**TAKE NOTICE THAT pursuant to § 17.62, Texas Business & Commerce Code, any person who with intent to avoid, evade, or prevent compliance, in whole or in part, with this examination under oath, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any relevant documentary material may be guilty of a misdemeanor that, upon conviction, is punishable by a fine of not more than $5,000.00 or by confinement in the county jail for not more than one year, or both.**

This Demand for Sworn Written Statement ("DSWS") formally supersedes the DSWS issued by the Division on February 5, 2024. The Division officially withdraws the February 5, 2024 DSWS and waives any and all rights thereunder, including enforcement. The sole DSWS issued to PFLAG with the current force and effect of law is the following.

**ISSUED THIS** __th day of _____ 2024.

DAVID SHATTO, Assistant Attorney General
Consumer Protection Division, OAG
T: (512) 463.2185 | F: (512) 370.9125
David.Shatto@oag.texas.gov

Other Authorized Agent:
Sam Weeks, Investigator
Consumer Protection Division, OAG
T: (512) 936.0501 | F: (512) 370.9125
Samuel.Weeks@oag.texas.gov

# EXHIBIT A:
## DEFINITIONS AND INSTRUCTIONS

1. **"You," "Your," and "PFLAG"** means the entity named on page one of this Demand for Sworn Written Statement, with an address at 1625 K Street NW #700, Washington, DC 20006, and a registered agent at Registered Agents Inc., at 1401 21st Street, Suite R, Sacramento, CA 95811, and includes its past and present officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidance or on behalf of any of the above. The terms "subsidiary," "affiliate," and "joint venture" refer to any firm in which there is total or partial ownership (25 percent or more) or control between the Company and any other person or entity.

2. The terms **"and/or," "and,"** and **"or"** refer to all listed categories inclusively, not exclusively (i.e., not the option of producing one group of documents, or another, nor of producing documents for one group of the listed persons, but not others). The conjunctive "and" shall be deemed to include the disjunctive "or" and vice versa.

3. **"Affiliate(s)"** includes, but is not limited to, PFLAG Tyler/ East Texas; PFLAG Houston; PFLAG Dallas, Inc.; PFLAG Fort Worth, Inc.; PFLAG San Antonio; PFLAG Odessa; PFLAG Denton; PFLAG Seguin; PFLAG Longview; PFLAG Boerne; PFLAG Corpus Christi; PFLAG Midland-Odessa; PFLAG Georgetown; PFLAG Amarillo; PFLAG Mesquite; PFLAG of the Big Country; PFLAG-Kerr County; PFLAG Brownsville Chapter; PFLAG Beaumont Chapter; PFLAG San Marcos, Inc.; PFLAG Brenham Chapter; PFLAG San Angelo; PFLAG Huntsville TX; PFLAG Corpus Christi, Texas, Chapter; PFLAG/HATCH YOUR SCHOLARSHIP FOUNDATION; PFLAG San Juan, Chapter of PFLAG; PFLAG of Montgomery (Parents, Families and Friends of Lesbians and Gays; and any other similarly related entity registered in Texas, either domestic or foreign.

4. **"Gender Transitioning and Reassignment Treatments and Procedures"** means any and all procedures or treatments for the purpose of "transitioning" a Child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex. This definition includes, but is not limited to, surgeries or procedures that result in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue, the provision of medications that induce transient or permanent infertility (including puberty suppressing and blocking drugs or supraphysiologic doses of testosterone to females and estrogen to males), and any other treatments, therapies, or procedures that are provided to address gender identity disorder, gender dysphoria, and any other similar or related conditions.

5. **"Including"** means including, but not limited to.

6. **"Person"** includes you and means any entity or natural person.

7. **"Relevant Time Period"** Unless otherwise noted, the requests in this Civil Investigative Demand require production of documents from March 8, 2023, to the date of the production of documents in response to this Sworn Written Statement, herein called the "Relevant Time Period."

8. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

9. In answering the information requests contained in Exhibit B, you shall furnish such information as is available to you, not merely such information within your officers' or employees' personal knowledge. You are to furnish any and all responsive information to each information request in Exhibit B after diligent inquiry into all sources of information available to you.

10. In the event any matter in Exhibit B cannot be fully or precisely answered after the exercise of reasonable diligence, you shall furnish as complete and precise an answer as you can and explain in detail the reasons why you cannot give a full or precise answer, what is needed to be done in order to be in a position to fully and precisely provide the answer, and a time estimate as to when you will be able to provide a full and precise answer.

11. Each response in this sworn written statement must include all relevant information from the Relevant Time Period. If changes in the relevant information, Including processes, procedures, or policies, occurred during the Relevant Time Period, describe the manner and timeframe in which the relevant information changed.

12. **"Members"** includes individuals who pay dues or purposes of joining or associating with PFLAG's national chapter or any local chapter. For purposes of this Demand for Sworn Written Statement, the term shall be broadly construed to encompass donors to PFLAG and individuals who directly participated in PFLAG's official programs, events and services.

13. The Division does not seek PFLAG's membership list, either full or partial, in any form. Therefore, at PFLAG's election, information that identifies a member may be redacted or otherwise anonymized.

14. At the end of your answers, you are required, under oath, to make and sign the following statement before a licensed notary:

STATE OF _____
COUNTY OF _____

My name is [FULL NAME]. I am over the age of 18 and capable of making this sworn statement. The preceding answers are within my personal knowledge and are true and correct.

_____
[FULL NAME]

Sworn and subscribed to before me this _____ day of _____, 2024.

[NOTARY STAMP AND NOTARY'S DATED SIGNATURE]

# EXHIBIT B
## INFORMATION REQUESTS TO BE ANSWERED UNDER OATH

1. In reference to the affidavit attached hereto as “EXHIBIT B1,” identify any "contingency plans" or “alternative avenues” that PFLAG identified, created, or shared with its members relating to obtaining and/or maintaining “gender-affirming medical care” in Texas.

2. In reference to the affidavit attached hereto as “EXHIBIT B1,” identify any "contingency plans" or “alternative avenues” that PFLAG has discovered or learned about relating to “gender-affirming medical care” in Texas.

3. Identify every health care provider and/or facility, in Texas, to whom PFLAG has referred members since March 8, 2023.

4. Identify every health care provider and/or facility, in Texas, from whom PFLAG has been referred members since March 8, 2023.

| | | |
|---|---|---|
| **LAZARO LOE, *et al.*** | § | **IN THE DISTRICT COURT OF** |
| **Plaintiffs** | § | **TRAVIS COUNTY, TEXAS** |
| **v.** | § | **_____ JUDICIAL DISTRICT** |
| **STATE OF TEXAS, *et. al*,** | § | |
| **Defendants.** | § | |

## AFFIDAVIT OF BRIAN K. BOND

I, Brian K. Bond, hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am the Executive Director of PFLAG, Inc. ("PFLAG"). Founded in 1973, PFLAG is the first and largest organization for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") people, their parents and families, and allies. We are a 501(c)(3) non-profit organization.

3. PFLAG has over 350 chapters across the country and approximately 325,000 members and supporters nationwide. Our members and supporters cross multiple generations of families in major urban centers, small cities, and rural areas across America. PFLAG envisions an equitable and inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved. Our mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them.

4. Our founder, Jeanne Manford, marched with her son Morty in the 1972 Christopher Street Liberation Day March in New York City and created the very first support group for parents and families of LGBTQ+ people in 1973. Supporting LGBTQ+ young people by supporting and strengthening their families has been a core part of our work ever since. Today, the gold-standard advocated by PFLAG parents and families—and set forth by pediatricians and therapists—is to accept, support, and affirm LGBTQ+ people's sexual orientation and/or gender identity and expression; parental rejection is widely understood to be abusive and damaging.

5. We know, too, that LGBTQ+ youth thrive when supported in their schools and community. So, our work also includes ending bullying, discrimination, and harassment in educational settings by providing training for teachers, administrators, and district leaders, and advocating in the public square to ensure LGBTQ+ people are treated fairly and equally when accessing public accommodations and health care.

6. We know that change happens and support grows one interaction at a time, one family at a time.

7. PFLAG is a national membership organization and we have local chapters in 49 states and the District of Columbia. Our chapters in Texas include PFLAG Amarillo, PFLAG Austin, PFLAG Beaumont, PFLAG Boerne, PFLAG Brenham, PFLAG Dallas, PFLAG El Paso, PFLAG Fort Worth, PFLAG Georgetown, PFLAG Houston, PFLAG Lubbock, PFLAG Mesquite, PFLAG Midland/Odessa, PFLAG Montgomery, PFLAG San Antonio, PFLAG San Marcos, PFLAG Seguin, and PFLAG Tyler/East Texas.

8. PFLAG's membership is comprised of chapter members and national members. Individuals can become a PFLAG member by joining the national organization directly or by

joining their local chapter, which sends a portion of the member's dues to PFLAG National, also making them national members. In addition to our formal members, PFLAG serves thousands of community members through our programs, events, and services every year.

9. PFLAG's members play a central role in electing our organizational leadership. Of the 21 members of the PFLAG National Board of Directors, seven are elected directly by our membership. Seven more are elected by the Regional Directors Council, a body of 13 volunteers who are themselves each elected by the members of one of PFLAG's thirteen regions to work with PFLAG National staff to provide support, resources, training, and help to start new affiliates, and to share the perspectives and activities of members with PFLAG National staff. The remaining seven are elected by the Board itself.

10. As Executive Director, I am the leader of the professional staff who carry out the work of the PFLAG National office, including supporting the development and work of the PFLAG Chapter Network and promoting PFLAG's presence in the national arena, including through policy advocacy, coalitions with organizations who share our goals, developing trainings and educational materials, and engaging with the media. Supporting the PFLAG Chapter Network is PFLAG National's largest program and our national staff works closely with chapter leaders and members across the country to reinforce their efforts to establish and grow their chapters, providing them with infrastructure, publications, online learning tools, advocacy support, media training, and countless other services and supports.

11. Because promoting the wellbeing of LGBTQ+ youth through encouraging and supporting love and affirmation by their families is a core part of our mission and because we have an extensive network of chapters and nearly 1500 members who live in Texas, we have been actively involved in supporting and providing resources to our members and constituents in

light of the increasingly hostile climate for transgender youth and their families in the state over the last few years. This includes PFLAG joining litigation on behalf of our members in order to protect them from Governor Abbott's directive deeming all affirming health care for transgender adolescents, regardless of medical necessity, to be "child abuse" and the Texas Department of Family and Protective Services' ("DFPS") subsequent adoption and implementation of that directive to investigate parents alleged to be helping their children access such care. Suddenly the very thing we know to be good for LGBTQ+ children—supporting and loving your child for who they are and ensuring they receive care they need to thrive—was a reason to be reported and subjected to an intrusive and traumatic investigation.

12. In September 2022, the Travis County District Court issued an injunction blocking DFPS from carrying out this directive, protecting PFLAG member families from investigation. Although the State appealed that injunction, the Court of Appeals reinstated its protections shortly thereafter. That case is still pending, but at least PFLAG families are presently protected from being investigated for child abuse based solely on allegations they sought medically necessary care for their transgender or nonbinary child.

13. This brief sigh of relief we felt from the DFPS Rule being enjoined ended when SB 14 was signed into law on June 2, 2023. PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposition regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and

nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming medical care or leave the state as a result of SB14. Requests for mental health care providers have skyrocketed, as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents' existing mental health issues connected to their gender dysphoria. Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date. And chapter leaders have heard concerns about the impacts on transgender and non-binary youth in the foster care system, who receive health care coverage through Medicaid and will lose coverage for their medical care for gender dysphoria if SB14 goes into effect.

14. SB 14 subjects PFLAG's Texas members with a transgender or nonbinary child in need of gender-affirming medical care to a substantial risk of harm. PFLAG has members in Texas whose children are being or will be monitored for the appropriate time to begin puberty blockers, are currently or soon will be on puberty blockers, and are currently or soon will be on hormone therapy, all as part of a medically prescribed course of care for gender dysphoria. Some of those families are being harmed right now by SB 14's passage, whether because they have had appointments for scheduled care cancelled, are losing access to healthcare providers who are moving their practice out of state or ending their provisions of gender-affirming care for fear of

losing their medical licenses or state funding, or have otherwise had their imminent plans to obtain the established course of medically necessary care for their transgender or nonbinary children disrupted or foreclosed.

15. Other current and future PFLAG members with transgender or nonbinary children face a substantial risk of being harmed if SB 14 goes into effect, including being denied the right to make medical decisions for their child because the care their child's healthcare providers have declared medically necessary for them has been deemed unlawful, being prevented from obtaining the puberty blockers or hormone therapy their child needs solely because they are treatment for gender dysphoria, or losing coverage for care that has previously been covered under state funded health plans. SB 14 will force PFLAG families who have seen their children thrive as a result of medical care to treat their gender dysphoria to stop providing that care, putting those children at risk of serious mental and physical harm—the very reasons those families sought medical care in the first place.

16. While SB 14 has caused or will cause some PFLAG families to leave Texas entirely or to have to access the medically necessary care their transgender or nonbinary child needs in another state, the logistical and financial costs of doing so are incredibly high. No family should be forced to leave their home, jobs, or community or to split up their family to access the established course of medical care for their child's health condition, but SB14 is putting Texas PFLAG families in exactly that position. For countless others, those costs are simply too high; thus SB 14 leaves those transgender and nonbinary Texas youth and their families with no way to access the medically necessary care they need. Parents are prioritizing their children's mental and physical health, but SB14 will strip them of the ability to make the

decisions that they, their children, and their children's medical providers know are in their best interests. SB14 will put these adolescents' lives at risk.

17. Although these members could challenge SB 14 in their own right—as the other Plaintiff families are doing—PFLAG brings claims on behalf of its members to represent their interests to shield them from harm, to vindicate their rights to make the medical decisions they, their child, and their medical providers know to be in their child's best interests, and to allow them to maintain their focus on their child's health and wellbeing rather than litigation.

18. Representing the interests of these members in challenging SB 14 is directly connected to PFLAG's mission in two ways. First, that mission includes encouraging and supporting parents and families of transgender and gender non-conforming people in affirming their children and helping them access the social, psychological, and medical supports they need. We work with our families to encourage love and support of their transgender and gender non-conforming children and to help them ensure that the children's needs are met. The provisions of SB 14 send the opposite message and prevent families from meeting their child's needs. SB 14 bars families from supporting their child's affirmation of their gender identity by seeking the established medically necessary care that has been prescribed for them, depriving youth of medically necessary gender-affirming care, resulting in anxiety, depression, and other negative health outcomes associated with denying or cutting off medically necessary care. In order to fulfill our mission to our members, we must fight back against a law that prevents them from doing the very thing we encourage because we know it is in the best interests of the children.

19. Second, we teach our members to advocate for a caring, just, and affirming world where LGBTQ+ people are safe, celebrated, empowered, and loved, and to advocate for equitable laws and policies that protect them. We have spoken out against bans on medically

necessary care for youth with gender dysphoria such as SB 14 because they directly conflict with parents' abilities to act in their children's best interest and do nothing to protect the health and well-being of youth or anyone who needs access to medical care. SB 14 is the antithesis of an equitable law, interfering with and obstructing decisions made between PFLAG parents, their child, and their child's provider to deprive that child of care that is proven to be safe, medically sound, and necessary for treating gender dysphoria. As an organization dedicated to parents and families of LGBTQ+ youth, we cannot in good faith sit back as our members' fundamental rights to make decisions about their child's medical care are infringed solely because their child is transgender or nonbinary.

20. PFLAG exists to foster a world where LGBTQ+ children can become thriving, healthy, and happy LGBTQ+ adults. Our members depend on us to provide support and community for them in a society that often still treats their children as second-class citizens, attempts to silence them, or denies their very existence. For our members who have transgender and nonbinary children and are doing nothing more than loving them and following the advice of qualified medical professionals, PFLAG is here to do all we can to support them in those efforts and protect them from harmful, invasive laws like SB 14.

Brian K. Bond
Executive Director, PFLAG, Inc.

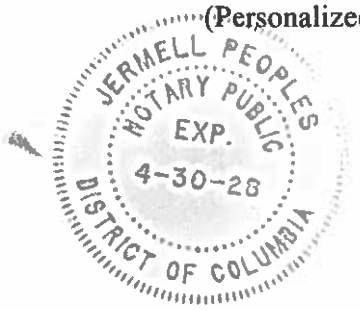
**Notary Verification**

District of Columbia

Brian K. Bond personally appeared before me, and being first duly sworn declared that he signed this declaration in the capacity designated, if any, and further states that he has read the above declaration and the statements therein contained are true.

Sworn to and subscribed before me on the 11th day of July 2023, by Brian K. Bond.

(Personalized Seal)




Notary Public's Signature

# ATTACHMENT 3

STATE OF TEXAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

# CIVIL INVESTIGATIVE DEMAND

**TO:** Susan Thronson
*President*
Brian K. Bond
*Chief Executive Officer*
PFLAG, Inc.
1625 K Street NW #700
Washington, DC 20006

***via CMRRR:*** ~~*[ADD HERE*~~[to be completed]
***via First Class Mail***

Registered Agents Inc.
1401 21st Street, Suite R
Sacramento, CA 95811

***via CMRRR:*** ~~*[ADD HERE*~~[to be completed]
***via First Class Mail***

Pursuant to this Office's specific authority under section 17.61 of the Texas Deceptive Trade Practices—Consumer Protection Act, Texas Business & Commerce Code §§ 17.41–17.63 ("DTPA"), PFLAG, Inc. ("PFLAG"), a ~~Nonprofit Corporation~~nonprofit corporation, is hereby directed to produce the items listed in Exhibit "B" attached hereto. Such production is governed by the Instructions and Definitions set forth in Exhibit "A" on this page and subsequent pages.

You are to make available the documentary material described in Exhibit "B" to the undersigned Assistant Attorney General or other authorized agent(s) identified by the Consumer Protection Division ("Division"). This documentary material shall be produced for inspection and copying during normal business hours at your principal office or place of business, or may be sent electronically or by certified mail to the Office of the Attorney General, 300 W. 15th Street, 9th Floor, Austin, TX 78701 and is due on ~~**Monday, February 26,**~~April __, 2024. If providing documents electronically, please provide them to Sam Weeks at Samuel.Weeks@oag.texas.gov.

The Division believes that you are in possession, custody, or control of documentary material relevant to the subject matter of an investigation of actual or possible violations of DTPA section 17.46 ~~for issues related to~~involving potential misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.

~~**TAKE NOTICE THAT pursuant to section 17.62, Texas Business and Commerce Code, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material is guilty of a misdemeanor and, on conviction, is punishable by a fine of not more than $5,000.00, by confinement in the county jail for not more than one year, or both.**~~

This Civil Investigative Demand ("CID") shall formally supersede the CID previously issued on February 5, 2024 by the Division. The original February 5, 2024 CID is officially withdrawn and the sole CID issued to PFLAG with the force and effect of law is the foregoing.

**TAKE NOTICE THAT pursuant to section 17.62, Texas Business and Commerce Code, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material may be guilty of a misdemeanor and on conviction is punishable by a fine of not more than $5,000.00 or by confinement in the county jail for not more than one year, or both.**

**ISSUED THIS** ~~5th~~ th day of ~~February~~ _____2024.

~~/s/ *David Shatto*~~

_____

DAVID SHATTO, Assistant Attorney General
Consumer Protection Division, OAG
T: (512) 463.2185 | F: (512) 370.9125
David.Shatto@oag.texas.gov

Other Authorized Agent:
Sam Weeks, Investigator
Consumer Protection Division, OAG
T: (512) 936.0501 | F: (512) 370.9125
Samuel.Weeks@oag.texas.gov

# EXHIBIT A:
## INSTRUCTIONS

1. **Read These Instructions~~/~~ and Definitions Carefully.** Your production must comply with these instructions and definitions.

2. Unless the context clearly indicates otherwise, words used in the singular include the plural, the plural includes the singular, and the neutral includes the masculine and feminine.

3. **Duty to Preserve Documents.** All documents and/or other data which relate to the subject matter or requests of this ~~Civil Investigative Demand~~CID must be preserved. ***Any ongoing, scheduled, or other process of document or data destruction involving such documents or data must cease, even if it is your normal or routine course of business ~~for you~~ to delete or destroy such documents or data ~~and~~or even if you believe such documents or data are privileged or otherwise protected from ~~discovery by privilege or otherwise~~disclosure.*** Failure to preserve such documents or data may result in legal action and may be regarded as spoliation of evidence under applicable law.

4. **Relevant Time Period.** Unless otherwise noted, the requests ~~in this Civil Investigative Demand~~herein require production of documents from March 8, 2023, to the date of the last production of documents in made response to this ~~Civil Investigative Demand, herein called the "Relevant Time Period."~~CID.

5. **Custody and Control.** In responding to ~~this Civil Investigative Demand~~the CID, you are required to produce ~~not only~~ all ~~requested~~responsive documents in your ~~physical~~ possession, ~~but also all requested documents within your custody and~~custody, or control. A document is ~~in~~within your custody ~~and~~or control if it is in the possession of another person and you have a right to possess that document that is equal or superior to that other person's right of possession. ~~On the rare occasion that you cannot obtain the document, you must provide an explanation as to why you cannot obtain the document which includes the following information:~~

~~a. the name of each author, sender, creator, and initiator of such document;~~
~~b. the name of each recipient, addressee, or party for whom such document was intended;~~
~~c. the date the document was created;~~
~~d. the date(s) the document was in use;~~
~~e. a detailed description of the content of the document;~~
~~f. the reason it is no longer in your possession, custody, or control; and~~

~~g. the document's present whereabouts.~~

~~If the document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the document was destroyed or otherwise disposed of, and the date and manner of the destruction or disposal.~~

6. **Non-~~identical~~Identical Copies ~~to be Produced.~~ or Drafts.** Any copy or draft of a document that differs in any manner, including the presence of handwritten notations, different senders or recipients, etc~~. must be~~., from the original version shall be considered a distinct document and produced.

7. ~~**No Redaction**. All~~**Permitted Redactions for Member Identifying Information.** In general, all materials or documents ~~produced in response~~responsive to this ~~Civil Investigative Demand~~CID shall be produced in complete unabridged, unedited, and unredacted form, even if portions may contain information not explicitly requested~~,~~ or ~~might include~~may reflect interim or final ~~editions~~portions of ~~a document.~~documents or materials.

Unlike the February 5, 2024 CID, the foregoing, operative CID does ***not*** request that PFLAG produce documents and information disclosing the identify of its Members and/or actual membership lists, either in whole or in part, in any form. For this reason, PFLAG may elect to redact or anonymize any portion of a document otherwise within the scope of the CID that contains information disclosing or providing the identity of any Member. Any questions related to the precise information that PFLAG may redact at its own election should be directed the Office of the Attorney General representatives above.

8. **Document Organization.** Each document and other tangible thing produced shall be clearly designated as to which request, and each sub-part of a request, that it satisfies. The documents produced shall be identified and segregated to correspond with the number and subsection of the request.

9. **Production ~~of Documents.~~ Format.** You may submit photocopies (with color photocopies where necessary to interpret the document) in lieu of original hard-copy documents if the photocopies provided are true, correct, and complete copies of the original documents. If the requested information is electronically stored information, it shall be produced in electronic form. Electronically stored information shall be produced with the accompanying metadata, ~~codes~~TIFF images, native files, load files, and programs necessary for ~~translating it~~processing into ~~usable form, or the information shall be produced in a finished~~ usable form. For any questions related to the production of documents you may consult with the Office of the Attorney General representatives above.

10. **Privilege Log.** For each Document and anydocument or other requested information that you assert is privileged or for any other reason excludableotherwise protected from productiondisclosure, please provide a privilege log, wherein you:

a. Identify that Document and other requested with a numerical list of the document(s), thing(s), or information;
b. State each specific ground for the claim ofwhich privilege or other ground for exclusion and the facts supporting each claim of privilege or other ground for exclusion;

11.10. State the date of the Document or other requestedprotection from disclosure is claimed is claim, and for each item detailed and non-conclusory information; the name, job title, and address ( that demonstrates a prima facie claim for privilege and protection, including city, state and ZIP Code) of the person who prepared it; the name, address (including city, state, and ZIP Code), and job title of the person to whom it was addressed or circulated or who saw it; and the name, job title, and address (including city, state, and ZIP Code) of the person now in possession of it; andbut not limited to, the following:

a. DescribeThe name of the typecustodian of the withheld materials;

b. The name of each author, writer, sender, and creator of the materials;

c. The name of each recipient, addressee, and copyee for whom the materials were intended, if any;

d. The date the materials were created;

e. The general subject matter of the Document or other requested informationmaterials; and

a.f. The factual and legal bases for the claim.

## DEFINITIONS

1. **"You," "your," and "Your," "PFLAG, Inc.," (also referred to herein as the "Company")** means the entity named on page one of this Civil Investigative DemandCID, with an address of 1625 K Street NW #700, Washington, DC 20006, and a registered agent at Registered Agents Inc., at 1401 21st Street, Suite R, Sacramento, CA 95811, and includes its past and present directors, officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, Affiliatesaffiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidancecontrol of or on behalf of any of the above. The terms "subsidiary," "Affiliateaffiliate," and "joint venture" refer to any firmentity in which there is total or partial ownership (25 percent or more) or control between the CompanyPFLAG and any other person or entity.

2. The words **"and"** and **"or"** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.

2. The terms **"and/or," "and,"** and **"or"** refer to all listed categories inclusively, not exclusively (i.e., not the option of producing one group of documents, or another, nor of producing documents for one group of the listed persons, but not others). The conjunctive "and" shall be deemed to include the disjunctive "or" and vice versa.

3. **"Affiliate(s)"** includes, but is not limited to, PFLAG Tyler/ East Texas; PFLAG Houston; PFLAG Dallas, Inc.; PFLAG Fort Worth, Inc.; PFLAG San Antonio; PFLAG Odessa; PFLAG Denton; PFLAG Seguin; PFLAG Longview; PFLAG Boerne; PFLAG Corpus Christi; PFLAG Midland-Odessa; PFLAG Georgetown; PFLAG Amarillo; PFLAG Mesquite; PFLAG of the Big Country; PFLAG-Kerr County; PFLAG Brownsville Chapter; PFLAG Beaumont Chapter; PFLAG San Marcos, Inc.; PFLAG Brenham Chapter; PFLAG San Angelo; PFLAG Huntsville TX; PFLAG Corpus Christi, Texas, Chapter; PFLAG/HATCH YOUR SCHOLARSHIP FOUNDATION; PFLAG San Juan, Chapter of PFLAG; PFLAG of Montgomery (Parents, Families and Friends of Lesbians and Gays;); and any other similarly related entity registered in Texas, either domestic or foreign.

4. "**Communication**" means any conversation, discussion, letter, email, correspondence, memorandum, meeting, note, or other transmittal of information or message, whether transmitted in writing, orally, electronically, or by any other means.

5. "**Document**" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced, or stored (manually, mechanically, electronically, or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail (e-

~~mail), instant messages, text messages or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices, and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof.~~

5. **"Document"** shall be construed in the broadest sense possible and encompasses any electronically stored information, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by PFLAG into a reasonably usable form. Although it does not limit the scope of this CID, the definition and interpretation of "document" under the Texas Rules of Civil Procedural provides a useful reference point.

6. **"Gender Transitioning and Reassignment Treatments and Procedures"** means any and all procedures or treatments for the purpose of "transitioning" a ~~Child's~~child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex~~, including~~. This definition includes, but is not limited to, surgeries or procedures that result in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue, the provision of medications that induce transient or permanent infertility (~~including~~such as puberty suppressing and blocking drugs or supraphysiologic doses of testosterone to females and estrogen to males), and any other treatments, therapies, or procedures ~~that are~~ provided to address gender identity disorder, gender dysphoria, and any other similar or related conditions.

~~7. "**Identify**" means the following:~~

~~a. With respect to a natural Person, the complete name, any alias(es), social security number, date of birth, occupation, title(s), job responsibilities, street and mailing address for both home and business at the time in question and at the time of responding (if different), home, cellular, and business telephone numbers, and personal and business email addresses;~~

~~b. With respect to a business or an entity, its name(s), business address(es), legal address(es), state(s) of incorporation, registered or unregistered tradename(s), name(s) under which it does business, or any other associated name(s), electronic email domains and websites operated by the entity, tax identification number(s), and the identity of its agent(s) for the service of process; and~~

~~c. With respect to a Document, its Bates or other sequential notation, title, date, location, author(s), signatory(ies), recipient(s), description (*e.g.*, memorandum, letter, contract, form), the number of pages, and a summary of the contents.~~

~~8. "**Person**" includes You and means any entity or natural person.~~

7. **"Members"** includes individuals who pay dues for purposes of joining or associating with PFLAG's national chapter or any local chapter. For purposes of this CID, the term shall be broadly construed to encompass donors to PFLAG and individuals who directly participated in PFLAG's official programs, events, and services. However, "Members" does not include PFLAG's professional staff and non-PFLAG entities with whom the organization associates.

8. "**Person**" includes you and encompasses an entity or natural person.

# EXHIBIT B:
## DOCUMENTS TO BE PRODUCED

In accordance with the requirements set forth ~~in the "Definitions"~~above and ~~"Instructions" sections of this Civil Investigative Demand, You are specifically required to~~provided for under Texas law, PFLAG must respond in writing ~~to each of~~and produce documents responsive the following Requests within ~~the time frame set forth below:~~twenty (20) days.

~~**Produce within 20 days:**~~

1. ~~-~~All ~~Documents~~documents and ~~Communications~~communications that form the basis of, or otherwise relate to, Brian K. Bond's personal knowledge of the information ~~contained in~~stated in paragraphs 7 and 13 of the affidavit attached hereto as "EXHIBIT B1."

2. All ~~Communications~~communications to, or from, ~~any PFLAG representative~~PFLAG's professional staff, non-members, or Affiliates regarding, relating to, or referencing, "contingency plans" and/or "alternative avenues to maintain care," as those phrases are used in the affidavit attached hereto as "EXHIBIT B1."

3. All recommendations, referrals, and/or lists of pediatric and/or adolescent ~~"~~health care providers~~" (as that term is used in paragraph 13 of the affidavit attached hereto as "EXHIBIT B1")~~ in Texas~~,~~ that PFLAG (or any of its ~~representatives~~professional staff or affiliates) has created, maintained, received, or distributed since March 8, 2023.

~~4. All Communications to, or from, Brian K. Bond regarding, or relating to, the contents and preparation of the affidavit attached hereto as "EXHIBIT B1."~~

~~5.~~4. In reference to the affidavit attached hereto as "EXHIBIT B1," produce ~~all Documents~~documents, meeting minutes, and ~~Communications that support Brian K. Bond's sworn~~communications sufficient to show the factual basis for the statement that "PFLAG families with transgender and nonbinary adolescents … have been asking chapters for alternative avenues to maintain care in Texas.~~""~~" (with PFLAG having the option to redact identifying member information in the manner described in Instruction No. 7).

~~6.~~5. All ~~Communications~~communications to, or from, ~~any PFLAG representative~~PFLAG's professional staff, non-members, or Affiliates regarding, relating to, or referencing any of the individuals or entities identified in the document attached ~~here to~~hereto as "EXHIBIT B2" since March 8, 2023.

~~7.~~6. ~~Any and all~~All contractual and charter agreements between PFLAG's Texas chapters and national chapter.

~~8.~~7. The governing documents and bylaws of PFLAG's Texas chapters and national chapter.

| | | |
|---|---|---|
| **LAZARO LOE, *et al.*** | § | **IN THE DISTRICT COURT OF** |
| **Plaintiffs** | § | **TRAVIS COUNTY, TEXAS** |
| **v.** | § | **_____ JUDICIAL DISTRICT** |
| **STATE OF TEXAS, *et. al*,** | § | |
| **Defendants.** | § | |

## AFFIDAVIT OF BRIAN K. BOND

I, Brian K. Bond, hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am the Executive Director of PFLAG, Inc. ("PFLAG"). Founded in 1973, PFLAG is the first and largest organization for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") people, their parents and families, and allies. We are a 501(c)(3) non-profit organization.

3. PFLAG has over 350 chapters across the country and approximately 325,000 members and supporters nationwide. Our members and supporters cross multiple generations of families in major urban centers, small cities, and rural areas across America. PFLAG envisions an equitable and inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved. Our mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them.

4. Our founder, Jeanne Manford, marched with her son Morty in the 1972 Christopher Street Liberation Day March in New York City and created the very first support group for parents and families of LGBTQ+ people in 1973. Supporting LGBTQ+ young people by supporting and strengthening their families has been a core part of our work ever since. Today, the gold-standard advocated by PFLAG parents and families—and set forth by pediatricians and therapists—is to accept, support, and affirm LGBTQ+ people's sexual orientation and/or gender identity and expression; parental rejection is widely understood to be abusive and damaging.

5. We know, too, that LGBTQ+ youth thrive when supported in their schools and community. So, our work also includes ending bullying, discrimination, and harassment in educational settings by providing training for teachers, administrators, and district leaders, and advocating in the public square to ensure LGBTQ+ people are treated fairly and equally when accessing public accommodations and health care.

6. We know that change happens and support grows one interaction at a time, one family at a time.

7. PFLAG is a national membership organization and we have local chapters in 49 states and the District of Columbia. Our chapters in Texas include PFLAG Amarillo, PFLAG Austin, PFLAG Beaumont, PFLAG Boerne, PFLAG Brenham, PFLAG Dallas, PFLAG El Paso, PFLAG Fort Worth, PFLAG Georgetown, PFLAG Houston, PFLAG Lubbock, PFLAG Mesquite, PFLAG Midland/Odessa, PFLAG Montgomery, PFLAG San Antonio, PFLAG San Marcos, PFLAG Seguin, and PFLAG Tyler/East Texas.

8. PFLAG's membership is comprised of chapter members and national members. Individuals can become a PFLAG member by joining the national organization directly or by

joining their local chapter, which sends a portion of the member's dues to PFLAG National, also making them national members. In addition to our formal members, PFLAG serves thousands of community members through our programs, events, and services every year.

9. PFLAG's members play a central role in electing our organizational leadership. Of the 21 members of the PFLAG National Board of Directors, seven are elected directly by our membership. Seven more are elected by the Regional Directors Council, a body of 13 volunteers who are themselves each elected by the members of one of PFLAG's thirteen regions to work with PFLAG National staff to provide support, resources, training, and help to start new affiliates, and to share the perspectives and activities of members with PFLAG National staff. The remaining seven are elected by the Board itself.

10. As Executive Director, I am the leader of the professional staff who carry out the work of the PFLAG National office, including supporting the development and work of the PFLAG Chapter Network and promoting PFLAG's presence in the national arena, including through policy advocacy, coalitions with organizations who share our goals, developing trainings and educational materials, and engaging with the media. Supporting the PFLAG Chapter Network is PFLAG National's largest program and our national staff works closely with chapter leaders and members across the country to reinforce their efforts to establish and grow their chapters, providing them with infrastructure, publications, online learning tools, advocacy support, media training, and countless other services and supports.

11. Because promoting the wellbeing of LGBTQ+ youth through encouraging and supporting love and affirmation by their families is a core part of our mission and because we have an extensive network of chapters and nearly 1500 members who live in Texas, we have been actively involved in supporting and providing resources to our members and constituents in

light of the increasingly hostile climate for transgender youth and their families in the state over the last few years. This includes PFLAG joining litigation on behalf of our members in order to protect them from Governor Abbott's directive deeming all affirming health care for transgender adolescents, regardless of medical necessity, to be "child abuse" and the Texas Department of Family and Protective Services' ("DFPS") subsequent adoption and implementation of that directive to investigate parents alleged to be helping their children access such care. Suddenly the very thing we know to be good for LGBTQ+ children—supporting and loving your child for who they are and ensuring they receive care they need to thrive—was a reason to be reported and subjected to an intrusive and traumatic investigation.

12. In September 2022, the Travis County District Court issued an injunction blocking DFPS from carrying out this directive, protecting PFLAG member families from investigation. Although the State appealed that injunction, the Court of Appeals reinstated its protections shortly thereafter. That case is still pending, but at least PFLAG families are presently protected from being investigated for child abuse based solely on allegations they sought medically necessary care for their transgender or nonbinary child.

13. This brief sigh of relief we felt from the DFPS Rule being enjoined ended when SB 14 was signed into law on June 2, 2023. PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposition regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and

nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming medical care or leave the state as a result of SB14. Requests for mental health care providers have skyrocketed, as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents' existing mental health issues connected to their gender dysphoria. Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date. And chapter leaders have heard concerns about the impacts on transgender and non-binary youth in the foster care system, who receive health care coverage through Medicaid and will lose coverage for their medical care for gender dysphoria if SB14 goes into effect.

14. SB 14 subjects PFLAG's Texas members with a transgender or nonbinary child in need of gender-affirming medical care to a substantial risk of harm. PFLAG has members in Texas whose children are being or will be monitored for the appropriate time to begin puberty blockers, are currently or soon will be on puberty blockers, and are currently or soon will be on hormone therapy, all as part of a medically prescribed course of care for gender dysphoria. Some of those families are being harmed right now by SB 14's passage, whether because they have had appointments for scheduled care cancelled, are losing access to healthcare providers who are moving their practice out of state or ending their provisions of gender-affirming care for fear of

losing their medical licenses or state funding, or have otherwise had their imminent plans to obtain the established course of medically necessary care for their transgender or nonbinary children disrupted or foreclosed.

15. Other current and future PFLAG members with transgender or nonbinary children face a substantial risk of being harmed if SB 14 goes into effect, including being denied the right to make medical decisions for their child because the care their child's healthcare providers have declared medically necessary for them has been deemed unlawful, being prevented from obtaining the puberty blockers or hormone therapy their child needs solely because they are treatment for gender dysphoria, or losing coverage for care that has previously been covered under state funded health plans. SB 14 will force PFLAG families who have seen their children thrive as a result of medical care to treat their gender dysphoria to stop providing that care, putting those children at risk of serious mental and physical harm—the very reasons those families sought medical care in the first place.

16. While SB 14 has caused or will cause some PFLAG families to leave Texas entirely or to have to access the medically necessary care their transgender or nonbinary child needs in another state, the logistical and financial costs of doing so are incredibly high. No family should be forced to leave their home, jobs, or community or to split up their family to access the established course of medical care for their child's health condition, but SB14 is putting Texas PFLAG families in exactly that position. For countless others, those costs are simply too high; thus SB 14 leaves those transgender and nonbinary Texas youth and their families with no way to access the medically necessary care they need. Parents are prioritizing their children's mental and physical health, but SB14 will strip them of the ability to make the

decisions that they, their children, and their children's medical providers know are in their best interests. SB14 will put these adolescents' lives at risk.

17. Although these members could challenge SB 14 in their own right—as the other Plaintiff families are doing—PFLAG brings claims on behalf of its members to represent their interests to shield them from harm, to vindicate their rights to make the medical decisions they, their child, and their medical providers know to be in their child's best interests, and to allow them to maintain their focus on their child's health and wellbeing rather than litigation.

18. Representing the interests of these members in challenging SB 14 is directly connected to PFLAG's mission in two ways. First, that mission includes encouraging and supporting parents and families of transgender and gender non-conforming people in affirming their children and helping them access the social, psychological, and medical supports they need. We work with our families to encourage love and support of their transgender and gender non-conforming children and to help them ensure that the children's needs are met. The provisions of SB 14 send the opposite message and prevent families from meeting their child's needs. SB 14 bars families from supporting their child's affirmation of their gender identity by seeking the established medically necessary care that has been prescribed for them, depriving youth of medically necessary gender-affirming care, resulting in anxiety, depression, and other negative health outcomes associated with denying or cutting off medically necessary care. In order to fulfill our mission to our members, we must fight back against a law that prevents them from doing the very thing we encourage because we know it is in the best interests of the children.

19. Second, we teach our members to advocate for a caring, just, and affirming world where LGBTQ+ people are safe, celebrated, empowered, and loved, and to advocate for equitable laws and policies that protect them. We have spoken out against bans on medically

necessary care for youth with gender dysphoria such as SB 14 because they directly conflict with parents' abilities to act in their children's best interest and do nothing to protect the health and well-being of youth or anyone who needs access to medical care. SB 14 is the antithesis of an equitable law, interfering with and obstructing decisions made between PFLAG parents, their child, and their child's provider to deprive that child of care that is proven to be safe, medically sound, and necessary for treating gender dysphoria. As an organization dedicated to parents and families of LGBTQ+ youth, we cannot in good faith sit back as our members' fundamental rights to make decisions about their child's medical care are infringed solely because their child is transgender or nonbinary.

20. PFLAG exists to foster a world where LGBTQ+ children can become thriving, healthy, and happy LGBTQ+ adults. Our members depend on us to provide support and community for them in a society that often still treats their children as second-class citizens, attempts to silence them, or denies their very existence. For our members who have transgender and nonbinary children and are doing nothing more than loving them and following the advice of qualified medical professionals, PFLAG is here to do all we can to support them in those efforts and protect them from harmful, invasive laws like SB 14.

Brian K. Bond
Executive Director, PFLAG, Inc.

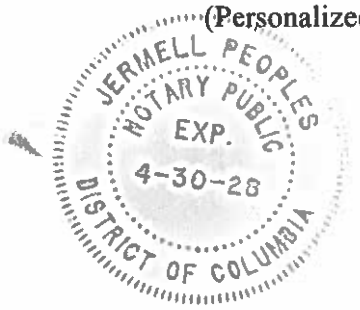
**Notary Verification**

District of Columbia

Brian K. Bond personally appeared before me, and being first duly sworn declared that he signed this declaration in the capacity designated, if any, and further states that he has read the above declaration and the statements therein contained are true.

Sworn to and subscribed before me on the 11th day of July 2023, by Brian K. Bond.

(Personalized Seal)




Notary Public's Signature

**EXHIBIT B2**

Texas Children's Hospital

Baylor College of Medicine

Seattle Children's Hospital

QMed/QueerMed

QueerDoc

Plume Health, P.C.

# ATTACHMENT 4

STATE OF TEXAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

**NOTICE OF DEMAND FOR SWORN WRITTEN STATEMENT**

**TO:** Susan Thronson
*President*
Brian K. Bond
*Chief Executive Officer*
PFLAG, Inc.
1625 K Street NW #700
Washington, DC 20006

***via CMRRR:*** **[~~*ADD HERE*~~to be completed]**
***via First Class Mail***

Registered Agents Inc.
1401 21st Street, Suite R
Sacramento, CA 95811

***via CMRRR:*** **[~~*ADD HERE*~~to be completed]**
***via First Class Mail***

The Consumer Protection Division has reason to believe that a "person," as defined by the DTPA, is engaging in, has engaged in, or is about to engage in an act or practice declared unlawful by the DTPA. Pursuant to section 17.60 of the Texas Deceptive Trade Practices—Consumer Protection Act, §§ 17.41 *et seq.*, Tex. Bus. & Com. Code ("DTPA"), PFLAG, Inc. ("PFLAG") is hereby directed to file on the prescribed form provided herein written answers under oath to the requests found in Exhibit "B."

The information requests must be answered fully, correctly, and under oath, in accordance with the "Definitions and Instructions" set forth in Exhibit "A." Your sworn written answers must be returned to the undersigned attorney general on or before ~~**Monday, February 26,**~~April __, 2024. You may change the terms of this notice of demand for sworn written statement only by written agreement with an authorized Texas assistant attorney general or by court order. If providing documents electronically, please provide them to Sam Weeks at Samuel.Weeks@oag.texas.gov.

This demand for sworn written statement is relevant to the subject matter of an investigation regarding possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures.

~~**TAKE NOTICE THAT pursuant to § 17.62, Texas Business & Commerce Code, any person who with intent to avoid, evade, or prevent compliance, in whole or in part, with this examination under oath, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any relevant documentary material may be guilty of a misdemeanor that, upon conviction, is punishable by a fine of not more than $5,000.00 or by confinement in the county jail for not more than one year, or both.**~~

This Demand for Sworn Written Statement ("DSWS") formally supersedes the DSWS issued by the Division on February 5, 2024. The Division officially withdraws the February 5, 2024 DSWS and waives any and all rights thereunder, including enforcement. The sole DSWS issued to PFLAG with the current force and effect of law is the following.

**ISSUED THIS** ~~5th~~ __th day of ~~February~~ _____ 2024.

~~*/s/ David Shatto*~~

DAVID SHATTO, Assistant Attorney General
Consumer Protection Division, OAG
T: (512) 463.2185 | F: (512) 370.9125
David.Shatto@oag.texas.gov

Other Authorized Agent:
Sam Weeks, Investigator
Consumer Protection Division, OAG
T: (512) 936.0501 | F: (512) 370.9125
Samuel.Weeks@oag.texas.gov

# EXHIBIT A:
## DEFINITIONS AND INSTRUCTIONS

1. **"You," "Your,"** ~~**"PFLAG, Inc.," and/or "PFLAG," (also referred to herein as the "Company")**~~ **and "PFLAG"** means the entity named on page one of this Demand for Sworn Written Statement, with an address at 1625 K Street NW #700, Washington, DC 20006, and a registered agent at Registered Agents Inc., at 1401 21st Street, Suite R, Sacramento, CA 95811, and includes its past and present officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, ~~Affiliates~~affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidance or on behalf of any of the above. The terms "subsidiary," "~~Affiliate~~affiliate," and "joint venture" refer to any firm in which there is total or partial ownership (25 percent or more) or control between the Company and any other person or entity.

~~2. The words **"and"** and **"or"** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.~~

2. The terms **"and/or," "and,"** and **"or"** refer to all listed categories inclusively, not exclusively (i.e., not the option of producing one group of documents, or another, nor of producing documents for one group of the listed persons, but not others). The conjunctive "and" shall be deemed to include the disjunctive "or" and vice versa.

3. **"Affiliate(s)"** includes, but is not limited to, PFLAG Tyler/ East Texas; PFLAG Houston; PFLAG Dallas, Inc.; PFLAG Fort Worth, Inc.; PFLAG San Antonio; PFLAG Odessa; PFLAG Denton; PFLAG Seguin; PFLAG Longview; PFLAG Boerne; PFLAG Corpus Christi; PFLAG Midland-Odessa; PFLAG Georgetown; PFLAG Amarillo; PFLAG Mesquite; PFLAG of the Big Country; PFLAG-Kerr County; PFLAG Brownsville Chapter; PFLAG Beaumont Chapter; PFLAG San Marcos, Inc.; PFLAG Brenham Chapter; PFLAG San Angelo; PFLAG Huntsville TX; PFLAG Corpus Christi, Texas, Chapter; PFLAG/HATCH YOUR SCHOLARSHIP FOUNDATION; PFLAG San Juan, Chapter of PFLAG; PFLAG of Montgomery (Parents, Families and Friends of Lesbians and Gays; and any other similarly related entity registered in Texas, either domestic or foreign.

4. **"Gender Transitioning and Reassignment Treatments and Procedures"** means any and all procedures or treatments for the purpose of "transitioning" a Child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex~~, including~~. This definition includes, but is not limited to, surgeries or procedures that result in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue, the provision of medications that induce transient or permanent infertility (including puberty suppressing and blocking drugs or supraphysiologic doses of testosterone to females and estrogen to males), and any other treatments, therapies, or procedures that are provided to address gender identity disorder, gender dysphoria, and any other similar or related conditions.

~~5. "**Identify**" means the following:~~

~~a. With respect to a natural Person, the complete name, any alias(es), social security number, date of birth, occupation, title(s), job responsibilities, street and mailing address for both~~

~~home and business at the time in question and at the time of responding (if different), home, cellular, and business telephone numbers, and personal and business email addresses;~~

~~b. With respect to an entity, its name(s), business address(es), legal address(es), state(s) of incorporation, registered or unregistered tradename(s), name(s) under which it does business, or any other associated name(s), electronic email domains and websites operated by the entity, tax identification number(s), and the identity of its agent(s) for the service of process;~~

~~c. With respect to a Document, its Bates or other sequential notation, title, date, location, author(s), signatory(ies), recipient(s), description (*e.g.*, memorandum, letter, contract, form), the number of pages, and a summary of the contents;~~

~~d. With respect to a Communication, the persons participating in the Communication, state the date, time, manner, place, means and substance of the Communication, and also the Document or Documents which refer to the Communication; and~~

~~e. With respect to an event or sequence of events, the date, place, and time of the event or sequence of events, the persons involved, and the facts related to the substance of the particular interrogatory.~~

~~6.~~5. **"Including"** means including, but not limited to.

~~7.~~6. **"Person"** includes ~~You~~you and means any entity or natural person.

~~8.~~7. **"Relevant Time Period"** Unless otherwise noted, the requests in this Civil Investigative Demand require production of documents from March 8, 2023, to the date of the production of documents in response to this Sworn Written Statement, herein called the "Relevant Time Period."

~~9.~~8. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

~~10.~~9. In answering the information requests contained in Exhibit B, you shall furnish such information as is available to you, not merely such information within your officers' or employees' personal knowledge. You are to furnish any and all responsive information to each information request in Exhibit B after diligent inquiry into all sources of information available to you.

~~11.~~10. In the event any matter in Exhibit B cannot be fully or precisely answered after the exercise of reasonable diligence, you shall furnish as complete and precise an answer as you can and explain in detail the reasons why you cannot give a full or precise answer, what is needed to be done in order to be in a position to fully and precisely provide the answer, and a time estimate as to when you will be able to provide a full and precise answer.

~~12.~~11. Each response in this sworn written statement must include all relevant information from the Relevant Time Period. If changes in the relevant information, Including processes, procedures, or policies, occurred during the Relevant Time Period, describe the manner and timeframe in which the relevant information changed.

12. **"Members"** includes individuals who pay dues or purposes of joining or associating with PFLAG's national chapter or any local chapter. For purposes of this Demand for Sworn Written Statement, the

term shall be broadly construed to encompass donors to PFLAG and individuals who directly participated in PFLAG's official programs, events and services.

13. The Division does not seek PFLAG's membership list, either full or partial, in any form. Therefore, at PFLAG's election, information that identifies a member may be redacted or otherwise anonymized.

~~13.~~14. At the end of your answers, you are required, under oath, to make and sign the following statement before a licensed notary:

STATE OF _____
COUNTY OF _____

My name is [FULL NAME]. I am over the age of 18 and capable of making this sworn statement. The preceding answers are within my personal knowledge and are true and correct.

_____
[FULL NAME]

Sworn and subscribed to before me this _____ day of _____, 2024.

[NOTARY STAMP AND NOTARY'S DATED SIGNATURE]

# EXHIBIT B
## INFORMATION REQUESTS TO BE ANSWERED UNDER OATH

~~1. Define the meaning of "gender-affirming medical care" as that phrase is used in the affidavit attached hereto as "EXHIBIT B1."~~

~~2. Define the meaning of "affirming general practitioners" as that phrase is used in the affidavit attached hereto as "EXHIBIT B1."~~

~~3.~~1. In reference to the affidavit attached hereto as "EXHIBIT B1," ~~Identify~~identify any "contingency plans" or "alternative avenues" that PFLAG identified, created, or shared with its members relating to obtaining and/or maintaining "gender-affirming medical care" in Texas.

~~4.~~ In reference to ~~Your response to Information Request No. 3 above, and separately for each "contingency plan" or "alternative avenue," Identify from whom PFLAG learned about such "contingency plans" or "alternative avenues."~~

~~5.~~2. ~~In reference to~~ the affidavit attached hereto as "EXHIBIT B1," ~~Identify~~identify any "contingency plans" or "alternative avenues" that PFLAG has discovered or learned about relating to "gender-affirming medical care" in Texas.

~~6. In reference to the affidavit attached hereto as "EXHIBIT B1," Identify all factual bases upon which Brian K. Bond made the sworn statement that he had personal knowledge that "PFLAG families with transgender and nonbinary adolescents shared their contingency plans – those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas."~~

~~In reference to the affidavit attached hereto as "EXHIBIT B1," Identify all factual bases upon which Brian K. Bond made the sworn statement that he had personal knowledge that "Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners…"~~

~~8.~~3. Identify every health care provider and/or facility, in Texas, to whom PFLAG has referred members since March 8, 2023.

~~9.~~4. Identify every health care provider and/or facility, in Texas, from whom PFLAG has been referred members since March 8, 2023.

| | | |
|---|---|---|
| **LAZARO LOE, *et al.*** | § | **IN THE DISTRICT COURT OF** |
| **Plaintiffs** | § | **TRAVIS COUNTY, TEXAS** |
| **v.** | § | **_____ JUDICIAL DISTRICT** |
| **STATE OF TEXAS, *et. al*,** | § | |
| **Defendants.** | § | |

## AFFIDAVIT OF BRIAN K. BOND

I, Brian K. Bond, hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am the Executive Director of PFLAG, Inc. ("PFLAG"). Founded in 1973, PFLAG is the first and largest organization for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") people, their parents and families, and allies. We are a 501(c)(3) non-profit organization.

3. PFLAG has over 350 chapters across the country and approximately 325,000 members and supporters nationwide. Our members and supporters cross multiple generations of families in major urban centers, small cities, and rural areas across America. PFLAG envisions an equitable and inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved. Our mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them.

4. Our founder, Jeanne Manford, marched with her son Morty in the 1972 Christopher Street Liberation Day March in New York City and created the very first support group for parents and families of LGBTQ+ people in 1973. Supporting LGBTQ+ young people by supporting and strengthening their families has been a core part of our work ever since. Today, the gold-standard advocated by PFLAG parents and families—and set forth by pediatricians and therapists—is to accept, support, and affirm LGBTQ+ people's sexual orientation and/or gender identity and expression; parental rejection is widely understood to be abusive and damaging.

5. We know, too, that LGBTQ+ youth thrive when supported in their schools and community. So, our work also includes ending bullying, discrimination, and harassment in educational settings by providing training for teachers, administrators, and district leaders, and advocating in the public square to ensure LGBTQ+ people are treated fairly and equally when accessing public accommodations and health care.

6. We know that change happens and support grows one interaction at a time, one family at a time.

7. PFLAG is a national membership organization and we have local chapters in 49 states and the District of Columbia. Our chapters in Texas include PFLAG Amarillo, PFLAG Austin, PFLAG Beaumont, PFLAG Boerne, PFLAG Brenham, PFLAG Dallas, PFLAG El Paso, PFLAG Fort Worth, PFLAG Georgetown, PFLAG Houston, PFLAG Lubbock, PFLAG Mesquite, PFLAG Midland/Odessa, PFLAG Montgomery, PFLAG San Antonio, PFLAG San Marcos, PFLAG Seguin, and PFLAG Tyler/East Texas.

8. PFLAG's membership is comprised of chapter members and national members. Individuals can become a PFLAG member by joining the national organization directly or by

joining their local chapter, which sends a portion of the member's dues to PFLAG National, also making them national members. In addition to our formal members, PFLAG serves thousands of community members through our programs, events, and services every year.

9. PFLAG's members play a central role in electing our organizational leadership. Of the 21 members of the PFLAG National Board of Directors, seven are elected directly by our membership. Seven more are elected by the Regional Directors Council, a body of 13 volunteers who are themselves each elected by the members of one of PFLAG's thirteen regions to work with PFLAG National staff to provide support, resources, training, and help to start new affiliates, and to share the perspectives and activities of members with PFLAG National staff. The remaining seven are elected by the Board itself.

10. As Executive Director, I am the leader of the professional staff who carry out the work of the PFLAG National office, including supporting the development and work of the PFLAG Chapter Network and promoting PFLAG's presence in the national arena, including through policy advocacy, coalitions with organizations who share our goals, developing trainings and educational materials, and engaging with the media. Supporting the PFLAG Chapter Network is PFLAG National's largest program and our national staff works closely with chapter leaders and members across the country to reinforce their efforts to establish and grow their chapters, providing them with infrastructure, publications, online learning tools, advocacy support, media training, and countless other services and supports.

11. Because promoting the wellbeing of LGBTQ+ youth through encouraging and supporting love and affirmation by their families is a core part of our mission and because we have an extensive network of chapters and nearly 1500 members who live in Texas, we have been actively involved in supporting and providing resources to our members and constituents in

light of the increasingly hostile climate for transgender youth and their families in the state over the last few years. This includes PFLAG joining litigation on behalf of our members in order to protect them from Governor Abbott's directive deeming all affirming health care for transgender adolescents, regardless of medical necessity, to be "child abuse" and the Texas Department of Family and Protective Services' ("DFPS") subsequent adoption and implementation of that directive to investigate parents alleged to be helping their children access such care. Suddenly the very thing we know to be good for LGBTQ+ children—supporting and loving your child for who they are and ensuring they receive care they need to thrive—was a reason to be reported and subjected to an intrusive and traumatic investigation.

12. In September 2022, the Travis County District Court issued an injunction blocking DFPS from carrying out this directive, protecting PFLAG member families from investigation. Although the State appealed that injunction, the Court of Appeals reinstated its protections shortly thereafter. That case is still pending, but at least PFLAG families are presently protected from being investigated for child abuse based solely on allegations they sought medically necessary care for their transgender or nonbinary child.

13. This brief sigh of relief we felt from the DFPS Rule being enjoined ended when SB 14 was signed into law on June 2, 2023. PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposition regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and

nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming medical care or leave the state as a result of SB14. Requests for mental health care providers have skyrocketed, as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents' existing mental health issues connected to their gender dysphoria. Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date. And chapter leaders have heard concerns about the impacts on transgender and non-binary youth in the foster care system, who receive health care coverage through Medicaid and will lose coverage for their medical care for gender dysphoria if SB14 goes into effect.

14. SB 14 subjects PFLAG's Texas members with a transgender or nonbinary child in need of gender-affirming medical care to a substantial risk of harm. PFLAG has members in Texas whose children are being or will be monitored for the appropriate time to begin puberty blockers, are currently or soon will be on puberty blockers, and are currently or soon will be on hormone therapy, all as part of a medically prescribed course of care for gender dysphoria. Some of those families are being harmed right now by SB 14's passage, whether because they have had appointments for scheduled care cancelled, are losing access to healthcare providers who are moving their practice out of state or ending their provisions of gender-affirming care for fear of

losing their medical licenses or state funding, or have otherwise had their imminent plans to obtain the established course of medically necessary care for their transgender or nonbinary children disrupted or foreclosed.

15. Other current and future PFLAG members with transgender or nonbinary children face a substantial risk of being harmed if SB 14 goes into effect, including being denied the right to make medical decisions for their child because the care their child's healthcare providers have declared medically necessary for them has been deemed unlawful, being prevented from obtaining the puberty blockers or hormone therapy their child needs solely because they are treatment for gender dysphoria, or losing coverage for care that has previously been covered under state funded health plans. SB 14 will force PFLAG families who have seen their children thrive as a result of medical care to treat their gender dysphoria to stop providing that care, putting those children at risk of serious mental and physical harm—the very reasons those families sought medical care in the first place.

16. While SB 14 has caused or will cause some PFLAG families to leave Texas entirely or to have to access the medically necessary care their transgender or nonbinary child needs in another state, the logistical and financial costs of doing so are incredibly high. No family should be forced to leave their home, jobs, or community or to split up their family to access the established course of medical care for their child's health condition, but SB14 is putting Texas PFLAG families in exactly that position. For countless others, those costs are simply too high; thus SB 14 leaves those transgender and nonbinary Texas youth and their families with no way to access the medically necessary care they need. Parents are prioritizing their children's mental and physical health, but SB14 will strip them of the ability to make the

decisions that they, their children, and their children's medical providers know are in their best interests. SB14 will put these adolescents' lives at risk.

17. Although these members could challenge SB 14 in their own right—as the other Plaintiff families are doing—PFLAG brings claims on behalf of its members to represent their interests to shield them from harm, to vindicate their rights to make the medical decisions they, their child, and their medical providers know to be in their child's best interests, and to allow them to maintain their focus on their child's health and wellbeing rather than litigation.

18. Representing the interests of these members in challenging SB 14 is directly connected to PFLAG's mission in two ways. First, that mission includes encouraging and supporting parents and families of transgender and gender non-conforming people in affirming their children and helping them access the social, psychological, and medical supports they need. We work with our families to encourage love and support of their transgender and gender non-conforming children and to help them ensure that the children's needs are met. The provisions of SB 14 send the opposite message and prevent families from meeting their child's needs. SB 14 bars families from supporting their child's affirmation of their gender identity by seeking the established medically necessary care that has been prescribed for them, depriving youth of medically necessary gender-affirming care, resulting in anxiety, depression, and other negative health outcomes associated with denying or cutting off medically necessary care. In order to fulfill our mission to our members, we must fight back against a law that prevents them from doing the very thing we encourage because we know it is in the best interests of the children.

19. Second, we teach our members to advocate for a caring, just, and affirming world where LGBTQ+ people are safe, celebrated, empowered, and loved, and to advocate for equitable laws and policies that protect them. We have spoken out against bans on medically

necessary care for youth with gender dysphoria such as SB 14 because they directly conflict with parents' abilities to act in their children's best interest and do nothing to protect the health and well-being of youth or anyone who needs access to medical care. SB 14 is the antithesis of an equitable law, interfering with and obstructing decisions made between PFLAG parents, their child, and their child's provider to deprive that child of care that is proven to be safe, medically sound, and necessary for treating gender dysphoria. As an organization dedicated to parents and families of LGBTQ+ youth, we cannot in good faith sit back as our members' fundamental rights to make decisions about their child's medical care are infringed solely because their child is transgender or nonbinary.

20. PFLAG exists to foster a world where LGBTQ+ children can become thriving, healthy, and happy LGBTQ+ adults. Our members depend on us to provide support and community for them in a society that often still treats their children as second-class citizens, attempts to silence them, or denies their very existence. For our members who have transgender and nonbinary children and are doing nothing more than loving them and following the advice of qualified medical professionals, PFLAG is here to do all we can to support them in those efforts and protect them from harmful, invasive laws like SB 14.

Brian K. Bond
Executive Director, PFLAG, Inc.

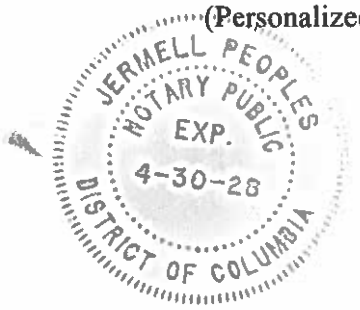
**Notary Verification**

District of Columbia

Brian K. Bond personally appeared before me, and being first duly sworn declared that he signed this declaration in the capacity designated, if any, and further states that he has read the above declaration and the statements therein contained are true.

Sworn to and subscribed before me on the 11th day of July 2023, by Brian K. Bond.

(Personalized Seal)




Notary Public's Signature

# ATTACHMENT 5

5/3/2023 3:56 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-22-002569
Norma Ybarra

SHELLY L. SKEEN, SENIOR ATTORNEY
EMAIL: SSKEEN@LAMBDALEGAL.ORG
WRITER'S DIRECT LINE: (214) 302-2455

May 1, 2023

**Sent Via Email at Johnathan.Stone@oag.texas.gov, Heather.Dyer@oag.texas.gov**

Johnathan Stone
Heather Dyer
Office of the Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

**RE:** Rule 11 Agreement and Informal Stay of Trial Court Proceedings in *PFLAG, Inc., et al. v. Abbott, et al.*, D-1-GN-22-0002569, In the 459th District Court, Travis County

Dear Johnathan and Heather:

This letter memorializes the following Rule 11 agreement between all Plaintiffs and their counsel of record in this cause, Defendant the Texas Department of Family and Protective Services ("DFPS"), Defendant DFPS Commissioner Stephanie Muth (the "Commissioner")[1] and all of Defendants' counsel of record in this cause[2]:

1. **First Amended Agreed Level 3 Scheduling Order Preempted:** All settings, deadlines, and the October 23, 2023 trial date in the First Amended Agreed Level 3 Scheduling Order, signed and entered February 14, 2023, and all deadlines in the Rule 11 Agreement entered April 10, 2023 are lifted.[3] The limitations on time for oral depositions and number of interrogatories remain in effect.

2. **Informal Stay of Trial Court Proceedings:** The Parties and their counsel agree they will not seek an order to stay this cause from the trial court, unless and until this Rule 11 agreement is terminated in accordance with Term 4 below. The Parties agree they will not file any substantive motions, notices, pleadings or other documents with the trial court, serve any additional discovery requests, make demands for responses to outstanding discovery requests, serve any deposition notices (on each other, other parties to the suit or nonparties), serve any discovery

[1] Jamie Masters was the Commissioner of the DFPS at the time this suit was filed and was named as a Defendant in her official capacity. Masters has since been replaced in the role of DFPS Commissioner by Stephanie Muth, who, in her official capacity, is now the appropriate Defendant.
[2] Plaintiffs and Defendants DFPS and the Commissioner shall collectively be referred to as the "Parties" herein.
[3] This Rule 11 agreement shall not affect any hearing or correspondence with the Court regarding Plaintiffs' Motion for Entry of a Confidentiality and Protective Order.

on nonparties, or otherwise proceed with the development of the case in the trial court, and all counsel agree they will not take any such actions on behalf of the Parties to this agreement or any other party to the suit. This does not preclude the Parties or counsel from filing notices of appearances, changes of counsel, *pro hac vice* motions, status reports or other filings that do not require responses from the Parties, other parties to the suit or nonparties, and do not implicate either directly or indirectly the substance of the dispute, particularly for the purpose of avoiding dismissal for want of prosecution. However, the Parties and their counsel may notify the trial court that deadlines have been lifted and settings have been passed, or urge the trial court to rule on motions it has already heard. This informal stay of the trial court proceedings does not apply to or affect any proceedings in any appellate court or the Texas Supreme Court.

3. **Stay of Investigations:** During the pendency of this Rule 11 agreement, Defendants DFPS and the Commissioner will comply with the July 8, 2022 and September 16, 2022 injunctions in this cause, attached hereto as Exhibits A and B.

4. **Duration/Termination:** This Rule 11 agreement shall remain in effect until:

   a. all Parties through their counsel of record agree in writing that this Rule 11 agreement is terminated; or

   b. fourteen days after a Party provides written notice to the opposing Parties that it intends to terminate this agreement; or

   c. a court orders the termination of this agreement; or

   d. both:

      i. a final opinion has been issued in the appeal in Case No. 03-22-00587-CV (into which Case No. 03-22-00420 has been consolidated) in the Third Court of Appeals and any associated proceedings in the Texas Supreme Court that may occur, and

      ii. the trial court has ruled on Defendants' Plea to the Jurisdiction.

5. **Breach and Enforcement:** If any Party believes another Party has materially breached this agreement and the Parties are unable to remedy the breach, the nonbreaching Party may ask the Court to enforce this agreement or seek sanctions from the trial court as appropriate.

6. **Court Orders**: Nothing in this Rule 11 agreement supersedes any relief, including but not limited to temporary injunctive relief, that has been or may be granted in

this lawsuit or any appeals therefrom by the trial court, the Third Court of Appeals, the Texas Supreme Court, or any other court. The termination of this agreement shall have no impact on the validity or enforceability of any court order entered in this lawsuit or any appeal therefrom.

If this letter accurately reflects the terms of our Rule 11 agreement, please sign below.

Very truly yours,

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

Agreed: May 3, 2023

Shelly L. Skeen
Senior Attorney
Pronouns: she/her/hers

AGREED:

Johnathan Stone

Johnathan Stone/Heather Dyer
Attorneys for Defendants
Date: May 3, 2023

CAUSE NO. D-1-GN-22-002569

| | | |
|---|---|---|
| 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,<br><br>Plaintiffs,<br><br>v.<br><br>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<br><br>Defendants. | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | IN THE DISTRICT COURT OF<br>TRAVIS COUNTY, TEXAS<br>459th JUDICIAL DISTRICT |

**ORDER GRANTING PLAINTIFFS VOES' AND ROES' APPLICATIONS FOR TEMPORARY INJUCTION AGAINST JAMIE MASTERS, IN HER OFFICIAL CAPACITY AS THE COMISSIONER OF THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, AND THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**

On July 6, 2022, the Court considered the application by 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") for a Temporary Injunction (the "Application"), as found in Plaintiffs' Original Petition, Application for Temporary Restraining Order, Temporary and Permanent Injunction, and Request for

Exhibit A

Declaratory Relief ("Petition") filed against Defendants Greg Abbott, in his official capacity as Governor of the State of Texas; Jaime Masters, in her official capacity as Commissioner of the Texas Department of Family and Protective Services ("Commissioner Masters"); and the Texas Department of Family and Protective Services ("DFPS") (collectively, "Defendants").

Based on the facts set forth in Plaintiffs' Petition, the declarations attached thereto, the testimony, the evidence, and the argument of counsel presented during the July 6, 2022, hearing on Plaintiffs' Application, this Court finds sufficient cause to enter a Temporary Injunction against Commissioner Masters and DFPS on behalf of MIRABEL VOE, individually and as parent and next friend of ANTONIO VOE, a minor and WANDA ROE, individually and as parent and next friend of TOMMY ROE, a minor. The applications for Temporary Injunction on behalf of PFLAG, Inc. and ADAM BRIGGLE and AMBER BRIGGLE, individually and as parents and next friends of M.B., a minor, remain under advisement by the Court and no ruling is issued in this Order.

Plaintiffs VOE and ROE state a valid cause of action against Commissioner Masters and DFPS and have a probable right to the declaratory and permanent injunctive relief they seek. For the reasons detailed in Plaintiffs' Application and accompanying evidence, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits. Commissioner Masters and DFPS implemented a new rule expanding the definition of "child abuse" to presumptively treat the provision of gender-affirming medical care, including puberty blockers and hormone therapy, as necessitating an investigation ("DPFS Rule"). The DFPS Rule operationalized Governor Abbott's February 22, 2022, letter to Commissioner Masters ("Governor Abbott's Directive") and Attorney General Paxton's Opinion No. KP-0401 ("Attorney General Paxton's Opinion"), which DFPS announced in its statement on February 22, 2022. The DFPS Rule was adopted without following

the necessary procedures under the APA, is contrary to DFPS's enabling statute, is beyond the authority provided to the Commissioner and DFPS, and is otherwise contrary to law, as alleged in Plaintiffs' Petition.

The Court further finds that an allegation about the provision of gender-affirming medical care, such as puberty blockers and hormone therapy, without more, was not investigated as child abuse by DFPS until after February 22, 2022. The DFPS Rule changed the *status quo* for transgender children and their families. The DFPS Rule was given the effect of a new law or new agency rule, despite no new legislation, regulation, or even valid agency policy.

It clearly appears to the Court that unless Commissioner Masters and DFPS are immediately enjoined from enforcing the DFPS Rule operationalizing Governor Abbott's Directive and Attorney General Paxton's Opinion, against the VOE and ROE Plaintiffs, who will suffer probable, imminent, and irreparable injury in the interim. Such injury, which cannot be remedied by an award of damages or other adequate remedy at law, includes, but is not limited to: being subjected to an unlawful and unwarranted child abuse investigation; intrusion and interference with parental decision-making; the deprivation or disruption of medically necessary care for the parents' adolescent children; the chilling of the exercise of the right of Texas parents to make medical decisions for their children relying upon the advice and recommendation of their health care providers acting consistent with prevailing medical guidelines; intrusion into the relationship between patients and their health care providers; gross invasions of privacy in the home and school, and the resulting trauma felt by parents, siblings, and other household members; outing an adolescent as transgender; adverse effects on grades and participation in school activities; fear and anxiety associated with the threat of having a child removed from the home; increased incidence of depression and risk of self-harm or suicide; having to uproot their lives and

their families to seek medically necessary care in another state; being placed on the child abuse registry and the consequences that result therefrom; and criminal prosecution and the threat thereof.

The Temporary Injunction being entered by the Court today maintains the status quo prior to February 22, 2022, and should remain in effect until final trial. The PFLAG and BRIGGLE Plaintiffs' Applications for Temporary Relief remain pending before this Court, and the Court will rule as soon as possible after it has had adequate time to consider legal and factual consideration of the record before it.

IT IS THEREFORE ORDERED that, until all issues in this lawsuit are finally and fully determined, Defendants Commissioner Masters and DFPS *are immediately enjoined and restrained from* implementing or enforcing the DFPS Rule, and from implementing Governor Abbott's Directive and the Attorney General's Opinion in the following manners:

(1) investigating MIRABEL VOE or WANDA ROE, individually or as next friends of ANTONIO VOE or TOMMY ROE, for possible child abuse or neglect *solely* based on allegations that they have a minor child or are a minor child who is gender transitioning or alleged to be receiving or being prescribed medical treatment for gender dysphoria, and

(2) taking any actions, including investigatory or adverse actions, against Plaintiffs VOE and ROE and their minor children, with open investigations solely based on allegations that they have a child who is transgender, gender nonconforming, gender transitioning, or receiving or being prescribed medical treatment for gender dysphoria, except that DFPS shall have the ability to administratively close or issue a "ruled out" disposition in any of these open investigations based on the information DFPS has to date – if this action requires no additional contact with members of the VOE or ROE families.

IT IS FURTHER ORDERED that a trial on the merits of this case is preferentially set before the Honorable Amy Clark Meachum, Judge of the 201st Judicial District Court of Travis County, Texas, on December 5, 2022, at 9 a.m. in the courtroom of the 201st Judicial District of Travis County, Texas, or in the 201st District Court Virtual/Zoom courtroom under the Texas Supreme Court Emergency Orders related to COVID-19. The Clerk of the Court is hereby directed to issue a show cause notice to Defendants to appear at the trial.

The Clerk of the Court shall forthwith issue a temporary injunction in conformity with the laws and terms of this Order.

Plaintiffs have previously executed with the Clerk a bond in conformity with the law in the amount of $100 dollars, and that bond amount will remain adequate and effective for this Temporary Injunction.

IT IS FURTHER ORDERED that this Order shall not expire until judgment in this case is entered or this Case is otherwise dismissed by the Court.

Signed on July 8, 2022, at 4:55 p.m. in Travis County, Texas.

JUDGE AMY CLARK MEACHUM

CAUSE NO. D-1-GN-22-002569

| | | |
|---|---|---|
| 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, | § | IN THE DISTRICT COURT OF |
| v. | § | TRAVIS COUNTY, TEXAS |
| 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 JUDICIAL DISTRICT |
| Defendants. | § | |

**ORDER GRANTING PFLAG, INC.'S AND THE BRIGGLE PLAINTIFFS' APPLICATION FOR TEMPORARY INJUCTION**

On July 6, 2022, the Court considered the application by 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") for a Temporary Injunction (the "Application"), as found in Plaintiffs' Original Petition, Application for Temporary Restraining Order, Temporary and Permanent Injunction, and Request for Declaratory Relief ("Petition") filed against Defendants Greg Abbott, in his official capacity as Governor of the State of Texas; Jaime Masters, in her official capacity as



Exhibit B

Commissioner of the Texas Department of Family and Protective Services ("Commissioner Masters"); and the Texas Department of Family and Protective Services ("DFPS") (collectively, "Defendants").

Based on the facts set forth in Plaintiffs' Petition, the declarations attached thereto, the testimony, the evidence, and the argument of counsel presented during the July 6, 2022 hearing on Plaintiffs' Application, this Court previously found sufficient cause to enter a Temporary Injunction against Commissioner Masters and DFPS on behalf of the Voe and Roe Plaintiffs.

During the last two months, the Court has considered the associational standing of PFLAG, as well as the ripeness of the Briggles' claims. Having now considered the applicable law, as well as the testimony, the evidence, and the arguments and briefing of counsel, this Court finds that PFLAG has standing, and the Briggle Plaintiffs claims' are ripe, in order to pursue this matter to final trial. The Court further finds sufficient cause to enter a Temporary Injunction against Commissioner Masters and DFPS on behalf of PFLAG and the Briggle Plaintiffs.

All Plaintiffs state a valid cause of action against Commissioner Masters and DFPS and have a probable right to the declaratory and permanent injunctive relief they seek. For the reasons detailed in Plaintiffs' Application and accompanying evidence, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits. Commissioner Masters and DFPS implemented a new rule expanding the definition of "child abuse" to presumptively treat the provision of gender-affirming medical care, including puberty blockers and hormone therapy, as necessitating an investigation ("DPFS Rule"). The DFPS Rule operationalized Governor Abbott's February 22, 2022, letter to Commissioner Masters ("Governor Abbott's Directive") and Attorney General Paxton's Opinion No. KP-0401 ("Attorney General Paxton's Opinion"), which DFPS announced in its statement on February 22, 2022. The DFPS Rule was adopted without following

the necessary procedures under the APA, is contrary to DFPS's enabling statute, is beyond the authority provided to the Commissioner and DFPS, and is otherwise contrary to law, as alleged in Plaintiffs' Petition.

The Court finds this new rule was improperly promulgated by Defendants and interferes with or impairs – or threatens to interfere with or impair – the legal rights and privileges of PFLAG members and their families, as well as the legal rights and privileges of the Briggle Plaintiffs, as well as the other Plaintiffs in this case. *See* Tex. Gov't Code sec. 2001.038(a).

The Court further finds that an allegation about the provision of gender-affirming medical care, such as puberty blockers and hormone therapy, without more, was not investigated as child abuse by DFPS until after February 22, 2022. The DFPS Rule changed the *status quo* for transgender children and their families. The DFPS Rule was given the effect of a new law or new agency rule, despite no new legislation, regulation, or even valid agency policy.

It clearly appears to the Court that unless Commissioner Masters and DFPS are immediately enjoined from enforcing the DFPS Rule operationalizing Governor Abbott's Directive and Attorney General Paxton's Opinion, members of Plaintiff PFLAG, including the Voe, Roe, and Briggle families (collectively, "Plaintiff Families"), will suffer probable, imminent, and irreparable injury in the interim. Such injury, which cannot be remedied by an award of damages or other adequate remedy at law, includes, but is not limited to: being subjected to an unlawful and unwarranted child abuse investigation; intrusion and interference with parental decision-making; the deprivation or disruption of medically necessary care for the parents' adolescent children; the chilling of the exercise of the right of Texas parents to make medical decisions for their children relying upon the advice and recommendation of their health care providers acting consistent with prevailing medical guidelines; intrusion into the relationship

between patients and their health care providers; gross invasions of privacy in the home and school, and the resulting trauma felt by parents, siblings, and other household members; outing an adolescent as transgender; adverse effects on grades and participation in school activities; fear and anxiety associated with the threat of having a child removed from the home; increased incidence of depression and risk of self-harm or suicide; having to uproot their lives and their families to seek medically necessary care in another state; being placed on the child abuse registry and the consequences that result therefrom; and criminal prosecution and the threat thereof.

The Temporary Injunction being entered by the Court today maintains the status quo prior to February 22, 2022, and should remain in effect while this Court, and potentially the Court of Appeals, and the Supreme Court of Texas, examine the parties' merits and jurisdictional arguments.

IT IS THEREFORE ORDERED that, until all issues in this lawsuit are finally and fully determined, Defendants Commissioner Masters and DFPS are immediately enjoined and restrained from implementing or enforcing the DFPS Rule, and from implementing Governor Abbott's Directive and the Attorney General's Opinion, with regard to members of Plaintiff PFLAG, including but not limited to Plaintiff Families, and that such restraint encompasses but is not limited to:

(1) investigating members of PFLAG, including but not limited to Plaintiff Families, for possible child abuse or neglect ***solely*** based on allegations that they have a minor child who is gender transitioning or alleged to be receiving or being prescribed medical treatment for gender dysphoria, and

(2) taking any actions, including investigatory or adverse actions, against Plaintiff Families and other members of PFLAG with open investigations solely based on allegations that they have

a child who is transgender, gender nonconforming, gender transitioning, or receiving or being prescribed medical treatment for gender dysphoria, except that DFPS shall have the ability to administratively close or issue a "ruled out" disposition in any of these open investigations based on the information DFPS has to date.

IT IS FURTHER ORDERED that in furtherance of the above, Defendants Commissioner Masters, DFPS and its employees, agents, contractors, and attorneys, as well as any individuals or entities in active concert with them, directly or indirectly under their control, or participating with them, who receive actual notice of the Order by personal service or otherwise, and who also receive actual notice that the person(s) reported for suspected child abuse or neglect solely based on allegations that the person(s) have a minor child who is gender transitioning, or receiving or being prescribed gender-affirming medical treatment, including puberty blockers and/or hormone therapy, is a member of Plaintiff PFLAG, shall immediately cease any intake, investigation, or assessment, including ceasing any further contact, communications, or other action related to processing such allegations. As specified above, DFPS shall have the ability to administratively close or issue a "ruled out" disposition in any of these open investigations based on the information DFPS has to date.

IT IS FURTHER ORDERED that a trial on the merits of this case is preferentially set before the Honorable Amy Clark Meachum, Judge of the 201st Judicial District Court of Travis County, Texas on June 12, 2023, at 9:00 a.m. o'clock in the courtroom of the 201st Judicial District of Travis County, Texas. The Clerk of the Court is hereby directed to issue a show cause notice to Defendants to appear at the trial.

The Clerk of the Court shall forthwith issue a temporary injunction in conformity with the laws and terms of this Order.

Plaintiffs have previously executed with the Clerk a bond in conformity with the law in the amount of $100 dollars, and that bond amount will remain adequate and effective for this Temporary Injunction.

IT IS FURTHER ORDERED that this Order shall not expire until judgment in this case is entered or this Case is otherwise dismissed by the Court.

Signed on September 16th, 2022, at 3:00 p.m. in Travis County, Texas.

JUDGE AMY CLARK MEACHUM

## Automated Certificate of eService

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

Shelly Skeen
Bar No. 24010511
sskeenlaw@gmail.com
Envelope ID: 75286123
Filing Code Description: No Fee Documents
Filing Description: LETTER REGARDING RULE 11 AGREEMENT
Status as of 5/4/2023 2:42 PM CST

Associated Case Party: ADAM BRIGGLE

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Clohe Kempf | | ckempf@aclutx.org | 5/3/2023 3:56:39 PM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Ian Pittman | | ian@jptexaslaw.com | 5/3/2023 3:56:39 PM | SENT |
| Johnathan Stone | | Johnathan.Stone@texasattorneygeneral.gov | 5/3/2023 3:56:39 PM | SENT |
| Paul Castillo | 24049461 | pcastillo@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| Maddy Dwertman | | maddy.dwertman@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |
| Brian Klosterboer | 24107833 | bklosterboer@aclutx.org | 5/3/2023 3:56:39 PM | SENT |
| Savannah Kumar | 24120098 | skumar@aclutx.org | 5/3/2023 3:56:39 PM | SENT |
| Shelly L.Skeen | | ssskeen@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| Nischay Bhan | | nischay.bhan@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |
| Brandt Roessler | | brandt.roessler@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |
| Sean King | | sean@jptexaslaw.com | 5/3/2023 3:56:39 PM | SENT |
| John Ormiston | | john.ormiston@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |
| Derek McDonald | | derek.mcdonald@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |
| David B.Goode | | david.goode@bakerbotts.com | 5/3/2023 3:56:39 PM | ERROR |
| Chase Strangio | | cstrangio@aclu.org | 5/3/2023 3:56:39 PM | SENT |
| James Esseks | | jesseks@aclu.org | 5/3/2023 3:56:39 PM | SENT |
| Anjana Samant | | asamant@aclu.org | 5/3/2023 3:56:39 PM | SENT |
| Kath Xu | | kxu@aclu.org | 5/3/2023 3:56:39 PM | SENT |
| Shelly L.Skeen | | sskeen@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |

## Automated Certificate of eService

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

Shelly Skeen
Bar No. 24010511
sskeenlaw@gmail.com
Envelope ID: 75286123
Filing Code Description: No Fee Documents
Filing Description: LETTER REGARDING RULE 11 AGREEMENT
Status as of 5/4/2023 2:42 PM CST

Case Contacts

| | | | | |
|---|---|---|---|---|
| Nicholas "Gully"Guillory | | nguillory@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| Omar Gonzalez-Pagan | | ogonzalez-pagan@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| M. Currey Cook | | ccook@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| Karen L.Loewy | | kloewy@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| Camilla B.Taylor | | ctaylor@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| Nick Palmieri | | nick.palmieri@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |
| Elizabeth Gill | | egill@aclunc.org | 5/3/2023 3:56:39 PM | SENT |
| Maia Zelkind | | mzelkind@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| Christopher Clay | | cclay@aclutx.org | 5/3/2023 3:56:39 PM | SENT |

Associated Case Party: GREG ABBOTT THE GOVERNOR OF THE STATE OF TEXAS

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Courtney Corbello | 24097533 | courtney.corbello@oag.texas.gov | 5/3/2023 3:56:39 PM | SENT |
| LASHANDA GREEN | | lashanda.green@oag.texas.gov | 5/3/2023 3:56:39 PM | SENT |
| karel macias | | karel.macias@oag.texas.gov | 5/3/2023 3:56:39 PM | SENT |
| Thomas Ray | | thomas.ray@oag.texas.gov | 5/3/2023 3:56:39 PM | SENT |
| Johnathan Stone | | johnathan.stone@oag.texas.gov | 5/3/2023 3:56:39 PM | SENT |
| Heather Dyer | | heather.dyer@oag.texas.gov | 5/3/2023 3:56:39 PM | SENT |

Associated Case Party: PFLAGI NC

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| David Goode | 24106014 | david.goode@usdoj.gov | 5/3/2023 3:56:39 PM | SENT |

## Automated Certificate of eService

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

Shelly Skeen
Bar No. 24010511
sskeenlaw@gmail.com
Envelope ID: 75286123
Filing Code Description: No Fee Documents
Filing Description: LETTER REGARDING RULE 11 AGREEMENT
Status as of 5/4/2023 2:42 PM CST

Associated Case Party: PFLAGI NC

| | | | | |
|---|---|---|---|---|
| Nischay Bhan | 24105468 | Nischay.bhan@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |
| Adriana Pinon | 24089768 | apinon@aclutx.org | 5/3/2023 3:56:39 PM | SENT |
| John Ormiston | 24121040 | john.ormiston@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |
| Michele Clanton | | mclanton@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| Karen Loewy | | kloewy@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| Nicholas Guillory | | nguillory@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| Brian Klosterboer | | bklosterboer@aclutx.org | 5/3/2023 3:56:39 PM | SENT |
| Maddy Dwertman | | maddy.dwertman@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |
| Currey Cook | | ccook@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| Chase Strangio | | cstrangio@aclu.org | 5/3/2023 3:56:39 PM | SENT |
| James Esseks | | jesseks@aclu.org | 5/3/2023 3:56:39 PM | SENT |
| Kath Xu | | kxu@aclu.org | 5/3/2023 3:56:39 PM | SENT |
| Savannah Kumar | | skumar@aclutx.org | 5/3/2023 3:56:39 PM | SENT |
| Brandt Roessler | | brandt.roessler@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |
| Christine Choi | | cchoi@aclu.org | 5/3/2023 3:56:39 PM | SENT |
| Carolina Caicedo | | ccaicedo@aclu.org | 5/3/2023 3:56:39 PM | SENT |
| Maia Zelkind | | mzelkind@lambdalegal.org | 5/3/2023 3:56:39 PM | SENT |
| Shelly Skeen | | slskeen@gmail.com | 5/3/2023 3:56:39 PM | SENT |
| Elizabeth Gill | | egill@aclunc.org | 5/3/2023 3:56:39 PM | SENT |
| Nick Palmieri | | nick.palmieri@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |
| Nischay Bhan | | nischay.bhan@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |
| Susan Kennedy | | Susan.Kennedy@bakerbotts.com | 5/3/2023 3:56:39 PM | SENT |

## Automated Certificate of eService

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

Pauline Sisson on behalf of David Shatto
Bar No. 24104114
pauline.sisson@oag.texas.gov
Envelope ID: 85861232
Filing Code Description: Answer/Response
Filing Description: THE OFFICE OF THE ATTORNEY GENERAL'S PLEA TO THE JURISDICTION
Status as of 3/22/2024 4:30 PM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Grace Ojionuka | | grace.ojionuka@arnoldporter.com | 3/22/2024 1:29:14 PM | SENT |
| Michele Clanton-Lockhart | | mclanton@lambdalegal.org | 3/22/2024 1:29:14 PM | SENT |
| Allissa Pollard | | Allissa.Pollard@arnoldporter.com | 3/22/2024 1:29:14 PM | SENT |
| Harper Seldin | | hseldin@aclu.org | 3/22/2024 1:29:14 PM | SENT |
| Paul Castillo | | pcastillo@lambdalegal.org | 3/22/2024 1:29:14 PM | SENT |
| Omar Gonzalez-Pagan | | ogonzalez-pagan@lambdalegal.org | 3/22/2024 1:29:14 PM | SENT |
| Elizabeth Gill | | egill@aclunc.org | 3/22/2024 1:29:14 PM | SENT |
| Karen Loewy | | kloewy@lambdalegal.org | 3/22/2024 1:29:14 PM | SENT |
| Brian Klosterboer | | bklosterboer@aclutx.org | 3/22/2024 1:29:14 PM | SENT |
| Lynly Egyes | | lynly@transgenderlawcenter.org | 3/22/2024 1:29:14 PM | SENT |
| Shawn Meerkamper | | shawn@transgenderlawcenter.org | 3/22/2024 1:29:14 PM | SENT |
| Elizabeth Gill | | egill@aclunc.org | 3/22/2024 1:29:14 PM | SENT |
| Harper Seldin | | hseldin@aclu.org | 3/22/2024 1:29:14 PM | SENT |

Associated Case Party: OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Pauline Sisson | | pauline.sisson@oag.texas.gov | 3/22/2024 1:29:14 PM | SENT |
| David G. Shatto | | david.shatto@oag.texas.gov | 3/22/2024 1:29:14 PM | SENT |
| Ryan Baasch | | ryan.baasch@oag.texas.gov | 3/22/2024 1:29:14 PM | SENT |
| Rob Farquharson | | rob.farquharson@oag.texas.gov | 3/22/2024 1:29:14 PM | SENT |
| Elizabeth Martin | | elizabeth.martin@oag.texas.gov | 3/22/2024 1:29:14 PM | SENT |

# Automated Certificate of eService

This automated certificate of service was created by the efiling system.
The filer served this document via email generated by the efiling system
on the date and to the persons listed below:

Grace Ojionuka on behalf of Allissa Pollard
Bar No. 24065915
Grace.Ojionuka@arnoldporter.com
Envelope ID: 103058856
Filing Code Description: Brief on the Merits (all briefs)
Filing Description: BRIEF FOR APPELLEE
Status as of 7/14/2025 8:10 AM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---|---|---|---|---|
| Allissa Aileen Pollard | 24065915 | allissa.pollard@arnoldporter.com | 7/11/2025 11:43:24 PM | SENT |
| Maria Williamson | | maria.williamson@oag.texas.gov | 7/11/2025 11:43:24 PM | SENT |
| Pauline Sisson | | pauline.sisson@oag.texas.gov | 7/11/2025 11:43:24 PM | SENT |
| Deborah Williams | | deborah.williams@oag.texas.gov | 7/11/2025 11:43:24 PM | SENT |
| Abby Smith | | abby.smith@oag.texas.gov | 7/11/2025 11:43:24 PM | SENT |
| Cathy Hodges | | catherine.hodges@aporter.com | 7/11/2025 11:43:24 PM | SENT |
| Paul Castillo | | pcastillo@lambdalegal.org | 7/11/2025 11:43:24 PM | SENT |
| Brian Klosterboer | | bklosterboer@aclutx.org | 7/11/2025 11:43:24 PM | SENT |
| Jacob Beach | | Jacob.Beach@oag.texas.gov | 7/11/2025 11:43:24 PM | SENT |
| Lanora Pettit | | lanora.pettit@oag.texas.gov | 7/11/2025 11:43:24 PM | ERROR |
| Alison Washburn | | alison.washburn@oag.texas.gov | 7/11/2025 11:43:24 PM | ERROR |
| Kateland Jackson | | kateland.jackson@oag.texas.gov | 7/11/2025 11:43:24 PM | ERROR |
| Emily Samuels | | emily.samuels@oag.texas.gov | 7/11/2025 11:43:24 PM | SENT |