

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

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

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

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

ALLISSA POLLARD
ARNOLD & PORTER KAYE SCHOLER,
LLP
700 Louisiana Street, Suite 4000
Houston, TX 77002-2755
(713) 576-2451 – 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

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

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

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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.,	)	IN THE DISTRICT COURT
Plaintiff,	)	
	)	
VS.	)	
	)	
OFFICE OF THE ATTORNEY	)	
GENERAL OF THE STATE OF	)	TRAVIS COUNTY, TEXAS
TEXAS; AND WARREN KENNETH	)	
PAXTON, JR., IN HIS	)	
OFFICIAL CAPACITY AS	)	
ATTORNEY GENERAL OF	)	
TEXAS,	)	
Defendants.	)	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

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

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

9 THE COURT: Thank you.

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

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

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

16 THE COURT: Thank you.

17 MR. CASTILLO: Paul Castillo for PFLAG,
18 Inc.

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

21 THE COURT: Thank you.

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

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

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

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

5 *(Off the record.)*

6 THE REPORTER: Thank you.

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

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

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

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

7 **ARGUMENT BY MS. POLLARD**

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

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

23 THE COURT: So you're ready to proceed.

24 MS. POLLARD: We are.

25 THE COURT: All right. Thank you.

1 Anything from the State on that?

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

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

9 **ARGUMENT BY MR. SHATTO**

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

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

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

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

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

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

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

20 MR. SHATTO: Correct.

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

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

3 THE COURT: Okay.

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

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

8 MR. SHATTO: Correct.

9 THE COURT: -- which triggered the
10 automatic --

11 MR. SHATTO: Correct.

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

15 MR. SHATTO: Sure.

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

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

24 THE COURT: Okay.

25 MR. SHATTO: And the automatic --

1 automatic stay went -- went through. We then --

2 THE COURT: Your what went through?

3 MR. SHATTO: The automatic stay --

4 THE COURT: The automatic stay.

5 MR. SHATTO: -- went through. And then
6 we then filed our counterclaim. That counterclaim --

7 THE COURT: Not in the Court of Appeals.
8 Here.

9 MR. SHATTO: Correct. At this level, at
10 the trial court level. PFLAG has since filed a motion
11 to the Court of Appeals to stay the automatic stay.
12 The -- the Court -- I'm sorry. To reinstate the --

13 THE COURT: I'm sorry. I
14 didn't understand -- to what?

15 MR. SHATTO: The Third Court of Appeals
16 reinstated --

17 THE COURT: The Third Court of Appeals --

18 MR. SHATTO: -- the temporary injunction.

19 THE COURT: -- reinstated my temporary
20 injunction.

21 MR. SHATTO: Correct.

22 THE COURT: So they have it on
23 temporary -- I think they do -- I think they call it
24 temporary orders.

25 MR. SHATTO: Correct.

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

4 MR. SHATTO: Correct.

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

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

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

12 MR. SHATTO: That --

13 THE COURT: So you chose --

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

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

17 MR. SHATTO: Correct.

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

20 MR. SHATTO: That's where it sits.

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

25 MR. SHATTO: Correct. Thank you for

1 explaining that better than I did.

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

4 MR. SHATTO: Yes.

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

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

19 MR. SHATTO: Okay.

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

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

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

3 THE COURT: You never sought it?

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

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

8 MR. SHATTO: Correct.

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

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

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

23 **ARGUMENT BY MS. LOEWY**

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

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

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

13 MS. POLLARD: It might have been
14 Thursday.

15 MS. LOEWY: Yeah.

16 THE COURT: Maybe it was Thursday.

17 MS. POLLARD: Some point last week.

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

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

23 THE COURT: And you did not fight that?

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

1 place so that PFLAG remains protected.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 THE COURT: All right. Thank you.

20 MS. KEMPF: Thank you, Your Honor.

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

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

25 THE REPORTER: Kemp?

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

2 THE REPORTER: Thank you.

3 MS. KEMPF: Thank you.

4 **MOTION IN LIMINE**

5 **ARGUMENT BY MS. KEMPF**

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

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

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

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

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

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

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

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

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

13 THE COURT: Mr. Shatto.

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

16 THE COURT: What is it again? Ms.?

17 MS. VASQUEZ: Christin Vasquez, Your
18 Honor.

19 THE COURT: Vasquez. Thank you.

20 **ARGUMENT BY MS. VASQUEZ**

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

1 ask him about member communications that PFLAG has had.

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

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

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

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

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

3 MS. VASQUEZ: Thank you, Your Honor.

4 THE COURT: All right.

5 MS. KEMPF: Thank you, Your Honor.

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

9 MS. POLLARD: Yes, Your Honor.

10 THE COURT: And what's that?

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

13 THE COURT: Thank you.

14 **ARGUMENT BY MR. INGLEHART**

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

25 THE COURT: Well, so you want me to admit

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

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

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

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

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

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

21 MR. INGLEHART: Okay. Sorry.

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

1 MR. INGLEHART: Okay.

2 THE COURT: You're correct. I could
3 probably also take judicial notice of them, but since
4 they're in Box, I'll just admit them because that's
5 easier.

6 MR. INGLEHART: Okay.

7 THE COURT: So 6.

8 MR. INGLEHART: Yes.

9 THE COURT: Is an OAG press statement.

10 MR. INGLEHART: Yes, Your Honor.

11 THE COURT: Any objection?

12 MR. SHATTO: The Attorney General is
13 going to object on relevance, Your Honor.

14 THE COURT: So they aren't -- then -- are
15 you -- are there ones you aren't objecting to? That's
16 my question.

17 MR. SHATTO: The Attorney General is
18 going to object on relevance for all of them.

19 THE COURT: Oh. So it's one of your big
20 objections because you just don't think there should be
21 any evidence at this hearing because you think it's a
22 summary hearing? You think I should just rule?

23 MR. SHATTO: We do believe it's a summary
24 hearing. Yes, Your Honor.

25 THE COURT: So that objection is

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

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

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

12 THE COURT: So it's -- 6 is admitted.
13 *(Plaintiff's Exhibit 6 admitted.)*

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

16 MR. INGLEHART: 8 through 12, Your Honor.

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

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

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

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

23 THE COURT: 15 to 25 are admitted.

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

25 THE COURT: And the Court takes judicial

1 notice of those as well.

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

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

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

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

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

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

19 MS. VASQUEZ: Yes, Your Honor.

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

22 MS. VASQUEZ: Yes.

23 THE COURT: Judge Crump.

24 MS. VASQUEZ: Yes, Your Honor.

25 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

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

4 THE COURT: Is he a lawyer?

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

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

10 MS. VASQUEZ: Sure.

11 THE REPORTER: Thank you.

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

17 THE COURT: Except he's not a lawyer.

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

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

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

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

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

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

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

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

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

6 MS. VASQUEZ: Thank you, Your Honor.

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

9 **OPENING STATEMENT BY MS. LOEWY**

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

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

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

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

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

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

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

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

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

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

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

23 THE COURT: Opening?

24 **OPENING STATEMENT BY MR. SHATTO**

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

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

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

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

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

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

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

9 THE REPORTER: I'm sorry.

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

12 MR. SHATTO: Yeah.

13 THE REPORTER: Yeah. Thank you.

14 THE COURT: Go ahead.

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

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

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

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

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

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

1 up to this point.

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

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

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

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

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

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

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

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

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

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

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

21 *(Witness sworn in.)*

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

25 *(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.

1 Q. And who are they?

2 A. The executive VP, the director -- or the VP
3 for communication, and the VP for development.

4 Q. And in 2023, did you have the same direct
5 reports?

6 A. I had several more.

7 Q. Who -- who were your direct reports in 2023?

8 A. We had not hired any VP at that point, so I
9 was overseeing communications, development, operations,
10 policy, advocacy, learn inclusion, and, of course,
11 chapter engagement.

12 Q. I asked about your direct reports, but do all
13 of those people still report to you indirectly?

14 A. Indirectly through my EVP, other than comms
15 and development, who report directly to me, and a
16 couple of minor staff -- junior staff. I'm sorry. \
17 not minor, but junior.

18 Q. What is PFLAG?

19 A. So PFLAG is the first and largest organization
20 made up of LGBTQ+ individuals, parents, family, and
21 allies. This is our 51st anniversary. We have been in
22 the state of Texas for decades. It's made up of --
23 truly of the most caring and amazing parents who want
24 to do right for their kids.

25 Q. Is PFLAG a 501(c)(3) nonprofit?

1 A. It is.

2 Q. What is PFLAG's mission?

3 A. PFLAG's mission is to create a more caring,
4 just, and affirming world for LGBTQ+ people and those
5 who love them.

6 Q. Does PFLAG have a mission statement?

7 A. It does.

8 Q. I'd like to show you what has been pre-marked
9 as Plaintiff's Exhibit 5. Mr. Bond, are you familiar
10 with this document?

11 A. Yes.

12 Q. And what is it?

13 A. That would be our mission statement.

14 Q. And this a true and accurate copy of PFLAG's
15 mission statement?

16 A. It is.

17 MS. POLLARD: Your Honor, plaintiff moves
18 to admit Plaintiff's Exhibit 5 into evidence.

19 MR. SHATTO: No objection.

20 THE COURT: 5 is admitted.

21 *(Plaintiff's Exhibit 5 admitted.)*

22 Q. (BY MS. POLLARD) Mr. Bond, is it your job as
23 CEO to make sure that PFLAG achieves its mission?

24 A. Absolutely.

25 Q. And what kind of work does PFLAG do in order

1 to achieve that mission?

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

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

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

20 Q. And does PFLAG have Articles of Incorporation?

21 A. Yes, it does.

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

24 A. I am.

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

1 as Plaintiff's Exhibit 3.

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

5 THE COURT: Yes.

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

8 A. These are our Articles of Incorporation.

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

11 A. Yes, it does.

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

14 MR. SHATTO: Objection; relevance.

15 THE COURT: Overruled. 3's admitted.

16 *(Plaintiff's Exhibit 3 admitted.)*

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

19 A. Yes, we do.

20 Q. Are you familiar with those Bylaws?

21 A. I am.

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

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

1 THE COURT: Yes.

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

4 A. These are our current Bylaws for PFLAG.

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

7 A. Yes, it does.

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

10 MR. SHATTO: Objection; relevance.

11 THE COURT: Overruled. 4 is admitted.

12 *(Plaintiff's Exhibit 4 admitted.)*

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

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

21 A. No.

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

24 A. No.

25 Q. Does PFLAG offer resources to medical

1 professionals regarding how to bill for medical care?

2 A. Absolutely not.

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

5 A. No.

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

8 A. No.

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

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

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

15 A. No.

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

18 A. No.

19 Q. Is PFLAG a membership organization?

20 A. Yes, it is.

21 Q. How does someone become a member of PFLAG?

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

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

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

6 THE WITNESS: Sorry.

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

12 MS. POLLARD: Sure.

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

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

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

1 A. Absolutely. Yes.

2 Q. And what is the rule of members within PFLAG?

3 A. One of the primary responsibilities for a
4 member of PFLAG is to vote on our portion of our board
5 of directors, our 24 board of directors. And the
6 membership has actually a really -- a lot of input into
7 that.

8 A third of the board is -- is elected
9 directly by the membership as a whole. A third of the
10 board actually elect our regional directors who are 13,
11 and of that eight of those have to be a member of the
12 board, and then the other eight members of the board
13 are selected by the board itself.

14 Q. Is that all described in PFLAG's Bylaws?

15 A. Yes.

16 Q. About how many members does PFLAG currently
17 have?

18 A. About 325,000 members that support us across
19 the country.

20 Q. Does Tex- -- does PFLAG have chapters in
21 Texas?

22 A. Yes, we do.

23 Q. How many Texas chapters of PFLAG are there?

24 A. So we have 18 chapters today. Big towns,
25 small towns across the state. Obviously here in

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

4 Q. How many members of PFLAG are in Texas?

5 A. About 1,600.

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

8 A. Yes, they do.

9 Q. How do you know that?

10 A. Because I hear from them.

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

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

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

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

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

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

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

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

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

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

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

5 Q. Are meetings in person?

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

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

16 Q. And who runs the meetings?

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

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

23 A. Yes.

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

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

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

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

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

18 MR. SHATTO: Objection; leading.

19 THE COURT: It's leading. Sustained.

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

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

1 it's -- if you haven't been to a meeting, it's --
2 it's -- it's -- it's a -- it's an experience because
3 you have parents in the room who are -- who -- who are
4 100 percent on board with their kid and -- and lead
5 with this -- this hope and this joy of where they are,
6 of seeing their kid thrive and accepted.

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

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

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

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

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

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

12 Q. Do all meetings have that expectation of
13 confidentiality?

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

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

20 A. Yes.

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

22 A. We're the plaintiff in this case.

23 Q. What does that case relate to?

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

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

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

4 A. Yes, we did.

5 Q. Why did PFLAG bring that case?

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

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

14 A. Yes.

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

17 A. Yes.

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

20 A. Yes, there was.

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

23 A. Yes. Correct.

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

1 A. Yes, I know.

2 Q. I apologize.

3 A. Sorry.

4 Q. And is there currently, what we call,
5 discovery going on in that case?

6 A. I don't believe so.

7 THE COURT: Is that I believe so?

8 THE WITNESS: I do not believe so.

9 THE COURT: I do not believe so.

10 THE WITNESS: Sorry.

11 THE COURT: Thank you.

12 THE WITNESS: Sorry.

13 Q. (BY MS. POLLARD) What is your understanding
14 of the current status of the *PFLAG v. Abbott* case?

15 A. Currently our -- while this is playing itself
16 out and -- our families are protected.

17 Q. And so by that, you mean that PFLAG members
18 are not currently subject to child abuse
19 investigations?

20 A. That is my understanding.

21 Q. On the basis of their children receiving
22 gender-affirming care?

23 A. They are being protected right now, yes.
24 They're not being investigated.

25 Q. Are you aware of a case called *Loe v. Texas*?

1 A. I am.

2 Q. And was PFLAG also a plaintiff in that case?

3 A. Yes.

4 Q. And do you know if there was a protective
5 order negotiated in that case?

6 A. There was. Yes, I do know that.

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

9 A. We did.

10 Q. And do you know whether there's discovery and
11 exchange of discovery currently ongoing in this case?

12 A. I believe there is not right now.

13 Q. And do you know whether a temporary injunction
14 was granted in that case?

15 A. I believe there was.

16 Q. And are you aware of the status of that case?

17 A. Again, it's on hold while it's playing itself
18 out in the courts.

19 Q. Did you, on behalf of PFLAG, submit an
20 affidavit in *Loe v. Texas*?

21 A. Yes, I did.

22 Q. I'm going to show you what has been marked as
23 Plaintiff's Exhibit 16. Another longer exhibit. If I
24 may, Your Honor, I'd like to approach the witness?

25 THE COURT: You may.

1 Q. (BY MS. POLLARD) Mr. Bond, do you recognize
2 this document?

3 A. I -- I do. Excuse me.

4 Q. And what is this?

5 A. This is our filing in the *Loe v. Texas* case
6 asking for a permanent injunction.

7 Q. And you stated that you submitted an affidavit
8 in support of this case; is that correct?

9 A. Yes, we did.

10 Q. So if you -- it's a large document. So I have
11 flagged for you where an Exhibit 11 starts. It will be
12 on Page 147 of the electronic exhibit, and it's marked
13 as Exhibit 11.

14 A. I got it.

15 Q. Are you there?

16 A. Yes.

17 Q. What is this document?

18 A. This is my affidavit in that case or in the
19 filing.

20 Q. And does this exhibit as a whole appear to be
21 a true and accurate copy of the petition in *Loe v.*
22 *Texas*?

23 A. It does.

24 MS. POLLARD: Your Honor, I'd like to
25 move Exhibit 16 into evidence.

1 MR. SHATTO: Objection; relevance.

2 MS. POLLARD: Your Honor, this is the
3 lawsuit and the affidavit upon which both of the
4 demands are based.

5 THE COURT: Overruled. It's 16? What
6 number?

7 MS. POLLARD: It's Plaintiff's
8 Exhibit 16, Your Honor.

9 THE COURT: 16 is admitted.

10 *(Plaintiff's Exhibit 16 admitted.)*

11 Q. (BY MS. POLLARD) Mr. Bond, on what date did
12 you sign your affidavit?

13 A. July 11th, '23.

14 Q. And was that after -- before or after SB14 was
15 enacted?

16 A. That was before it went into -- before it
17 was -- it had passed, but it hadn't gone into law
18 yet -- into effect. Sorry.

19 Q. And so at the time you signed your affidavit,
20 SB14 was not yet in effect?

21 A. Correct.

22 Q. In general, what did your affidavit discuss?

23 A. That SB14 was going to cause incredible -- it
24 was causing incredible harm and distress to our
25 families in the state of Texas who were literally just

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

5 Q. I'm sorry.

6 A. And we wanted --

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

8 A. Sorry. I'm just mumbling.

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

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

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

21 A. Okay.

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

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

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

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

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

1 or leave the state as a result of SB14.

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

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

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

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

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

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

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

6 A. No.

7 MR. SHATTO: Objection; leading.

8 THE COURT: Overruled.

9 A. No.

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

13 A. Yes.

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

18 A. Absolutely not.

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

22 A. No.

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

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

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

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

14 A. No.

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

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

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

24 MR. SHATTO: Objection; leading.

25 MS. POLLARD: Your Honor, for a question

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

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

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

12 A. Would not. No, would not.

13 Q. Are you aware of any such providers?

14 A. No.

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

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

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

1 Office of the Attorney General?

2 A. Yes, we did.

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

5 MS. POLLARD: May I approach, Your Honor?

6 THE COURT: Yes.

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

9 A. It is.

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

12 MR. SHATTO: No objections.

13 THE COURT: Exhibit 1 is admitted.

14 *(Plaintiff's Exhibit 1 admitted.)*

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

17 A. Excuse me. Yes, we did.

18 MS. POLLARD: May I approach, Your Honor?

19 THE COURT: Yes.

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

24 A. It is.

25 MS. POLLARD: Your Honor, plaintiff moves

1 to admit Plaintiff's Exhibit 2 into evidence.

2 MR. SHATTO: No objections.

3 THE COURT: 2 is admitted.

4 *(Plaintiff's Exhibit 2 admitted.)*

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

8 A. Yes.

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

12 A. Okay. Thank you.

13 Q. When were the demands issued?

14 A. February 5th.

15 Q. Of what year?

16 A. Oh, 2024, sorry.

17 Q. When did PFLAG receive the demands?

18 A. February 9th of 2024.

19 Q. What did the demands seek from PFLAG?

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

24 Q. Did the demand --

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

1 Q. Oh, I'm sorry. Go ahead.

2 A. No. I was just going to say, and -- and it
3 was -- it was -- well, I'm done.

4 Q. Did the demands reference your affidavit in
5 the *Loe v. Texas* litigation?

6 A. Yes.

7 Q. Did they, in fact, attach a copy of that
8 affidavit?

9 A. They did.

10 Q. Would the information sought by the demands
11 reveal identities of PFLAG members?

12 A. Yes, it could.

13 Q. And would the information sought by the
14 demands include communications between or among PFLAG
15 members?

16 A. Yes.

17 Q. And -- and would it reveal identities of PFLAG
18 families with transgender adolescents?

19 A. Yes, it could very well do that.

20 Q. Are you aware that defendants in this case
21 have said that they issued the demands as a part of an
22 investigation into insurance fraud?

23 A. Yes.

24 Q. And specifically that defendants have stated
25 they're investigating the use of billing codes for

1 endocrine disorders in the context of gender-affirming
2 care?

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

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

8 A. Yes.

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

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

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

17 A. No.

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

23 A. No.

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

1 medical billing codes at all?

2 A. No.

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

6 A. No.

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

9 A. Yes.

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

13 A. Yes, it does.

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

16 A. Yes.

17 Q. Does that list include medical providers?

18 A. Yes, it does.

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

22 A. No.

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

25 A. No.

1 Q. Had you ever heard of QueerMed?

2 A. No.

3 Q. And had you ever heard of Plume Health?

4 A. No.

5 Q. Does PFLAG have any communications with its
6 members about medical billing codes in gender-affirming
7 medical care?

8 A. Absolutely not.

9 Q. Does PFLAG have any communications with its
10 members about how to bill insurance for
11 gender-affirming medical care?

12 A. No. Again, we do peer-to-peer support.

13 Q. Does PFLAG have any communications with its
14 members about healthcare providers providing
15 gender-affirming medical care in Texas after the
16 effective date of SB14?

17 A. No.

18 Q. As the CEO of PFLAG, how do you stay informed
19 about what PFLAG members are experiencing?

20 A. Through my chapter engagement team, comms
21 team, advocacy team, policy team, and then talking to
22 various chapter members.

23 Q. And through those mechanisms, are you aware of
24 the reactions that PFLAG members have had to PFLAG
25 receiving the demands?

1 A. Absolutely.

2 Q. How have they reacted?

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

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

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

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

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

1 demands were issued?

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

13 Q. Since PFLAG received this -- these demands,
14 has there been a decrease in physical participation at
15 meetings?

16 A. Yes.

17 Q. Have any volunteers stepped back from
18 participating in PFLAG activities since PFLAG received
19 the demands?

20 A. Yes.

21 Q. Are you aware of any particular impact the
22 demands have had on parents of transgender youth in
23 Texas?

24 A. Yes. I mean, they're -- as I've said, they're
25 horrified, they're looking over their shoulder. These

1 are good people, good citizens that are just trying to
2 keep their kids and their families safe.

3 Q. What impact would having to produce the
4 documents and information sought by the demands have on
5 PFLAG?

6 A. Well, we're already seeing it. It was words
7 used earlier, but chilling. I mean, people won't sign
8 in, people won't show up out of fear that they could
9 somehow be drug into this. A lot of these folks are in
10 small towns across the state. This impacts their
11 potential job, their -- their livelihoods. It -- it's
12 pretty terrifying.

13 Q. What impact on having to produce internal
14 member communications of PFLAG members have on PFLAG?

15 A. People will walk away. People will start
16 disappearing into the shadows and -- and trying to
17 navigate what's going on with their kid on their own,
18 which is not -- you know, the -- the model is to be
19 there, to support each other, to help each other, and
20 this is having a direct impact on people doing that.

21 Q. What impact would having to search for and
22 produce documents have responsive -- or -- search or
23 produce documents responsive to these demands have on
24 PFLAG in terms of time and resources?

25 A. Oh, it's -- it's a time suck. We are spending

1 an incredible amount of time trying to make sure we are
2 going through everything we -- I mean, we -- we have a
3 IT person, but she also does multiple things. So we
4 have a consultant that's helping -- helping with this
5 to make sure that we are -- are doing due diligence.

6 Q. Does PFLAG have any full-time lawyers on
7 staff?

8 A. No.

9 Q. What impact would having to search for and
10 produce documents responsive to the demands have on
11 PFLAG in terms of its ability to serve PFLAG members?

12 A. I mean, there's the morale component of it.
13 Someone that we don't know going through all of our --
14 our emails. There's that. There's the time of our
15 chapter engagement team. I mean, literally multiple
16 departments have been engaged with Texas. We're
17 talking our policy, our advocacy team, or
18 communications team, and certainly our chapter
19 engagement team. It's very time-consuming and -- and
20 costly. And it's taking us away from doing other
21 things we need to be doing, including here in the state
22 of Texas.

23 Q. Does PFLAG fear the consequences of having to
24 comply with the demands?

25 A. I fear the impact on these parents that I'm

1 already seeing in small towns who are terrified of
2 what's next.

3 Q. And, Mr. Bond, how do you feel about having to
4 come and testify here today?

5 A. Look, I wish I wasn't here, but I'm -- I'm
6 proud of our parents. I'm proud that every day they
7 get up and work hard for their kids and try to learn,
8 in conjunction with their pediatricians and -- and
9 their -- or their doctors, medical providers, medical
10 health providers, to keep their kids safe. They should
11 not be having to go through this. It's hard enough out
12 there in this world. These parents just want to do the
13 right thing for their kid, which is why we're here.

14 MS. POLLARD: Thank you, Mr. Bond.

15 Pass the witness, Your Honor.

16 THE COURT: Okay. Let's start and --
17 because I think we'll probably reach a question pretty
18 quickly on -- based on what I heard on the motion in
19 limine.

20 So let's start with the questions, and
21 then we'll see if we can do some, and then we'll reach
22 probably a point where I need to make some decisions.
23 So it is Mr. Shatto.

24 MR. SHATTO: Correct, Your Honor.

25 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 --

1 MS. POLLARD: I --

2 THE COURT: I -- I know -- I understand
3 what's happening here, but currently it's not really
4 meeting the objection, so I think I have to allow these
5 sort of foundational questions, so go ahead.

6 MS. POLLARD: May I make one point of
7 clarification?

8 THE COURT: Yes.

9 MS. POLLARD: The initial questions were
10 asking how he personally communicated, which I
11 understand would be relevant. It's the -- this
12 question seemed to relate to how PFLAG in general
13 communicates or what technology it uses, and I would
14 object to general questions about PFLAG's technology.

15 THE COURT: Well, if he knows, he has to
16 answer, but I agree he shouldn't answer this question
17 if he doesn't know. But I think he is enough of a
18 corporate representative where he might have to answer
19 some general questions. We haven't gotten into -- of
20 the -- I -- we haven't gotten into necessarily your
21 motion in limine yet, I do not believe. So go ahead,
22 Mr. Shatto, carefully. Go ahead.

23 Q. (BY MR. SHATTO) Do you communicate with PFLAG
24 members in any other way than previously mentioned
25 here?

1 THE COURT: This is to you personally.
2 Now, do you personally communicate to PFLAG members in
3 any other way?

4 A. I mean, I -- I know a lot of these people very
5 personal, right, so, yes, I do text with some of them.
6 I call some of them. I see them at meetings. I'm not
7 sure about what the technology is we do as a shop
8 candidly, so...

9 Q. (BY MR. SHATTO) How often do you communicate
10 with PFLAG members?

11 A. Well, there's 350 chapters in the country. I
12 mean, I -- what do you mean? I talk to a PFLAG'er
13 every day.

14 Q. And, of course, you remember filing the
15 affidavit in *Loe v. Texas*, correct?

16 A. Correct.

17 Q. And that affidavit discusses, in part, the
18 passage of SB14, correct?

19 A. Correct.

20 Q. And SB14 bans certain gender-related
21 treatments and procedures for children, correct?

22 A. Correct.

23 Q. And then members have since talked about the
24 effects of SB14, correct?

25 A. Yes.

1 Q. And these conversations occurred at PFLAG
2 meetings, correct --

3 MS. POLLARD: Objection; form.

4 Q. (BY MR. SHATTO) -- to your knowledge?

5 THE COURT: There -- there was a form
6 objection, and so I think rephrase your question. I
7 understand what you're trying to say. It wasn't
8 specific enough. So I think currently let's specify
9 your question.

10 Q. (BY MR. SHATTO) To your knowledge, the
11 conversations about PFLAG that -- about SB14, they
12 occur at PFLAG meetings, correct?

13 MS. POLLARD: Objection; still vague.

14 THE COURT: It is. Sustained.

15 Q. (BY MR. SHATTO) Do you remember talking about
16 the effects of SB14 at PFLAG meetings?

17 THE COURT: Do you -- are you asking him
18 if he has personally talked about the effects of SB14
19 at meetings that he has attended?

20 MR. SHATTO: Yes.

21 MS. POLLARD: Objection; vague to the
22 time period.

23 THE COURT: It would have to be after its
24 initial -- like --

25 MR. SHATTO: The -- the time period is

1 irrelevant here because it would go directly towards
2 whether or not PFLAG has certain information about
3 potential fraudulent activity.

4 THE COURT: Well, I don't think that's --

5 MS. POLLARD: And I'd object --

6 THE COURT: -- an accurate
7 characterization, but -- but I guess the question to
8 you is, have you ever spoken about SB14. And the time
9 is in the question because it hasn't existed in the
10 world that long at any meetings that you have attended.
11 That's it.

12 MS. POLLARD: And to the extent that
13 the -- the question is intended, as the Attorney
14 General just represented, to get at the actual
15 substance of the CIDs, we would object.

16 THE COURT: When he asks about the
17 substance of the CIDs, the Court will sustain your
18 objection. But he has not and so it is overruled at
19 this time. You may answer this question.

20 THE WITNESS: I'm not really sure what
21 the question is now.

22 THE COURT: That's fair.

23 THE WITNESS: Sorry. Sorry.

24 Q. (BY MR. SHATTO) I -- I think we can move on
25 and just simplify this real quick. You're not involved

1 in every single one -- you're not involved in every
2 single communication that PFLAG members have, correct?

3 A. Correct.

4 Q. And so you don't know everything that PFLAG
5 staff and members discuss then, correct?

6 A. I would have a pretty good sense of what's
7 going on at a level of where we're potentially being
8 accused of fraud.

9 Q. But you don't have firsthand knowledge of
10 every conversation that PFLAG staff and members have,
11 correct?

12 A. No, but I get pretty good readouts.

13 Q. And have you since talked to PFLAG members
14 about these proceedings, the PFLAG, the OAG proceeding
15 going on right now?

16 MS. POLLARD: Objection; vague.

17 THE COURT: I mean, I think we're
18 treading care -- closely into attorney-client privilege
19 and maybe some work-product privilege, but I don't know
20 that vagueness is the problem. And so, like, literally
21 right now the only question is, Have you had
22 conversations. And so I'm going to allow you to ask
23 that question, which is just, Have you personally had
24 conversations? That is an okay question to ask.

25 Q. (BY MR. SHATTO) Have you personally had

1 conversations about these proceedings?

2 A. Yes.

3 Q. And did you tell them that the State is
4 allowing redaction of their names in these proceedings?

5 MS. POLLARD: Then I'm going to object
6 that it is vague as to who "them" is. And to the
7 extent it's seeking member communications, it would be
8 protected by the First Amendment. And to the extent
9 it's seeking communications with his lawyers, it's
10 protected by attorney-client privilege and work
11 product.

12 THE COURT: Those are sustained.

13 Q. (BY MR. SHATTO) Have you seen the demands as
14 modified by the Attorney General's office?

15 A. I've spoken with our attorneys about them,
16 yes.

17 MR. SHATTO: Your Honor, we'd like to
18 introduce the Modified Demands 3 and 4 into the record.

19 THE COURT: You have -- have you loaded
20 them in the Box?

21 MR. SHATTO: They are loaded in the Box.
22 They're Exhibits 3 and 4 at this time.

23 THE COURT: They're State's?

24 MR. SHATTO: State's Exhibits 3 and 4.
25 They've been on file with the Court for quite a while.

1 THE COURT: Any objection?

2 MS. POLLARD: No objection, Your Honor --

3 THE COURT: So --

4 MR. SHATTO: -- to the -- to the
5 admission of the exhibits, no objection.

6 THE COURT: Correct. The admission --
7 he's moving to admit the exhibits, and the Court is at
8 this time going to admit Exhibits 3 and 4.

9 *(Defendants' Exhibits 3 and 4 admitted.)*

10 MR. SHATTO: May I approach the witness
11 and provide Exhibit 3 to the witness to review?

12 THE COURT: Yes.

13 Q. (BY MR. SHATTO) This is a Civil Investigative
14 Demand.

15 THE COURT: So can I ask a question?
16 This is different. This is now a new demand or a new
17 Word demand than the one that the plaintiff's put in?

18 MR. SHATTO: Correct. These are modified
19 demands that the State has proposed --

20 THE COURT: That's all I wanted -- I just
21 wanted -- that -- now the witness can answer. I just
22 wanted to make sure I'm looking at a different
23 document, because at first blush, they look like the
24 same document. So --

25 MR. SHATTO: Correct.

1 THE COURT: -- I just wanted to make sure
2 they're different.

3 MR. SHATTO: They are very similar, yes,
4 but they are different.

5 THE COURT: Okay. Then, yes, you may
6 approach the witness.

7 Q. (BY MR. SHATTO) These are modified demands,
8 sir. Mr. Bond, will you please read No. 7 of the
9 modified demand?

10 A. Which one?

11 MS. POLLARD: Objection; lacks foundation
12 to the extent that he's representing that this is a
13 modified demand.

14 MR. SHATTO: It's not important. These
15 have been --

16 THE COURT: Well, let's not call it
17 modified demand. Let's call it what it is, which is
18 Exhibit 3.

19 MR. SHATTO: Okay.

20 Q. (BY MR. SHATTO) May you please read No. 7,
21 Members, of Exhibit 3? That is on Page 6, I believe.
22 Correct.

23 A. No. 7?

24 Q. Yes, please, No. 7?

25 A. Members includes individuals who pay dues for

1 purposes of joining or associating with PFLAG's
2 national chapter or any local chapter. For purposes of
3 this CID, the term shall be broadly construed to
4 encompass donors to PFLAG and individuals who directly
5 participate in PFLAG official programs, events, and
6 services. However, members do not -- does not include
7 PFLAG's professional staff and non-PFLAG entities with
8 whom the organization associates.

9 Q. Thank you. And can you please turn to Page 3
10 of Exhibit 3? Then can you please read No. 7 on that
11 page, Permitted Redactions for Member Identifying
12 Information?

13 MS. POLLARD: Objection; relevance.
14 These are not the actual demands that have been issued
15 in this case and lacks foundation for what the document
16 actually is.

17 MR. SHATTO: Your Honor, they're
18 completely relevant. The Court itself can make changes
19 to our -- our petition, and we've offered these as
20 potential changes for the Court to consider.

21 THE COURT: Okay. So I'm going to
22 overrule the objection. And I guess that means the
23 witness can answer the question. It's gotten
24 confusing, but I don't think there's any other
25 objection other than you just wanted to point out that

1 this -- you don't believe that this document matters.
2 And I'm allowing the Attorney General to ask questions
3 about it as a matter of course, as a matter of their
4 evidence.

5 Now, if you think that it's infringing
6 upon something, that's where I'm going to be more
7 interested in your objections. But at this time, I
8 don't think that's what you made, so I'm overruling
9 that objection. And you can ask this particular
10 question and maybe line of questions.

11 MR. SHATTO: All right.

12 Q. (BY MR. SHATTO) Mr. Bond, do you mind reading
13 No. 7 on Page 3 of Exhibit 3?

14 A. Sure. Permitted Redactions For Members
15 Identifying Information. In general, all materials or
16 documents responsive to this CID shall be produced in
17 complete unabridged, unedited, and unredacted form,
18 even if portions may contain information not explicitly
19 requested or may reflect interim or final portions of
20 documents or materials. Do you want me to continue?

21 Q. Then continue.

22 A. Okay. Unlike the February 5th, 2024 CID, the
23 foregoing, operative CID does not request that PFLAG
24 produce documents and information disclosing the
25 identifying -- the identify -- identify -- I can't

1 talk -- of its members and/or actual membership lists,
2 either in whole or in part, or in any form. For this
3 reason, PFLAG may elect to redact or {sic} any portion
4 of a document otherwise within the scope of the CID
5 that contains information disclosing or providing the
6 identity of any member. Any questions related to the
7 precise information that PFLAG may redact at its own
8 election shall be directed to the Office of the
9 Attorney General's representatives above.

10 Q. Thank you, Mr. Bond.

11 MR. SHATTO: And if may I approach the
12 witness again, I have Exhibit 4 to provide to him.

13 THE COURT: You may.

14 MR. SHATTO: Thank you, Your Honor.

15 Q. (BY MR. SHATTO) This is Exhibit 4, sir.

16 A. Thank you.

17 Q. Similar to previously, may the witness please
18 turn to Page 4 and read 12, Members?

19 A. Members includes individuals who pay dues for
20 purposes of joining or associating with PFLAG's
21 national chapter or any local chapter. For purposes of
22 this Demand a Sworn Written Statement, the term shall
23 be broadly constructed to encompass donors to PFLAG and
24 individuals who directly participated in PFLAG's
25 official programs, events, and services.

1 Q. And please read No. 13, please.

2 A. The Division does not seek PFLAG's membership
3 list, either full or partially, in any form. Therefore
4 at PFLAG's election, information that identifies a
5 member may be redacted or otherwise acro- -- I can't
6 even say the word -- acronized {sic}. Whatever. I
7 can't say it. Missouri schools.

8 Q. I just have, I think, one more question. Is
9 PFLAG currently gather any responsive documents to the
10 demand?

11 MS. POLLARD: Objection to the extent it
12 calls for any attorney-client privileged information.

13 THE COURT: Sustained. It calls for a
14 legal conclusion a bit as well, so -- I mean, I -- I
15 have a temporary injunction in place.

16 MR. SHATTO: No further questions, Your
17 Honor.

18 THE COURT: All right. Redirect, if
19 you -- if any.

20 MS. POLLARD: Just one to two questions.

21 **REDIRECT EXAMINATION**

22 BY MS. POLLARD:

23 Q. Mr. Bond, did these sections that you were
24 asked to read defining members and excluding member
25 names from production, did those exist in the demands

1 that PFLAG received that we've identified as Exhibits 1
2 and 2?

3 A. Sorry. Can you clarify a little bit?

4 Q. Sure. Can you take a -- do you still have
5 Exhibit 1 in front of you?

6 A. I should have them all right here.

7 THE COURT: For my clarification, because
8 it would help me, what are the dates on 3 and 4?

9 MR. SHATTO: They may not be dated at
10 this time, Your Honor. But they're undated because
11 they were submitted as proposed modified demands for
12 our motion to modify.

13 THE COURT: Oh, so you didn't actually
14 send them?

15 MR. SHATTO: They have not been sent to
16 PFLAG, correct. They've only been filed with the
17 Court.

18 THE COURT: All right. Go ahead.

19 Q. (BY MS. POLLARD) And, Mr. Bond, if you would
20 turn to the -- the definition section in Exhibit 1.

21 A. Okay.

22 THE COURT: All right. Back to --

23 MS. POLLARD: If we may.

24 THE COURT: Yes.

25 MS. POLLARD: We'll be quick.

1 Q. (BY MS. POLLARD) So in Exhibit 1, in the
2 section on Definitions, do you see anything defining
3 members in Exhibit 1?

4 *(Off the record.)*

5 A. I -- I do not.

6 Q. (BY MS. POLLARD) And if you would take a look
7 at the previous section under Instructions, Item No. 7,
8 if you would, under Instructions. It's on Page 3 of 6
9 of Exhibit 1.

10 A. Uh-huh.

11 Q. What does that say?

12 A. On no redactions? Is that the right one.

13 Q. Correct?

14 A. All materials or documents produced in
15 response to the CID shall be produced in complete,
16 unabridged, unedited, unredacted form, even if portions
17 may contain information not explicitly requested or
18 might include interim or final additions of a document.

19 Q. And do you still have Plaintiff's Exhibit 2 in
20 front of you?

21 A. I believe so. Yes.

22 Q. That document also has an Exhibit A. This
23 time it's titled Definitions and Instructions. Do you
24 see that?

25 A. Yes.

1 Q. And do you see any definition of member?

2 A. I do not.

3 Q. Thank you very much.

4 MS. POLLARD: No further questions.

5 THE COURT: Anything else?

6 MR. SHATTO: Your Honor, I have no
7 further questions. Just so you know, those demands
8 were filed with the Court March 19th.

9 THE COURT: All right. Thank you. You
10 may step down --

11 MS. POLLARD: Your Honor, may this --

12 THE COURT: -- and we're going to take a
13 break. You may -- oh, yes. You are excused as a
14 witness. You are free to go, and you are also free to
15 stay.

16 THE WITNESS: Thank you.

17 THE COURT: All right. We're going to be
18 on a break. It's 10:48. Let's come back at 11:00.
19 Thanks.

20 *(Recess was taken.)*

21 THE COURT: Going back on the record.
22 Plaintiffs may call their next witness. Can you state
23 your name again?

24 MS. LESKIN: Yes. Lori Leskin, Your
25 Honor.

1 THE COURT: Leskin. Thank you.

2 MS. LESKIN: PFLAG calls Sam Weeks.

3 THE COURT: Mr. Weeks, come on up.

4 MS. LESKIN: Your Honor, while he's
5 coming to the stand, just -- we call Mr. Weeks under
6 Texas Rule of Evidence 611.

7 THE COURT: Wait. Hold on a second.

8 THE WITNESS: Oh, my apologies.

9 MS. LESKIN: That Mr. Weeks is a party
10 identified as an adverse witness -- an adverse party.

11 THE COURT: Thank you. Mr. Weeks, please
12 raise your right hand.

13 *(Witness sworn in.)*

14 THE COURT: All right. Thank you. Come
15 around. Have a seat in front of the microphone. I see
16 your lawyer now. State your name again.

17 MS. JOHNSON: My name is Kathy Johnson.
18 I'm with the Attorney General's office.

19 THE COURT: Now, are you in the same
20 division these guys are with?

21 MS. JOHNSON: I am not. I only represent
22 Mr. Weeks.

23 THE COURT: So you represent -- what
24 division are you in?

25 MS. JOHNSON: I'm in the Administrative

1 Law Division. He -- Mr. Weeks used to work in the
2 Consumer Protection Division, but no longer does. So
3 he's a third party to this matter, and that's why I'm
4 here. I just represented him on the subpoena matter
5 itself, and with your permission, I'd like to sit at
6 counsel table while he's testifying.

7 THE COURT: You may sit at counsel table,
8 yes.

9 MS. JOHNSON: Thank you.

10 MS. LESKIN: May I question from the
11 table?

12 THE COURT: Yes. Lower that microphone.

13 MS. LESKIN: That was my next step.

14 **SAM WEEKS,**
15 having been first duly sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 BY MS. LESKIN:

18 Q. Good morning, Mr. Weeks.

19 A. Good morning.

20 Q. Your counsel just represented that you no
21 longer work with Office of the Attorney General
22 Consumer Protection Division; is that correct?

23 A. Yes, ma'am.

24 Q. Where do you work now?

25 A. I work for the Texas Comptroller.

1 Q. And when did you start working for the Texas
2 Comptroller?

3 A. Roughly a week or so ago.

4 Q. How long were you at the Attorney General's
5 Consumer Protection Division?

6 A. Roughly about four-and-a-half years, I want to
7 say.

8 Q. Where did you work before then?

9 A. Before then I was a private investigator. I
10 also had a part-time job because my business wasn't
11 doing too good.

12 Q. When you were at the Consumer Protection
13 Division, who did you report to?

14 A. Can you clarify a little bit? I had several
15 supervisors over my tenure. There had been a lot of
16 turnover.

17 Q. Over the last year that you were employed by
18 the Consumer Protection Division, who did you report
19 to?

20 A. Jennifer Roscitti.

21 THE COURT: How -- Jennifer who?

22 THE WITNESS: Jennifer Roscitti.

23 THE COURT: R-i-c-h- --

24 THE WITNESS: It's R-o-s-c-i-t-t-i, if I
25 remember correctly.

1 THE COURT: I would have never gotten
2 that.

3 Q. (BY MS. LESKIN) Do you know what her position
4 was or is?

5 A. She -- she is currently the deputy chief, I
6 believe.

7 Q. Were you assigned to a particular team or
8 subsection of the Consumer Protection Division?

9 MS. VASQUEZ: Objection, Your Honor;
10 relevance to this line of questioning.

11 THE COURT: I'm going to overrule it as
12 general background, but stay at the ready. Go ahead.

13 A. I'm -- I'm -- I'm sorry. Can you repeat the
14 question. I was getting some water.

15 Q. (BY MS. LESKIN) Sure. When you were at the
16 Consumer Protection Division, were you assigned to a
17 particular team or subsection of that division?

18 A. There weren't particular assignments for
19 investigators when I was there. We were just one
20 group.

21 Q. Did you have --

22 A. If I remember correctly, as far as, like, it
23 wasn't a section, like, thing while -- while I was
24 there. We had -- we -- we used to be in, like, the
25 Austin office -- Harris -- county office, but we

1 reorganized.

2 Q. Was that the Austin office? Is that where you
3 were?

4 A. Not within the last -- well, it was in the
5 local office now, but we were all on one team now the
6 way we were organized, if that makes sense.

7 Q. And you were based, though, out of Austin?

8 A. Yes, ma'am.

9 Q. Had you been involved in any investigations
10 during your time at the Consumer Protection Division,
11 investigations relating to transgender medical care?

12 A. Yes, ma'am.

13 Q. Other than the one that is a -- subject of
14 this litigation, were you involved in other
15 investigations relating to transgender medical care?

16 MS. VASQUEZ: Objection, Your Honor.
17 This is going to be covered by the law enforcement
18 privilege, also attorney work product, and
19 attorney-client privilege.

20 MS. LESKIN: I'm not asking for
21 details --

22 MS. VASQUEZ: This is concerning his
23 duties as an investigator for the law enforc- -- or for
24 the Consumer Protection Division, and that is
25 privileged information, what he worked on while he was

1 there, other than why we're here today.

2 MS. LESKIN: I'm actually not asking for
3 any details, just yes or no whether he had done any
4 investigations.

5 MS. VASQUEZ: That also is privileged,
6 Your Honor.

7 THE COURT: I'll sustain your objection.

8 MS. VASQUEZ: Thank you, Your Honor.

9 MS. LESKIN: Thank you, Your Honor.

10 Q. (BY MS. LESKIN) Just wanted to understand the
11 background process in your role when you were at the
12 Consumer Protection Division. How would you, in
13 general, decide to initiate an investigation?

14 MS. VASQUEZ: Objection, Your Honor.
15 That assumes facts not in evidence that he would
16 initiate an investigation.

17 MS. LESKIN: I can rephrase, Your Honor.

18 THE COURT: Rephrase.

19 Q. (BY MS. LESKIN) While you were an
20 investigator with the Consumer Protection Division,
21 would you initiate investigations?

22 A. It's -- not -- not regularly. It wasn't a
23 normal thing we did.

24 MS. VASQUEZ: Objection to the narrative,
25 Your Honor.

1 THE COURT: The answer was given, not
2 normally.

3 Q. (BY MS. LESKIN) And, generally, how would
4 matters come to your attention to get involved?

5 A. Sometimes it would be by an email. Sometimes
6 it'd be verbal. You know, that's about it.

7 Q. And who would they come from?

8 A. They come from my supervisors. They come from
9 my attorneys. You know, that about runs the gamut
10 roughly.

11 Q. You signed a declaration in this action,
12 correct?

13 A. Yes, ma'am.

14 MS. LESKIN: Your Honor, can I approach
15 the witness?

16 THE COURT: Yes.

17 MS. LESKIN: We have an exhibit that's
18 been marked as Plaintiff's Exhibit 37. It has not been
19 uploaded to the Box, but I have a paper copy available.
20 It is the affidavit that Mr. Weeks signed.

21 THE COURT: You're going to have to
22 upload it to the Box later.

23 MS. LESKIN: Yes. We are in the process
24 of doing that as to speak.

25 THE COURT: But you -- you-all have to

1 provide it, though.

2 MS. VASQUEZ: Yes, Your Honor, we have
3 it.

4 MS. LESKIN: It was -- it was submitted
5 to the Court as an exhibit to the response to the TRO
6 by the Office of the Attorney General.

7 THE COURT: You're going to show it to
8 him first or you're offering it at this time?

9 MS. LESKIN: I'm going to show it to him,
10 authenticate it, and then I will offer it.

11 THE COURT: Okay. Go ahead.

12 MS. LESKIN: Can you put that up on the
13 screen?

14 THE WITNESS: Thank you.

15 MS. LESKIN: Thank you. I have a copy
16 for Your Honor. Oh, let me give you this copy.

17 THE COURT: I think you need to give it
18 to the court reporter, not to me.

19 MS. LESKIN: Okay.

20 THE COURT: In case something happens.
21 So give an extra copy to the court reporter.

22 MS. LESKIN: There you go.

23 THE WITNESS: Thank you.

24 Q. (BY MS. LESKIN) I'm showing you what we've
25 identified as Plaintiff's Exhibit 37, Mr. Weeks. If I

1 could just ask you to take a look at that first. Have
2 you done that?

3 A. I'm sorry.

4 Q. Have you reviewed it?

5 A. Oh, I'm reviewing it right now.

6 Q. Okay. Let me know when you're done.

7 A. I've reviewed it.

8 Q. Okay. And if you look on Page 2, that's your
9 virtual signature, correct?

10 A. Yes, ma'am.

11 Q. And you signed this on February 28th, 2024,
12 correct?

13 A. It says 29th.

14 Q. I'm sorry. February 29th, 2024, correct?

15 A. Yes, ma'am.

16 MS. LESKIN: Your Honor, we would offer
17 Plaintiff's Exhibit 37 into evidence.

18 MS. VASQUEZ: Your Honor, we would object
19 on relevance grounds for this proceeding.

20 THE COURT: Overruled, the objection on
21 relevance grounds. 37 is going to be admitted, but you
22 are going to have to promise me you upload it to the
23 Box.

24 MS. LESKIN: Yes, Your Honor.

25 *(Plaintiff's Exhibit 37 admitted.)*

1 THE COURT: All right. Go ahead.

2 Q. (BY MS. LESKIN) And you understand that the
3 declaration, your affidavit, was submitted to this
4 Court in connection with filings made by the Office of
5 the Attorney General, correct?

6 A. Just to clarify, you're saying I understand
7 that it was filed with the Attorney General with -- and
8 in the case?

9 Q. Yes.

10 A. Yeah, that's -- yes.

11 Q. And you understood that was the purpose of --
12 of signing the declaration, correct?

13 A. Yes, ma'am.

14 Q. And at the time you signed this, you were
15 still employed by the Consumer Protection Division,
16 correct?

17 A. Yes, ma'am.

18 Q. Did you have the opportunity to review the
19 document that was submitted by the Office of the
20 Attorney General with which they submitted your
21 affidavit?

22 A. Can you clarify for me some more?

23 Q. Sure. Let me show you a document that was
24 filed in this case, the response to the TRO.

25 MS. VASQUEZ: Objection, Your Honor;

1 that's outside the relevance of this witness'
2 knowledge.

3 THE COURT: I don't know if it is or it
4 isn't yet. I need to see what they're going to show
5 him. Let me just see what they're going to show him
6 and maybe. Let me just see first.

7 Q. (BY MS. LESKIN) So just to put in context,
8 this is a document filed by the Attorney General's
9 office, the response to plaintiff's application for
10 temporary restraining order. Do you see that?

11 A. Yes, ma'am, I see it.

12 Q. Okay. And if we can go to Paragraph 7. And
13 do you see the second sentence in this paragraph, it
14 says, In the meantime, however, the Consumer Protection
15 Division of the Attorney -- Attorney General's office
16 has become aware of information suggesting that medical
17 providers and other persons are evading SB14's
18 structures by committing various forms of fraud,
19 including insurance fraud. Do you see that sentence?

20 A. Yes, ma'am, I do.

21 Q. And do you see that in support of that
22 sentence, they cite your affidavit?

23 A. I do see that.

24 Q. Okay. Were you aware that your affidavit was
25 being used to support that statement?

1 A. So just so I understand, are you asking about
2 this specific statement in this document?

3 Q. Yes.

4 A. I did not see this specific statement.

5 Q. You have never seen that before?

6 A. I have never seen that document or this -- I'm
7 sorry, this -- this specific statement.

8 Q. And you'll see that refers to Paragraph 5 of
9 your affidavit, correct?

10 A. Yeah, I see the declaration.

11 Q. Okay. And you see the reference in
12 Paragraph 5?

13 A. Yes, ma'am.

14 Q. Okay. So let's go back to your affidavit.
15 And let's look at Paragraph 5.

16 A. Okay. Sounds good. Thank you.

17 Q. And you have a copy there in front of you, if
18 that's easier for you. In Paragraph 5 of your
19 affidavit refers to a true and correct copy of
20 QueerDoc's website pharmacy options page where QueerDoc
21 states the following. And you quote that, correct?

22 A. Yes, ma'am.

23 Q. And the website that you cite here, which is
24 also Exhibit 1, if you want to take a look at it --

25 A. Yes, ma'am.

1 Q. -- is that something you located, or did
2 someone identify that for you?

3 A. So I reviewed this website. This had been
4 handed off to me by Mr. Shatto. That being said, I did
5 review this website, and I reviewed the website and I
6 read through it. So I was aware of the contents of
7 this.

8 Q. Well, when you say "this website," are you
9 referring solely to the page that is marked as
10 Exhibit 1, which is entitled Pharmacy, Exhibit 1 to
11 your affidavit?

12 A. I'm -- I'm sorry. I'm referring to Exhibit 2.

13 Q. Okay. So let's refer to Paragraph 5. You see
14 it's referring to Exhibit 1?

15 A. Yeah. My apologies.

16 Q. That's okay.

17 A. I -- I did a lot of review of websites there,
18 so I -- I want to say I came across this, but I don't
19 want to speculate because I did a lot of -- I didn't --
20 I didn't do -- it wasn't for a long time, like, I maybe
21 put an hour of work into this, but I --

22 MS. VASQUEZ: Object to the narrative,
23 Your Honor. I'm not sure there's a question on the
24 table right now of what it is.

25 THE COURT: I think I need to ask this

1 question at this point in the proceeding, which is, you
2 are not his attorney. And so are you -- how are you
3 proceeding? Are you a friendly to him, or are you
4 claiming to be an unfriendly to him and -- and because
5 you can't -- if you're his attorney, you can't just
6 continuously cut your witness off when he's doing
7 something you don't want him to do with a narrative
8 objection.

9 But if you're not on his side and that's
10 why Ms. Johnson's here, maybe Ms. Johnson's the one who
11 needs to be doing the objecting if he wanders off into
12 a narrative. But -- but I'm trying -- I just need to
13 understand that. If you're not with him, if you're
14 also someone who he does not share an attorney-client
15 privilege with and he is not under your direction, then
16 I'll be more understanding of some of your objections
17 to narrative.

18 MS. VASQUEZ: Your Honor, it's my
19 position -- our position, I represent the interest of
20 the Attorney General's office and the Consumer
21 Protection Division. That said, he's --

22 THE COURT: Is he somebody in your care,
23 custody, control or not?

24 MS. VASQUEZ: In the sense that he worked
25 for the Attorney General's office during the time of

1 his work on this case, I represent him at this hearing.
2 She represents him for the motion to quash, Your Honor.

3 THE COURT: Then -- I'm going to overrule
4 your narrative objections then. When he answers he's
5 going to be able to answer without you cutting him off
6 and -- and giving him tips of what you want him to do.

7 MS. VASQUEZ: Okay.

8 THE COURT: All right. All right.
9 Let's -- let's ask some questions. We're going to be
10 careful with how we proceed. You're going to stand at
11 the ready, but I don't want you to just cut him off if
12 he's trying to answer a question. Go ahead.

13 MS. LESKIN: Thank you, Your Honor.

14 Q. (BY MS. LESKIN) Mr. Weeks, we were just
15 talking about Exhibit 1?

16 A. Yes, ma'am, I understand. Sorry.

17 Q. That's okay. So -- so that we're clear, is
18 Exhibit 1 a website, Exhibit 1 to your affidavit --

19 A. Uh-huh.

20 Q. -- is that a website you located on your own,
21 or did someone direct you to that website?

22 A. I can't remember at this time.

23 Q. Okay. And when you found the website that
24 you've attached as Exhibit 1 to your declaration, did
25 you look elsewhere on the QueerDoc website?

1 A. Here, hold on. Sorry. I'm -- like, I'm
2 getting some water.

3 Q. That's okay.

4 A. Can you -- can you repeat that for me?

5 Q. Sure. When you identified the website page
6 that you attached as Exhibit 1 to your affidavit, did
7 you identify or look at other parts of the QueerDoc
8 website, or did you limit your review to this page
9 marked Pharmacies?

10 MS. VASQUEZ: Your Honor, this goes to
11 the investigative privilege.

12 THE COURT: I will sustain that.

13 MS. VASQUEZ: Thank you.

14 Q. (BY MS. LESKIN) Did you -- have you ever
15 looked at the QueerDoc website beyond the Pharmacies
16 page?

17 MS. VASQUEZ: Same objection, Your Honor;
18 same privilege.

19 THE COURT: I think I have to sustain
20 that, even though I recognize there are things in this
21 hearing that everybody would like to know. I think one
22 of the reasons we're here is stopping them from
23 learning more, and so I can't use this hearing as a
24 sword for you guys. It just doesn't work that way, and
25 so sustained.

1 Q. (BY MS. LESKIN) On the page that you've
2 attached as Exhibit 1, is there any information
3 available indicating that QueerDoc operates within the
4 state of Texas?

5 A. Can you repeat that? I'm sorry.

6 Q. Sure. And you can take a look at Exhibit 1 to
7 your declaration on the screen or on the hard copy in
8 front of you, whatever's easiest.

9 A. Okay. That's...

10 Q. And take a look at that page. My question is,
11 is there anything on that page that indicates that
12 QueerDoc operates in the state of Texas?

13 A. On this particular page or are you talking
14 about in the rest of the website? You're just talking
15 about this page?

16 Q. For now I'm asking about this page that you
17 attached to your declaration.

18 A. Okay. So -- and, again, to clarify further,
19 are you asking me if they operate or if they have a --
20 a location in Texas?

21 Q. Well, right now I'm asking, is there anything
22 on this page that indicates that they operate or have a
23 location in Texas?

24 A. Just if they operate -- I'm sorry. Let me --
25 let me get my words together. So you're asking me if

1 they have a location or if they -- have particular
2 services they provide in Texas? I'm just trying to
3 understand.

4 Q. Well, let me back up, and I'll start with a
5 different question.

6 A. Okay.

7 Q. And we'll come back to this one.

8 A. All right. Thank you.

9 Q. As an investigator in the Consumer Protection
10 Division, is it fair to say that your interests are
11 restricted to representations made to consumers in
12 Texas?

13 MS. VASQUEZ: Objection, Your Honor;
14 vague.

15 THE COURT: Overruled. If you know, you
16 can answer.

17 A. And if you can repeat it, just so I
18 understand.

19 Q. (BY MS. LESKIN) Sure. When you worked as an
20 investigator in the office of the Consumer Protection
21 Division, did you understand that the -- well, let me
22 ask it this way, that the focus of your work were for
23 representations made within the state of Texas.

24 A. Representations that were made within the
25 state of Texas or could affect the state of Texas? Are

1 you -- just so I understand.

2 Q. Well, let me start with representations made
3 in the state of Texas?

4 A. Okay. So, yes, my -- my work would include
5 representation -- representations made within the state
6 of Texas, yes, ma'am.

7 Q. And your work involved statements that
8 affected consumers within the state of Texas, correct?

9 MS. VASQUEZ: Objection to the extent
10 this question calls for a legal conclusion, Your Honor.

11 THE COURT: Overruled. He's an
12 investigator, and if he knows the answer to this
13 question, he may answer it.

14 A. Okay. So you're asking me if these Consumer
15 Protection Division's interests apply to basically acts
16 or representations that can affect the consumers within
17 the state of Texas, correct?

18 Q. (BY MS. LESKIN) Correct.

19 A. So as I understand it, yes.

20 Q. Okay. So going back to my question, was there
21 anything on the page that you've attached as Exhibit 1
22 to your affidavit, was there anything on that page that
23 indicated a statement that affected consumers within
24 the state of Texas?

25 A. So -- and, again, just looking at this

1 reminding me, so if you're talking about what can
2 affect consumers, if somebody can order the drugs
3 within the state of Texas where they can be shipped
4 into, like the mail order pharmacy, that could be
5 relevant, as I understand it.

6 Q. Were you aware that QueerDoc on their website
7 represents the states in which they serve?

8 MS. VASQUEZ: Objection; that goes into
9 his investigation beyond this page, and that would be
10 covered by law enforcement privilege.

11 MS. LESKIN: Your Honor, they've opened
12 the door by marking this page and making this the basis
13 of their investigation.

14 THE COURT: I'm going to sustain your
15 objection.

16 MS. VASQUEZ: Thank you, Your Honor.

17 THE COURT: I'm going to sustain the
18 objection. Maybe I shouldn't say this, but I want to
19 say if -- it may hamper the Office of the Attorney
20 General's ability to present their own case, but I
21 understand what you're saying, that you're going to
22 stand on this investigative privilege the same way
23 they're standing on their position of, you don't get to
24 know this, you're standing on, you don't get to know
25 this. But it might come down to a merits issue, and

1 the absence of information may end up being the reason
2 of -- the Court issues a ruling that it issues.

3 But as long as you understand that, I
4 think it's your objection to make and it's your
5 position to take, and so the Court is sustaining your
6 objections.

7 MS. VASQUEZ: Thank you, Your Honor.

8 Q. (BY MS. LESKIN) I want to show you --

9 MS. LESKIN: It's for purposes of
10 impeachment, Your Honor, and not for admission of the
11 evidence.

12 Q. (BY MS. LESKIN) -- a page from a different --
13 a page of a -- different page from the QueerDoc
14 website. And this is a page --

15 MS. LESKIN: Can you please move that up
16 a little bit so we can see the caption for that? The
17 bottom part. There we go. There we go.

18 Q. (BY MS. LESKIN) And I'll ask you, have you
19 seen this page from the QueerDoc website before?

20 MS. VASQUEZ: Objection, Your Honor; you
21 already sustained the objection to law enforcement
22 privilege which she asked for other pages that he
23 looked at on this website.

24 THE COURT: I think that -- is this an
25 exhibit of yours?

1 MS. LESKIN: It's not, Your Honor. We --
2 we can make it an exhibit. We can offer it as
3 Exhibit 38 and upload it to the Box, if that would
4 be --

5 THE COURT: I'm -- I'm okay with you
6 doing that. I think you're going to need to rephrase
7 your question, because I think I'm going to sustain
8 their objection to the investigative privilege here.
9 But if you want to ask questions about looking at it
10 now, he can -- he can ask -- you can ask questions
11 about looking at it now.

12 MS. LESKIN: Thank you, Your Honor, and
13 we will mark this, then, as Plaintiff's Exhibit 38.

14 THE COURT: And it's a website? You just
15 printed it off?

16 MS. LESKIN: It's a page from the
17 QueerDoc website. And the bottom of the page does have
18 the full U- -- the full address -- URL address on it.

19 THE COURT: Okay. I think it's enough to
20 be self-authenticating, so I'm not worried about that.
21 I guess what would be the OAG objection?

22 Again, we're not going to ask about what
23 he may have looked at in his investigation. I
24 sustained that. So if you have an objection to them
25 offering 38?

1 MS. VASQUEZ: Foundational.

2 THE COURT: I'm going to overrule that.
3 38 will be admitted.

4 *(Plaintiff's Exhibit 38 admitted.)*

5 THE COURT: But, again, you have some
6 work to do.

7 MS. LESKIN: Yes, Your Honor.

8 THE COURT: Okay. Go ahead. It's just
9 this one page, by the way. It's not a bunch of other
10 pages. It's, like, a screen shot that's going to be
11 Exhibit 38.

12 MS. LESKIN: Correct, Your Honor.

13 THE COURT: Okay.

14 MS. LESKIN: Just one page.

15 Q. (BY MS. LESKIN) And you can look at this page
16 with me. And do you see anywhere on this page where it
17 indicates that Texas has been identified as a state
18 QueerDoc serves?

19 A. So you're just saying as to what I'm seeing
20 now does it identify?

21 Q. Yes.

22 A. No. I -- I -- I don't see it being identified
23 as such right now.

24 Q. And are you aware of any information
25 indicating that QueerDoc operates in the state of

1 Texas?

2 A. So when you ask me that -- and I just want to
3 understand -- are you saying based on this or based off
4 the previous page?

5 Q. Based on any information you have available to
6 you, do you have any information indicating that
7 QueerDoc operates in the state of Texas?

8 MS. VASQUEZ: Objection, Your Honor.

9 THE COURT: Sustained.

10 Q. (BY MS. LESKIN) Do you have any information
11 that QueerDoc is suggesting medical providers evade
12 SB14?

13 MS. VASQUEZ: Same objection, Your Honor.

14 THE COURT: Sustained.

15 Q. (BY MS. LESKIN) Do you have any information
16 for -- that QueerDoc is -- has -- strike that.

17 Do you have any information indicating
18 that QueerDoc is committing insurance fraud within the
19 state of Texas?

20 MS. VASQUEZ: Same objection, Your Honor.

21 THE COURT: Sustained. Again, I want to
22 be clear. When you're objecting, you're making a
23 privilege assertion, an investigative privilege
24 assertion, and you are instructing your client not to
25 answer and I'm allowing you to do that.

1 MS. VASQUEZ: Yes, Your Honor.

2 THE COURT: Okay. That's what we've been
3 doing. I think it's a little unclear, and that's why I
4 wanted to come back and clarify that.

5 MS. LESKIN: Understood, Your Honor.
6 And, again, our position is that the State opened the
7 door by citing to Paragraph 5 of Mr. Weeks'
8 affidavit --

9 THE COURT: I understood that.

10 MS. LESKIN: -- in their filing to the
11 Court.

12 THE COURT: I think they -- they'll have
13 some decisions to make about what they want to do with
14 their cross.

15 MS. LESKIN: Thank you.

16 Q. (BY MS. LESKIN) If we turn back to your
17 affidavit, if you can turn to Paragraph 6 of your
18 affidavit.

19 A. Paragraph 6?

20 Q. Yes. And that refers to Exhibit 2 which we --
21 we started to reference before.

22 A. Okay. I'm sorry. I was getting water.

23 Q. That's okay. You get your water, and you let
24 me know when you're ready to go.

25 A. Thank you. Okay. What was your question?

1 Q. I'm just asking you to turn to Paragraph --

2 A. Oh.

3 Q. -- 6 of your affidavit?

4 A. Yes, ma'am. I'm there.

5 Q. And take a look at Exhibit 2, which you've
6 attached to your -- to your affidavit.

7 A. Okay.

8 Q. I believe you testified earlier that the
9 article that you've attached as Exhibit 2 was provided
10 to you by Mr. Shatto, correct?

11 A. So I just want to make clear, though he
12 initially gave me the article to review, all
13 investigators -- I reviewed this article myself and
14 went through the website -- this particular one. I'm
15 sorry. This particular.

16 Q. And when you say you went through the website,
17 which website are you referring to?

18 A. I'm referring -- not the whole website. Let
19 me rephrase. I'm sorry. I misspoke. I'm talking
20 about PJ Media. I -- I reviewed the article for PJ
21 Media.

22 Q. Okay. And that's Exhibit 2 to your
23 declaration, correct?

24 A. Exhibit 2, yes, ma'am.

25 Q. Do you remember when you first saw Exhibit 2?

1 A. If I recall, I believe it was the day I signed
2 this affidavit.

3 Q. February 29th, 2024?

4 A. Yes, ma'am.

5 Q. Were you familiar with PJ Media before seeing
6 this article?

7 A. Not off the top of my head, no.

8 Q. Have you reviewed other articles by or
9 published on PJ Media?

10 A. No, ma'am.

11 Q. And if you look to the third page of
12 Exhibit 2, the bottom of the article, do you see the
13 Editor's Note at the bottom there?

14 A. The Editor's Note on the last one?

15 Q. Well, it's actually not the last page because
16 there's some ads.

17 A. Oh, I'm -- yeah.

18 Q. It's on the third page at the end of the
19 article itself.

20 A. Yes. The Editor's Note right there. I see
21 it. Yes, ma'am.

22 Q. And you see where it asks readers to support
23 PJ Media's conservative reporting? Do you see that?

24 A. Yes, ma'am.

25 Q. And you see that they espouse the theory that

1 the destructive transgender ideology is at war with
2 reality. Do you --

3 A. Yes --

4 Q. -- see that?

5 A. -- yes, ma'am, I do see that.

6 Q. And did you consider that when assessing the
7 article?

8 A. To be frank, I can't recall.

9 Q. Now, the article itself says that the story is
10 based on a series of Tweets by Matt Walsh of The Daily
11 Wire, right?

12 A. If I may review.

13 Q. Of course. Just so you know, it's on the
14 first page of the article?

15 A. Cool. Thank you. There it is, Matt Walsh of
16 The Daily Wire at the top. I believe I see that.

17 Q. And you see where it says that Matt Walsh of
18 The Daily Wire shared these findings in a series of
19 Tweets?

20 A. Yes, ma'am.

21 Q. And did you go and did you review the actual
22 Tweets that Mr. Walsh published?

23 MS. VASQUEZ: Objection; law enforcement
24 privilege.

25 THE COURT: Sustained.

1 Q. (BY MS. LESKIN) Did you do anything to
2 confirm the truth of the story being reported?

3 MS. VASQUEZ: Same objection.

4 THE COURT: Sustained.

5 Q. (BY MS. LESKIN) Did you determine what
6 insurance companies require in order to approve
7 coverage for gender-affirming care?

8 MS. VASQUEZ: Same objection.

9 THE COURT: I'm going to sustain it. I
10 think at this point I need to tell the witness, I mean,
11 the witness -- I -- they're -- they're -- they're not
12 so much objecting as they're instructing you not to
13 answer. And so that's what I want to be very clear
14 about.

15 They're instructing you, it's their
16 privilege, and they're saying that you have an
17 investigative privilege with them and they're
18 instructing you not to answer, and I am allowing them
19 to instruct you of that. It's not so much an
20 objection. It's more of a privilege assertion. I see
21 it more like that.

22 But the witness isn't represented by
23 them. He's represented by his own lawyer who showed up
24 and made an announcement representing themselves, and
25 not in the same department, claiming some sort of

1 disagreement. So I can only say to you that you,
2 Witness, have some agency here, and they're instructing
3 you not to answer. I'm allowing them to instruct you
4 of that.

5 But you have some choices to make about
6 maybe you should discuss with your lawyer about whether
7 or not you feel like you should answer these questions
8 or not because that's not something I can instruct you
9 on. And it's really not something they can instruct
10 you on.

11 If your lawyer wants to be involved in
12 this, if you want to be involved in this, you can
13 choose to answer these questions. And that's why I
14 want to be very clear that it's not so much an
15 objection. That the witness has some agency here.

16 Now, it may be limited because I
17 understand you're saying that he's in your
18 possession -- I mean, he's in your direction, but I
19 just -- it's not precisely that I am sustaining an
20 objection. I am allowing the Office of the Attorney
21 General to tell a witness, who used to work in their
22 office as part of the Civil Investigative Division, who
23 now works for another state agency, the Comptroller, to
24 tell him not to answer because they believe it is
25 privileged.

1 He can rely on that, or he can not rely
2 on that. That is a decision that the witness can make
3 along with his lawyer. And do you want to discuss with
4 him after the Court has said that?

5 MS. JOHNSON: Yes. Can we take just a
6 five-minute recess?

7 THE COURT: Yes. I think that's what we
8 need to do to make sure that we're doing this
9 correctly. Thank you. Take a ten-minute break.

10 THE WITNESS: Thank you, Your Honor.

11 *(Recess was taken.)*

12 THE COURT: All right. We're going to go
13 back on the record. And, again, I'm not -- I just want
14 to make clear what's going on here. I think it's
15 gotten a little confused. And so -- because I've just
16 been sustaining or overruling objections, and so I
17 don't really necessarily feel like the witness needs to
18 state anything or that anybody needs to state anything.
19 I think everybody now has had a chance to talk to who
20 you needed to talk to and then we'll just go back into
21 it. And you can continue to ask your questions.

22 MS. LESKIN: Thank you, Your Honor.

23 THE COURT: All right. Thank you.

24 Q. (BY MS. LESKIN) We were talking about
25 Exhibit 2 to your affidavit. Did you do anything to

1 investigate anything further that was mentioned in this
2 article, other than read the article?

3 MS. VASQUEZ: Objection; law enforcement
4 privilege.

5 THE COURT: So they're -- they're
6 asserting law enforcement privilege and asking you not
7 to answer the question. And then that is now to you.
8 I'm allowing them to assert it. That said, if the
9 witness doesn't follow that or does follow that is the
10 witness' decision.

11 THE WITNESS: So how -- how would I
12 confirm how I feel one way or another?

13 THE COURT: Well, you talked to your
14 lawyer. Lawyer, do you want to say anything?

15 MS. JOHNSON: If you're not to answer the
16 question because of the privilege, you can just say,
17 I'm not going to answer based on the privilege.

18 A. I'm not going to answer.

19 Q. (BY MS. LESKIN) Based on the privilege?

20 A. Based on the privilege, yes, ma'am.

21 Q. Okay. Thank you.

22 A. Uh-huh.

23 Q. Going back to Exhibit 2, you see that the
24 article is dated June 7th, 2023, correct?

25 A. Yes, ma'am.

1 Q. And you understand that that was three months
2 before SB14 went into effect, correct?

3 A. To be -- SB14 is a law I am not that familiar
4 with. I couldn't tell you the dates on it.

5 Q. Okay. So you're not aware that it went into
6 effect effective September 1, 2023?

7 A. I'm not -- I -- I do not have any informa- --
8 I don't have hardly any information of SB14.

9 Q. Did you see anything in this article that
10 you've attached as Exhibit 2 to your declaration
11 discussing SB14?

12 A. Are you asking in my affidavit do I see
13 anything about SB14?

14 Q. I'm looking at Article 2 to your affidavit.

15 A. Okay.

16 Q. The article that we've been referring to
17 published on PJ Media?

18 A. Oh, you're referring to PJ Media?

19 Q. The article that's Exhibit 2 to your
20 affidavit, yes --

21 A. Oh, okay.

22 Q. -- PJ Media on the bottom?

23 A. Okay. Yes, absolutely.

24 Q. And did you see anything in that article or do
25 you see anything in that article referring to SB14?

1 A. Let me review it real quick. If you're asking
2 me if I see anything about SB14 in -- about the article
3 in front of me --

4 Q. Yes.

5 A. -- I do not. I do not see it.

6 Q. And do you see anything about the state of
7 Texas in the article that's in the PJ Media article?

8 A. I see a particular line here about there being
9 a transgender provider within the United States, which
10 Texas is within. But if you're asking me if I see
11 Texas mentioned specifically, no.

12 Q. And do you see anything in this article
13 regarding the provision of transgender care to minors?

14 A. I see a note there about protecting kids.

15 Q. Where do you see that?

16 A. It's at the end. So it says near -- near the
17 end. Protecting kids is just one piece of the puzzle.

18 Q. And that's a statement by Mr. Walsh himself,
19 correct?

20 A. Reading that it looks like that from where I'm
21 sitting, as I understand it. As I understand it, I --
22 I -- to be frank with you, that's what it looks like.

23 Q. It's a quote following Walsh said, correct?

24 A. Yes, ma'am.

25 Q. Okay. But in the recount of the

1 investigation, there's no indication in the article,
2 you'll agree with me, that Plume was providing
3 gender-affirming care to minors, correct?

4 A. So you're referring into the rest of the
5 article?

6 Q. Yes.

7 A. Okay. Let's see here. I'll check. Sorry. I
8 got to read it. It's been a hot minute. So prior to
9 that comment, I don't see anything else mentioning
10 children.

11 Q. And if you go to the second page of the
12 article, the second paragraph at the top, it mentions
13 Plume is the largest transgender healthcare provider in
14 the United States. You see that, correct? Do you see
15 that sentence?

16 A. Yeah. You're -- you're referring to the line
17 that's right below, after a mere 22-minute virtual
18 consultation with Plume?

19 THE COURT: No. Sorry. You went very
20 fast. Remember to go a little slower so the court
21 reporter can take the accurate record.

22 A. Yes, ma'am.

23 Q. (BY MS. LESKIN) And it describes Plume as the
24 largest transgender healthcare provider in the United
25 States, correct?

1 A. Yeah. And -- and, again, to go slower.
2 That's the line right before, a mere 22-minute virtual
3 consultation with Plume.

4 Q. So the bottom -- the bottom line of that
5 paragraph right after that, correct?

6 A. Yeah, yeah. Okay.

7 Q. Were you familiar with Plume?

8 A. I want to say I'd come across it in my other
9 work, but to be frank with you, I -- I -- I couldn't --
10 I couldn't recall exactly.

11 Q. Do you know where they're located?

12 A. Not off the --

13 MS. VASQUEZ: Objection, Your Honor; this
14 gets into law enforcement privilege, and it goes to his
15 other duties assigned at the Consumer Protection
16 Division.

17 THE COURT: So they have again asserted
18 the investigative privilege. You can follow that or
19 not follow that.

20 A. I'll go ahead and take the privilege.

21 Q. (BY MS. LESKIN) And as part of your work, did
22 you do anything to investigate whether Plume provided
23 any medical services within the state of Texas?

24 MS. VASQUEZ: Same privilege.

25 A. I'll take the privilege.

1 Q. (BY MS. LESKIN) Did you do any investigation
2 to whether Plume was providing medical care for minors
3 within the state of Texas?

4 MS. VASQUEZ: Law enforcement privilege.

5 A. I'll take the privilege.

6 Q. (BY MS. LESKIN) Are you aware that Plume does
7 not provide any medical care for minors?

8 MS. VASQUEZ: Same privilege.

9 A. I'll take the privilege.

10 Q. (BY MS. LESKIN) Sure. So let me show you --

11 MS. LESKIN: This is another website,
12 Your Honor. We'll mark this as exhibit -- Plaintiff's
13 Exhibit 39, and we will provide a hard copy and upload
14 it to the Box.

15 THE COURT: I think this is the last one
16 of these I'm going to allow --

17 MS. LESKIN: Okay.

18 THE COURT: -- so just because it's
19 really not what I asked. We want them to be there
20 already. But I don't want to get confused. I don't
21 want the court reporter to get confused, but we will do
22 39 as well.

23 MS. LESKIN: Thank you, Your Honor.

24 Q. (BY MS. LESKIN) And if we can go to the
25 middle of this page. And I'll represent to you this is

1 from the Plume website. And do you see the question
2 that says, Can someone under 18 --

3 MS. LESKIN: Further down. And the only
4 thing we're marking, Your Honor, is this page here.

5 Q. (BY MS. LESKIN) Can you see where it says,
6 Can someone under 18 use Plume without parental
7 consent?

8 MS. VASQUEZ: Objection, Your Honor. I'm
9 going to object to foundation.

10 MS. LESKIN: Just asking if he sees the
11 sentence.

12 THE COURT: I -- yeah. I don't know if
13 we're going to admit this document, but to the extent
14 that you have pulled up a website for Plume, something
15 that was mentioned in an exhibit to the
16 declaration/affidavit that this witness has performed
17 and put in the record of the Court, I'm going to allow
18 you to show this part of the Plume website and ask a
19 question about it.

20 MS. LESKIN: Thank you.

21 Q. (BY MS. LESKIN) And do you see where it says,
22 We're very sorry that we cannot provide services for
23 anybody under the age of 18?

24 A. Yes, ma'am.

25 Q. And that's not something you saw prior to

1 today?

2 MS. VASQUEZ: Objection, Your Honor; law
3 enforcement privilege.

4 THE COURT: There again, invoking the law
5 enforcement privilege.

6 A. I'll take the privilege.

7 Q. (BY MS. LESKIN) Do you have up with you on
8 the stand there Exhibit 1? It should be Plaintiff's
9 Exhibit 1. It's the CID that was issued to PFLAG and
10 previously admitted.

11 A. I -- I don't think I see it. Oh, here it is.

12 Q. It's on the screen as well.

13 A. Yes, thank you.

14 Q. I believe it is one of those documents in the
15 pile as well, if you'd like to see the full document.

16 A. Okay. Thank you. There's a lot here, so I'll
17 just stick with this.

18 Q. Sure.

19 MS. LESKIN: Your Honor, if I -- if it's
20 easier, I can identify it for the witness in the pile.
21 It might --

22 THE COURT: Sure.

23 MS. LESKIN: -- be easier if I --

24 THE COURT: You can walk up --

25 MS. LESKIN: Thank you.

1 THE COURT: -- and show him which one it
2 is.

3 A. Okay. Cool. Thank you.

4 THE COURT: Because there are some --
5 again, I was confused. So --

6 A. Thank you.

7 THE COURT: -- show him one that is
8 actually Exhibit 1.

9 Q. (BY MS. LESKIN) And my first question is,
10 have you seen this document before?

11 A. This particular document? No, ma'am. Not --
12 not that I can recall.

13 Q. Okay. And if you look at the first page of
14 the exhibit itself, you see that this is a Civil
15 Investigative Demand issued to PFLAG, correct?

16 A. Yes, ma'am.

17 Q. And if you look at the bottom, it says, Other
18 authorized agent, and that's you, correct?

19 A. Yes, ma'am.

20 Q. And you're listed as the investigator?

21 A. Yes, ma'am.

22 Q. And in that second paragraph it directs PFLAG,
23 if it's producing documents electronically to provide
24 them to you, correct?

25 A. Yes, ma'am.

1 Q. Did you write this CID?

2 A. No. I -- I -- to be frank with you, I can't
3 remember. My work with CIDs is usually administrative,
4 but it -- this particular one, I -- I did not have a
5 hand in this one, as far as I can recall.

6 Q. And you're aware that your counsel filed a
7 motion to quash your subpoena to appear today, correct?

8 A. Yes, ma'am.

9 Q. And you're aware that it indicated you had no
10 personal knowledge of the facts relevant to the lawsuit
11 beyond your affidavit, correct?

12 A. Can you repeat that?

13 Q. Sure. Are you aware that the motion to quash
14 filed on your behalf indicated that you had no personal
15 knowledge of facts relevant to the lawsuit beyond what
16 is in your affidavit?

17 A. Just so --

18 Q. Are you aware that of?

19 A. Well, I just want to make sure I understand
20 you. So you're saying the motion to quash stated I had
21 no personal knowledge?

22 Q. Beyond what was in your affidavit.

23 A. I was unaware of that language.

24 Q. Okay. Do you disagree with that statement?

25 MS. VASQUEZ: Your Honor, I'm going to

1 assert the law enforcement privilege again and the
2 investigative privilege.

3 MS. LESKIN: It has nothing to do with
4 his investigation, Your Honor.

5 THE COURT: Overruled. Overruled.

6 A. So -- and, again, can you just -- I'm trying
7 to answer the question. I just want to understand what
8 you're saying. So what -- are you asking me if I had
9 more knowledge than the affidavit or just knowledge
10 within the affidavit?

11 Q. (BY MS. LESKIN) More knowledge about this
12 lawsuit and the underlying investigations that the
13 lawsuit is based on beyond what is in your affidavit?

14 A. The knowledge that I had past this affidavit
15 was, again, mostly administrative and very rudimentary,
16 so -- because I want to answer you truthfully. I -- I
17 have knowledge -- more, more knowledge past this
18 affidavit, but it's not anything that would be
19 relevant. I think it would just be, say, like, you
20 know, you asked me like if I did administrative work on
21 something, so it -- like, if you're asking about this
22 particular case, like, that would be about it, if that
23 makes sense.

24 Q. And when you say you did administrative work,
25 what does that mean?

1 A. Like maybe I found Secretary of State filings,
2 you know, but I -- I couldn't give you specifics on
3 like, that's a piece of more information that I have on
4 it. I -- you know, could say -- well, I mean, that
5 would be within this, so, I mean, I -- I reviewed
6 Secretary of State filings. So really I would say it
7 would be within the affidavit, I mean, honestly because
8 there's not much more to say other than -- I mean, only
9 unless there's something I missed specifically. Again,
10 my -- it's been a few months since I've even looked at
11 this -- well, I mean, it has been a few months, but
12 that is when I worked on this.

13 Q. Are you aware of that there are -- well,
14 strike that.

15 There are other divisions besides the
16 Consumer Protection Division within the Office of the
17 Attorney General charged with investigating Medicaid
18 fraud, correct?

19 MS. VASQUEZ: Objection; relevance.

20 THE COURT: Overruled. If the witness is
21 aware, he can answer it. We're not going to go down
22 this very far, but you may answer it if you're aware.

23 A. Yes, I am aware of other divisions including
24 Medicaid fraud.

25 Q. (BY MS. LESKIN) And, in general, the Consumer

1 Protection Division's investigation regarding
2 insurance-related fraud is focused on insurance
3 companies' deceptive acts as to consumers, correct?

4 MS. VASQUEZ: Objection; calls for
5 speculation and also a legal conclusion, Your Honor.

6 THE COURT: I don't think he's the
7 witness for this question, and that might even be
8 something the Court can take judicial notice of, but I
9 don't think it's appropriate for this witness, so
10 sustained on the objection.

11 MS. LESKIN: Okay.

12 Q. (BY MS. LESKIN) You have there in front of
13 you Exhibit 1, which we identified as the Civil
14 Investigative Demand. If I could ask you to turn to
15 Exhibit B1 to that document, and that's the affidavit
16 of Brian Bond.

17 A. B1?

18 Q. B1.

19 A. Okay.

20 Q. It's in Exhibit 1.

21 A. Exhibit 1. This one you showed me?

22 Q. That's the one I showed you.

23 A. Okay. B1?

24 Q. Yes.

25 A. All right.

1 Q. And attached to the demand is an Exhibit B1
2 entitled Affidavit of Brian Bond.

3 A. Brian Bond. Okay. Exhibit B.

4 Q. Yes.

5 A. Yes, I see this.

6 Q. Have you seen this document before?

7 A. No.

8 Q. You've never read this document?

9 A. I've never looked over this document that I
10 can recall.

11 Q. I'm sorry?

12 A. That I can recall.

13 Q. And specifically if I could ask you to look at
14 Paragraph 13.

15 A. Paragraph 13?

16 Q. Yes, of Mr. Bond's affidavit.

17 A. Of his affidavit? Okay.

18 Q. Yes.

19 A. Paragraph 13 begins with, This brief sigh?

20 Q. Yes.

21 A. Okay. I see it.

22 Q. And whether or not you saw it in the context
23 of this affidavit or not, do you recall ever seeing any
24 part of the statements in Paragraph 13?

25 A. Yeah, all this is new information to me.

1 Q. This declaration was not part of the
2 investigation you did, correct, you personally?

3 A. I'm sorry. Repeat that.

4 Q. This -- Mr. Bond's affidavit was not part of
5 the investigation you did, correct?

6 A. No. I've never seen this information as far
7 as I can remember.

8 THE COURT: We're going to go until 1:00
9 and then we're going to be done, so you probably need
10 to get to the end with this witness. That will be four
11 hours, and I have another case coming at 2:00.

12 MS. LESKIN: Yes, Your Honor.

13 THE WITNESS: Thank you, Your Honor.

14 Q. (BY MS. LESKIN) Paragraph -- let's go back to
15 your affidavit.

16 A. Sure.

17 THE COURT: That means you need to wrap
18 it up, because we need to do some argument. I need to
19 see if they have any witnesses. I don't think they do,
20 but -- but I just want you to be careful of time.
21 Five, ten more minutes at the most.

22 MS. LESKIN: And that's all I have, Your
23 Honor. Thank you.

24 Q. (BY MS. LESKIN) Paragraph 2 of your affidavit
25 refers -- says, On or around July 7th, 2023, the

1 Consumer Protection Division became aware that medical
2 providers may have chosen -- chosen to use false,
3 misleading, or deceptive acts to treat children for
4 gender dysphoria. Do you see that?

5 A. Yes, ma'am.

6 Q. Do you know how the Consumer Protection
7 Division became aware?

8 A. To be frank with you, it's -- not off the top
9 of my head. I think we had reviewed --

10 MS. VASQUEZ: Objection to -- to
11 investigative privilege.

12 THE COURT: They are saying it's
13 investigative privilege and asserting it.

14 A. I'll take the privilege.

15 Q. (BY MS. LESKIN) And you joined the
16 investigation on August 8th, correct?

17 A. According to this affidavit, yes, ma'am.

18 Q. And the -- the demand that -- that I showed
19 you as Exhibit 1, those were issued in February of
20 2024, correct?

21 A. Where? Where are we looking?

22 Q. Sure. At the bottom of Page 1 of Exhibit 1.

23 A. Uh-huh.

24 Q. It says issued this 5th day of February, 2024.

25 A. Yes, ma'am, I see that.

1 Q. Okay. You are aware that Mr. -- you see,
2 looking at Mr. Bond's declaration, that he filed it in
3 the case called *Loe vs. State of Texas*, correct?

4 A. Where is that? I'm sorry.

5 Q. If you go back to Mr. Bond's declaration.

6 A. Okay. Pardon me. *Lazaro Loe v. State of*
7 *Texas*.

8 Q. Are you familiar with that lawsuit?

9 A. No ma'am.

10 Q. Do you know the purpose of that lawsuit?

11 A. No, ma'am.

12 Q. Did you review anything from that lawsuit?

13 A. No, ma'am.

14 MS. LESKIN: No further questions, Your
15 Honor.

16 THE WITNESS: Thank you.

17 MS. VASQUEZ: No questions, Your Honor.

18 THE COURT: All right. Thank you. You
19 are free to go --

20 THE WITNESS: Thank you.

21 THE COURT: -- or stay, but you are
22 released from your subpoena.

23 THE WITNESS: Thank you very much, Your
24 Honor. Thank you.

25 THE COURT: You, too, Ms. Johnson.

1 MS. JOHNSON: Thank you, Your Honor.

2 THE COURT: So for the plaintiff, any
3 further witnesses?

4 MS. LESKIN: No, Your Honor.

5 THE COURT: Thank you. For the Attorney
6 General, any witnesses that you would like to call?

7 MR. SHATTO: No, Your Honor.

8 THE COURT: Okay. Then let's just go
9 ahead then and we'll have some closing and exactly what
10 you're seeking.

11 You know, one of the things that I need
12 to research and just haven't had a chance yet, and I'm
13 curious, your thoughts on this. Currently, there is
14 some -- there are some temporary orders issued by the
15 Third Court of Appeals, and there's nothing happening.
16 I think you agreed to stay that.

17 So when -- if the Court chooses to enter
18 a permanent injunction, kind of what does that do to
19 that and where are we process-wise? Maybe those are
20 questions that you don't know the answer to, but I'd
21 like you to speculate on both sides just so we have
22 some thoughtful discussion about that as part of the
23 closing here today.

24 And then there's also -- there's an
25 injunction -- is there also a cause of action from the

1 plaintiff, like a legal cause of action in addition to
2 an equitable injunction? I think I need to further
3 understand that.

4 And then in your closing, further
5 understand the State's cause of action as well against
6 the plaintiff. I feel like I blew past that a little
7 to get here to -- the evidence in, so let's focus on
8 that a little bit more now. Thanks.

9 MS. LOEWY: Sure. Do you mind if I stay
10 seated, Your Honor?

11 THE COURT: I actually think it's a
12 little better because of the way the mic is --

13 MS. LOEWY: Yes.

14 THE COURT: -- so I appreciate that, Yes.

15 **CLOSING ARGUMENT BY MS. LOEWY**

16 MS. LOEWY: Thank you. Well, so to -- to
17 start with where Your Honor left of in terms of the
18 nature of the cause of action, I think that's where it
19 makes sense to start. The cause of action that the
20 plaintiffs have brought is twofold. One is a
21 straightforward petition to set aside and modify
22 pursuant to Section 17.61 of the DTPA, of the Texas
23 Business and Commerce Code, and under the UDJA.

24 It is a cause of action. You know,
25 the -- the statute is not exactly fully flushed out in

1 describing the nature of this cause of action, but it
2 allows a recipient of a CID to file a petition to set
3 aside or modify. And a petition, you know, just says
4 petition just like in Civil Rule of Procedure 22.
5 That's how you commence a civil action. So that is the
6 nature of the plaintiff's -- of PFLAG's filing.

7 THE COURT: Is there not a lot of
8 published case law on this? Is that where we're
9 lacking?

10 MS. LOEWY: That's correct.

11 THE COURT: We just don't have a lot of
12 case law that would put meat on this bone, basically.
13 We don't really have published case law?

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

15 THE COURT: So -- I know you loaded up
16 other cases of judicial notice.

17 MS. LOEWY: Yes.

18 THE COURT: Are they also operating on
19 that same theory, or are those separate types of cases?
20 Because you loaded up a couple other cases in other
21 venues around the state. And are they making the same
22 argument, or are they making a different argument? Do
23 you know.

24 MS. LOEWY: So there -- there's a mix of
25 them, Your Honor. Some of them -- some of it is due to

1 the nature of the specific types of demands that the
2 Attorney General's office sent to some of these other
3 entities. But, for example -- co-counsel will correct
4 me if I'm wrong -- Seattle Children's similarly filed a
5 petition to modify -- set aside and modify their
6 demands.

7 THE COURT: That -- which one did?

8 MS. LOEWY: The Seattle Children's.

9 THE COURT: Okay. And is that one of the
10 ones that's in my evidence or --

11 MS. LOEWY: Yes.

12 THE COURT: Okay. And is that here or
13 was that in another venue?

14 MS. LOEWY: That was here, Your Honor.
15 That case has since been resolved.

16 THE COURT: That case is resolved.

17 MS. LOEWY: Yes.

18 THE COURT: The one in El Paso, is that
19 one resolved, or is that pending?

20 MS. LOEWY: That is pending, I believe.
21 Yeah. It was a different type of investigative tool.
22 That's part of the issue here, Your Honor. The DTPA
23 provides different -- the -- the 17.61(g) action is
24 specific to civil investigative demands. With regard
25 to the demands for sworn written statements, there

1 isn't a specific provision of the DTPA to challenge
2 those. That's part of the reason for the UDJA claims.

3 THE COURT: All right. Thank you. Keep
4 going.

5 MS. LOEWY: Sure. So -- so that's where
6 I would start, Your Honor, is that that -- there is --
7 there are underlying causes of action that PFLAG, as a
8 recipient of demands, is entitled to bring.

9 The counterclaim that the Attorney
10 General's office has brought against them, as
11 Mr. Shatto noted, is the flip side in that it is a
12 petition to enforce where there has been failure to
13 comply with an underlying demand, similarly framed in
14 terms of a petition.

15 Opposing counsel had -- has suggested
16 this summary proceeding, this pre-litigation posture by
17 borrowing from federal case law in a variety of ways
18 with regard to administrative subpoenas. What I would
19 say, Your Honor, is that at the end of the day, the
20 inquiry that the Court is engaged in is not different.
21 That in the context of those kinds of administrative
22 subpoenas, the Court has a role in assessing whether
23 the agency has exceeded its authority.

24 Now, demands like those that the AG's
25 office has served on PFLAG do receive some measure of

1 deference, but it's the government's initial burden to
2 show the legitimate purpose of the investigation,
3 whether the inquiries are reasonably relevant to that
4 purpose, whether the agency already has the sought
5 information, and whether statutory procedures have been
6 followed.

7 Those are factors that are set forth in
8 the U.S. Supreme Court case called *United States vs.*
9 *Powell*. Those are the factors that apply in
10 assessing -- in assessing administrative subpoenas,
11 which is the context that they're borrowing from. And
12 in that case law, the Attorney General's office can use
13 an affidavit from a responsible investigating agent to
14 make that showing of all of those factors.

15 Your Honor, I would argue that the
16 testimony from Mr. Weeks does not meet that threshold
17 for the Attorney General's office. He testified that
18 he did not have a hand in writing the Civil
19 Investigative Demand, that his knowledge was
20 rudimentary, administrative, that he reviewed Secretary
21 of State filings and had not seen the exhibits attached
22 to his affidavit until the day he signed it when
23 Mr. Shatto put them in front of him.

24 He had no idea what the genesis of this
25 investigation was. He had never seen Mr. Bond's

1 affidavit before, had never seen the paragraph from his
2 affidavit with the words on which the Attorney
3 General's office hangs their hat to suggest that PFLAG
4 had actual knowledge of insurance fraud. And so the
5 idea that that could be enough to justify the
6 legitimacy of the investigation is -- is pretty
7 surprising.

8 Our cause of action here, Your Honor,
9 raises the big picture deficiencies with the demands,
10 but also more discrete demand-by-demand deficiencies.
11 And what -- as I started with today, Your Honor, our
12 goal today is -- is to see whether there's a way to
13 bring this to an end for PFLAG.

14 Now, that can't come about in a way that
15 infringes their constitutional rights. If Your Honor
16 would like me to address the case law with regard to
17 protected communications beyond just the revelation of
18 member names, I am happy to do that. It is ample.

19 THE COURT: I -- I don't need you to do
20 that. I think at this point, though, I'm going to ask
21 you a question about -- so at some point they sent you,
22 You're right on member names. We don't want your
23 member names. We're going to agree. We're going to
24 concede. Now, maybe they didn't do it and maybe that's
25 what you're standing on because they didn't actually

1 send a -- a new investigate demand. They filed a
2 document with a pleading.

3 But if that were -- what is wrong with
4 that compromise, or do you want to address it, which
5 is, they have put forth a compromised position that
6 PFLAG has not taken them up on. And so I guess my
7 question would be that. They've almost conceded that
8 they don't get your member lists. I think they've
9 conceded that.

10 MS. LOEWY: Which is great, Your Honor,
11 and we're glad for that concession. But those proposed
12 modifications don't go anywhere near far enough to cure
13 the full range of deficiencies with the demands. And,
14 yeah, I'm happy to address that globally but, also, you
15 know, they -- there has to be a connection with every
16 single one of the demands to the investigation that
17 they purport to be pursuing, and they can't meet that
18 showing.

19 Even with that concession that they're
20 not seeking member names, they are still seeking
21 protected communications among PFLAG members, which
22 similarly receive constitutional protection under both
23 the state and federal constitutions. The demands seek
24 information that is overbroad, that would not be
25 reasonably discoverable under the Rules of Civil

1 Procedure, which is another safeguard of the DTPA.

2 So -- so we recognize that they have
3 offered proposed modifications, but those proposed
4 modifications don't go far enough in complying with the
5 requirements of the DTPA or in shielding PFLAG from
6 constitutional infringement.

7 What we have offered, Your Honor, is --
8 our motion for summary judgment in this case was the
9 start of an identification process of where the
10 granular demands failed to meet the requirements of
11 either the DTPA or the Constitution.

12 We would welcome, as we said -- as said
13 at the outset, we're -- we're not looking for an all or
14 nothing solution here, Your Honor. While we think
15 there are reasons to set aside the demands in their
16 entirety, our ultimate goal here is to bring this to an
17 end for PFLAG. And if that includes turning over some
18 discrete amount of information, whether through the
19 affidavit that Mr. Bond already submitted along with
20 the motion for summary judgment or through his
21 testimony today, whether there are ways for this to be
22 modified in a discrete way to come within the bounds of
23 the law, that that is actually the ultimate solution
24 that we are looking for here. Because the last thing
25 PFLAG wants is an endless array of appeals in this

1 matter.

2 So we have -- our proposed order that we
3 did submit to the Court does exactly this kind of more
4 granular assessment of the different aspects of the
5 demands that we would ask the Court to take a look at
6 and rule on.

7 THE COURT: Where -- where could I
8 find -- look at your proposed order? Is it part of the
9 pleading, or did you just put it in the Box, or is it
10 on an email?

11 MS. LOEWY: We put it in Box, and we have
12 paper copies if Your Honor would like.

13 THE COURT: Let me see if I can find it
14 in the Box. Got it. Thank you.

15 MS. LOEWY: Absolutely. So we recognize
16 that it looks a little bit unusual. It looks a little
17 bit like you're ruling on discovery issues, but that's
18 sort of the nature of what we're looking at here. The
19 tests are a little bit different, though. Right? It's
20 not just your average relevance assessment. There are
21 requirements under the DTPA of what every demand has to
22 include and cannot include.

23 We've identified where we think the
24 demands fall short. We've identified where we think
25 there are constitutional backstops. And because in

1 particular this does implicate constitutional concerns,
2 the bar is higher than just a simple relevance
3 assessment.

4 THE COURT: All right. Thank you. I'll
5 give you last word, but let's turn to the Office of the
6 Attorney General. Mr. Shatto.

7 **CLOSING ARGUMENT BY MR. SHATTO**

8 MR. SHATTO: Thank you, Your Honor. As
9 mentioned by PFLAG, our counterclaim is what we would
10 like you to rule on today. That counterclaim is the
11 mirror image of their claim and essentially the
12 petition to modify -- I'm sorry, the petition to
13 enforce is effective simply because at this point PFLAG
14 has not provided us documents, and we are asking the
15 Court to enforce our demands as modified, as we've
16 produced them to the Court through the previous motions
17 we filed and have them issue those -- issue those
18 documents to us.

19 As far as the powers of the State and
20 where we are right here, the Consumer Protection
21 Division, DTPA is largely patterned after a federal
22 law, like the Federal Trade Commission types of ideas,
23 and there just isn't much case law in this world. And
24 so we do often borrow law from across different
25 jurisdictions.

1 And these are pre-suit investigat- --
2 investigatory tools and administrative agencies, such
3 as the Consumer Protection Division, these powers are
4 analogous to a grand jury's. We have the power of
5 inquisition. We have -- which means that we can
6 investigate merely on suspicion that the law is being
7 violated or just to assure the law is not being
8 violated.

9 Now, as far as it goes to the actual
10 demands themselves, we've met our statutory burden
11 clearly. Each demand shall, number one, state the
12 statute and section under which the alleged violation
13 is being investigated and general subject matter of the
14 investigation. We already went through this earlier.
15 We've met that burden.

16 Now, PFLAG and the State have different
17 opinions about the demands themselves. What we
18 believe, that we have certainly modified those demands
19 to alleviate any valid First Amendment concerns they
20 have. They also raise Fourth Amendment concerns in
21 particular, and those are largely for overbreadth in
22 this instance. And we would also -- we didn't go over
23 this earlier, but we eliminated several of the
24 questions specifically and we've narrowed the questions
25 down as well.

1 An overview of those changes is in our
2 motion to modify, and -- and our office has taken
3 into -- really taken into consideration their concerns
4 and modified these demands on purpose so that they
5 don't actually violate any of their concerns.

6 And so CPD, we're tasked with enforcing
7 the DTPA, and to -- to deny the CPD from issuing these
8 demands as modified would -- would keep CPD from
9 fulfilling its statutory law enforcement duties. There
10 is also a important governmental interest in
11 investigating potential false, misleading, and
12 deceptive acts.

13 THE COURT: I -- I have a question.
14 Can -- I want to respect the Consumer Protection
15 Division, so I've been thinking about a way to ask this
16 question. But outside of this case, just in another
17 analogous case, many of which have been here at the
18 courthouse -- I mean, I don't know. I can't remember
19 if it has mandatory jurisdiction here or not, but we've
20 tried a Consumer Protection Division case last week
21 here in Travis County. We try them.

22 Have you ever -- can you give me an
23 analogous example? I -- I don't -- where you're
24 actually doing this much investigation of the
25 non-target? Because this is a -- not a target of the

1 investigation.

2 MR. SHATTO: Sure.

3 THE COURT: And I just -- I want to ask
4 you for -- if there are analogous situations where you
5 feel like you've put this much effort into a non-target
6 of an investigation in order for you to be able to do
7 your job? And I'm literally just asking. Like, I -- I
8 don't know, but I don't want you to -- I'm not asking
9 you to break your investigative privilege. I'm asking
10 you to tell me about things that might be in the public
11 domain that your division has done that -- where you
12 have put this much effort into a non-target of an
13 investigation.

14 MR. SHATTO: Sure. I don't know if I can
15 answer that question specifically, but I can say that
16 we often issue demands to third parties. I would say
17 that the amount of effort that has gone into this case
18 is not necessarily so much -- may not be so much
19 because of our interest, but because of the response we
20 received from PFLAG.

21 THE COURT: Okay. Keep going.

22 MR. SHATTO: And as far as -- just to
23 kind of wrap this up a little bit, as far as the
24 reasoning of the investigation itself and -- and
25 hanging that on the knowledge of Mr. Weeks, I think we

1 can all -- at least I'll say, there is a fair amount of
2 investigative privilege here, and that certainly is not
3 necessarily the end-all and be-all, the knowledge that
4 the Consumer Protection Division has, in terms of the
5 reason why we may investigate one party over another.

6 And for these reasons, we think that
7 the -- the Court has all the information necessary
8 that's needed to sign our order for counterclaim.

9 THE COURT: Where would I find your
10 proposed order?

11 MR. SHATTO: I just realized it has not
12 been updated to the proposed orders online, but I can
13 do that right now for you.

14 THE COURT: Yeah. I think I'm going to
15 take this under -- I'm not going to rule right away.
16 I'm going to take this under advisement --

17 MR. SHATTO: We do also have copies.

18 THE COURT: -- and spend some time
19 looking at a significant record that's been provided to
20 me in considering some of the countervailing interests
21 here, I think. I think it's fair to say it's -- I
22 don't know if it's a matter of first impression, but
23 it's a matter of -- it might be a matter of first
24 impression. We at least don't have a published case
25 where we looked at these issues. I'm going to take and

1 consider it. And during that time, why don't you get
2 me a copy of what you'd like the Court to rule on your
3 side.

4 MR. SHATTO: Yes, Your Honor.

5 THE COURT: But I think -- there was a
6 lot of back talk about getting here. I didn't quite
7 understand all of that. You know, I would get a -- I
8 fol- -- I tried to follow it, and I didn't understand
9 exactly what was going on.

10 But I think both sides now feel like,
11 after I give the last word to the plaintiff, as we
12 would in any trial, that we have completed a record
13 now. And the Court has what it needs to rule on this
14 matter and issue a final decision; is that correct?

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

16 MR. SHATTO: Yes, Your Honor.

17 THE COURT: All right. Thank you. So
18 then I will let the plaintiff have the final word.

19 **FURTHER CLOSING ARGUMENT BY MS. LOEWY**

20 MS. LOEWY: Thank you, Your Honor. A
21 couple of things that I would follow up on. So first,
22 you know, we would disagree that the demands themselves
23 are sufficiently specific. They cite to the general
24 laundry list in the consu- -- in the DTPA, for here are
25 all the things that are unlawful trade practices

1 without any specificity. Their after the fact
2 description that this was really about insurance fraud
3 is helpful, but isn't actually on the face of the
4 demands, so it didn't actually allow PFLAG to assess
5 the demands through the lens of what they were
6 allegedly purporting to investigate.

7 Your Honor raised the right point here
8 that -- that this is a third party. They have
9 disclaimed that PFLAG is the target of the
10 investigation, but if you're going to -- if they're
11 going to send demands to an entity that they believe
12 has information about a deceptive trade practice, there
13 has to be a reasonable basis for that.

14 And the cherry-picked language from
15 Mr. Bond's *Loe v. Texas* affidavit not only doesn't get
16 them there, it also really raises questions about
17 whether there were improper motives behind the demands
18 in the first place. And, yes, they received lots of
19 deference, and they can investigate what they want to,
20 but, you know, there has to be more than mere intuition
21 that illegal conduct is happening for them to send
22 these demands to a third party. And the fact that they
23 are a third party actually is another reason that the
24 bar gets raised.

25 Other really discrete things that I would

1 mention, Your Honor, one is specifically with regard to
2 the use of a demand for a sworn written statement. It
3 is our read of the statute that that's actually not
4 appropriate to send to a third party at all. That --
5 that they can use CIDs to gather information from third
6 parties, but the specific language of the statute says
7 that they can demand sworn written statements from the
8 person, the entity that is actually suspected of
9 engaging in the deceptive trade practice.

10 The last thing that I would say
11 specifically with regards to their counterclaim, Your
12 Honor, is that their ability to file a petition to
13 enforce turns on the recipient of demands failing to
14 respond, failing to reply.

15 Whether the Attorney General's office
16 likes the temporary injunction that was issued by this
17 Court and the temporary relief that was issued by the
18 Court of Appeals or not, those injunctions extended the
19 return date for the demands to the end of this
20 litigation and shielded PFLAG from having to turn over
21 anything while the lawfulness of the demands were being
22 assessed, so there has been no failure to -- to reply
23 to respond to the demands at this point in time.

24 We would actually suggest, Your Honor,
25 that a different approach would be either -- whether

1 Your Honor wants to deny it without prejudice --

2 MR. SHATTO: Objection, Your Honor; this
3 goes beyond the extent of the closing.

4 THE COURT: It's kind of what I asked to
5 do, though, so -- I'll let you respond. I'm not going
6 to -- I'm not going to let it end here because I think
7 they are going a little bit beyond. But I did want to
8 understand some procedural implication, so I'm going to
9 let them say this, but I will let you respond to it.
10 Go ahead.

11 MS. LOEWY: We would actually ask that
12 the Court consider holding it in abeyance until after
13 the -- there has been a time past during which PFLAG
14 has had the opportunity to respond to anything they are
15 required to provide to the Attorney General's office,
16 if anything at all, after Your Honor has been able to
17 assess the lawfulness of any of the demands themselves.

18 THE COURT: I guess I don't understand
19 what that means, though. I don't understand what you
20 just said. Like what -- who would be the judge at the
21 time you need and what would you be responding to?

22 MS. LOEWY: Well, so the proposed order
23 that -- that we have suggested would extend the return
24 date for the demands, as modified, to 30 days from
25 issuance.

1 THE COURT: I'm trying to understand how
2 that would work. Maybe I'd be better off listening to
3 this side and then I'd better understand what you're
4 asking.

5 Go ahead. What would be your response to
6 that request?

7 **FURTHER CLOSING ARGUMENT BY MR. SHATTO**

8 MR. SHATTO: Just in general, we would
9 argue that PFLAG had missed their opportunity to
10 respond to the demands in general. We don't believe
11 they filed timely in the very beginning. This has all
12 been fully briefed by -- by the parties. Obviously
13 PFLAG disagrees with this contention, but that's one of
14 the initial issues that was brought up in the
15 beginning, was the timeliness of the filing.

16 THE COURT: Right. Well, one of the
17 things was, though, I mean, I -- in the practical part
18 of me, and I'm nothing if not practical -- you'd be
19 surprised by the way, how many cases come down to a
20 document case. You never actually sent a modified
21 demand.

22 MR. SHATTO: Correct.

23 THE COURT: You just filed a pleading and
24 proposed it.

25 MR. SHATTO: Correct.

1 THE COURT: And so how are they going to
2 ever respond to a modified demand that you never sent?

3 MR. SHATTO: So this was -- we never got
4 the hearing set properly, but it's been with the Court
5 now for some time. We sent the modified demands as
6 part of that motion to modify in deference to the
7 Court's injunction at that time. We wanted to propose
8 these potential compromises that we had. And at this
9 point in time, I think it's all in front of the Court
10 for those modified demands to now be -- for the Court
11 to rule on and then to determine that those modified
12 demands should issue.

13 THE COURT: So that's one of the
14 things -- you're almost asking for an injunction as
15 well. You're almost asking for some equitable relief,
16 because you never sent a modified demand. So you're
17 asking me to send it for you by an order.

18 MR. SHATTO: I guess.

19 THE COURT: I mean, you're conceding that
20 you don't get what you originally sent, but you should
21 only get what your modified demand was. And you're
22 asking me to basically rewrite your own demand and --
23 and issue that as my order.

24 MS. VASQUEZ: Your Honor --

25 MR. SHATTO: I think that's --

1 MS. VASQUEZ: -- I think -- we had filed
2 a motion. I think it was a motion for clarification
3 and motion to modify. I think we were concerned about
4 violating your temporary injunction by sending a
5 modified demand, so that's why we were seeking to do
6 that.

7 THE COURT: I understand that. Now, did
8 you get here on that or no? You never set it?

9 MR. SHATTO: It was already set, but it's
10 our understanding that everything is before the Court
11 now.

12 THE COURT: Okay. So that's actually
13 pending in front of me maybe. So I don't know that
14 that position is too far off of what you just said.

15 MS. LESKIN: Well, Your Honor, the
16 petition that plaintiffs have filed is a petition to
17 set aside or modify. Like, we are asking for
18 modifications to be made. What we've argued is that
19 the modifications that the Attorney General's office
20 that has -- to -- to be clear, the first time they were
21 submitted was in a motion to modify the temporary
22 restraining order.

23 THE COURT: Right. I understand that. I
24 think what I'm hearing, though, interestingly, three
25 hours and 45 minutes into today, that I have a menu of

1 options rather than just check yes or no.

2 MS. LOEWY: That's correct Your Honor.
3 And forgive me if it wasn't clear at the outset.
4 That's what I meant by we're asking the Court to engage
5 in the process of considering modifications because we
6 think that's actually the most straightforward route to
7 bringing this to resolution.

8 We think that the demands need to be
9 modified much further than what is being proposed by
10 the Attorney General's office because there are flaws
11 beyond simply the piece that they've cured.

12 THE COURT: All right. Thank you. All
13 right. I understand that. And then I think even
14 though you have a motion to modify that I have not
15 ruled on, your preference would be -- their preference
16 is maybe modify first and hold the final order off
17 until after we do some modifying.

18 Your preference is, Go ahead and rule,
19 Judge, and -- because we've -- you've got everything
20 you need, and we're past modification?

21 MR. SHATTO: Our counterclaim
22 incorporates those modifications.

23 THE COURT: Okay. All right. I think I
24 understand that position. I understand the positions.
25 I don't think I -- I don't think that is not clear.

1 MS. LOEWY: That's fair, Your Honor.
2 To -- to be clear, their proposed modifications are
3 incorporated into their counterclaim at this point.

4 THE COURT: I understand.

5 MS. LOEWY: They're a different set of
6 modifications than we have offered. And to the extent,
7 I mean, it would be helpful to the Court to do -- I
8 mean, I think the parties cross-motions for summary
9 judgments that are on file, but obviously not being
10 ruled on, may also be illuminating and helpful in this
11 regard because they've laid out some of these pieces.
12 And -- and if the Court would want proposed findings or
13 additional briefing, we're -- we're happy to help the
14 Court in any way that we can.

15 THE COURT: All right. I understand
16 where we are. I think I get that. Sorry it took me so
17 long to figure that out, but I've got it now in terms
18 of where the parties are.

19 **TAKEN UNDER ADVISEMENT**

20 THE COURT: With that said, I'm going to
21 take it all under advisement and make some decisions
22 about where to go next and whether I do a modified type
23 of ruling, or we have more work to do, or whether I
24 rule a final ruling.

25 You never answered my question, though,

1 about just the appellate law question. And I didn't
2 know if either one of you wanted to answer the
3 appellate law question which was just, if I were to
4 rule and issue a final permanent injunction or not
5 issue a final permanent injunction, what effect does
6 that -- I mean, I guess that's the ruling that just
7 sort of overtakes the ruling that currently sits at the
8 Third Court of Appeals? I don't really know. I'm just
9 asking. I don't know.

10 MS. LESKIN: I mean --

11 THE COURT: You think so? Best guess.

12 MS. LOEWY: Your Honor, because the
13 temporary injunction is only in place until a final
14 ruling --

15 THE COURT: Yeah.

16 MS. LESKIN: -- to some extent, right, it
17 would almost render the -- the sort of appeal of the
18 underlying temporary injunction mute.

19 THE COURT: That's what I think, but
20 you-all have a lot more of an issue -- you have a lot
21 more access to resources and attorneys than I do, so I
22 just thought I'd ask the question.

23 MS. LOEWY: It's a fair question, Your
24 Honor.

25 MS. POLLARD: We would be happy to

1 continue to consider it and --

2 THE COURT: If there is something --

3 MS. POLLARD: -- and let you know if we
4 find something particularly helpful, but...

5 THE COURT: Sure. That's what I think,
6 but I don't know if anybody else -- with all of your
7 many, many attorneys have other thoughts about it.

8 MR. SHATTO: I -- I think -- I think
9 we're to some idea that your final ruling would be the
10 appealable order that we would go off of.

11 THE COURT: Okay. All right. That is
12 everything for me. Thank you. Let's go off the
13 record.

14 *(Court adjourned.)*
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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)

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

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Pauline Sisson on behalf of David Shatto

Bar No. 24104114

pauline.sisson@oag.texas.gov

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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

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Pauline Sisson on behalf of David Shatto

Bar No. 24104114

pauline.sisson@oag.texas.gov

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Filing Description: 20240808 OAGs 2nd Mtn to Abate Appeal Pending

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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

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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