

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

STATE OF TEXAS,

Petitioner,

-against-

TAYLOR BRUCK, Acting County Clerk,
Ulster County,

Respondent.

Index No. EF2025-2536

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS
PETITIONER'S VERIFIED PETITION**

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	<u>PAGE NO.</u>
PRELIMINARY STATEMENT	1
FACTS AND PROCEDURAL BACKGROUND.....	2
ARGUMENT	4
I. PETITIONER’S WRIT FAILS BECAUSE RESPONDENT COMPLIED WITH NEW YORK STATE LAW.....	5
A. Mandamus is An Extraordinary Remedy	5
B. Petitioner Has No “Clear Legal Right” to Relief; New York Executive Law § 837-x Prohibited Respondent from Processing the Texas Filing.....	6
II. PETITIONER’S AS-APPLIED CONSTITUTIONAL CHALLENGE TO N.Y. EXEC. LAW § 837-X FAILS.....	10
A. Petitioner’s Unpleaded Constitutional Claim Is Procedurally Barred	10
B. The Texas Judgment Is Not Entitled to Full Faith and Credit under U.S. Const. Art. IV. § 1 Because it Falls Within the Penal Judgment Exception	12
C. Petitioner’s Arguments To Invalidate §837-x Are Without Merit.....	18
CONCLUSION.....	20

TABLE OF AUTHORITIES**Cases**

<i>All. to End Chickens as Kaporos v. New York City Police Dep't,</i> 32 N.Y.3d 1091 (2018)	5
<i>Ass'n of Surrogates & Supreme Ct. Reps. v. Bartlett,</i> 40 N.Y.2d 571 (1976)	10
<i>Baker, ex rel. Thomas v. General Motors,</i> 522 U.S. 222 (1998)	18, 19
<i>Bronx-Lebanon Hosp. Ctr. v. Daines,</i> 101 A.D.3d 1431 (3d Dep't 2012)	11
<i>City of Albany v. McMorran,</i> 16 A.D.2d 1021 (3d Dep't 1962)	8
<i>City of Oakland v. Desert Outdoor Advert., Inc.,</i> 127 Nev. 533 (2011)	17
<i>Clements v. New York Sec'y of State,</i> 227 A.D.3d 84 (3d Dep't 2024)	4
<i>Connelly v. Bell,</i> 286 A.D. 220 (1st Dep't 1955)	17, 19
<i>Council of City of New York v. Bloomberg,</i> 6 N.Y.3d 380 (2006)	4
<i>de Blasio v. New York City Conflict of Int. Bd.,</i> No. 155404/2023, 2025 WL 97708 (N.Y. Sup. Ct. Jan. 13, 2025)	11, 12
<i>Diamond v. Dougfield, Inc.,</i> 17 Misc.2d 914 (N.Y. Sup. Ct. 1959)	11
<i>Dr. Bloom Dentist v. Cruise,</i> 259 N.Y. 358 (1932)	9
<i>Edison III Fund Ltd. v Partners,</i> 2007 N.Y. Slip Op. 32327[U], 2007 WL 2815477 (N.Y. Sup. Ct. July 23, 2007)	11
<i>F.F. v. State,</i> 194 A.D.3d 80 (3d Dep't 2021)	8
<i>Farmland Dairies v. Barber,</i> 65 N.Y.2d 51 (1985)	13

<i>Gonzalez v. Annucci,</i> 171 A.D.3d 1265 (3rd Dep’t 2019).....	12
<i>Green Harbour Homeowners’ Ass’n, Inc. v. Town of Lake George Plan. Bd.,</i> 1 A.D.3d 744 (3d Dep’t 2003).....	11
<i>Huntington v. Attrill,</i> 146 U.S. 657 (1892).....	13, 14, 19
<i>Johnstown Water Bd. v. City of Johnstown,</i> 71 Misc.3d 1212(A), 2021 WL 1621651 (N.Y. Sup. Ct. 2021)	6
<i>Kallista, S.A. v. White & Williams LLP,</i> 51 Misc.3d 401 (N.Y. Sup. Ct. 2016)	11
<i>Levy v. SUNY Stony Brook,</i> 185 A.D.3d 689 (2d Dep’t 2020)	8
<i>Loucks v. Standard Oil Co. of New York,</i> 224 N.Y. 99 (1918)	17, 19
<i>Milwaukee County v. M.E. White Co.,</i> 296 U.S. 268 (1935).....	17
<i>N.Y. Civil Liberties Union v. State of New York,</i> 4 N.Y.3d 175 (2005)	5
<i>Nelson v. George,</i> 399 U.S. 224 (1970).....	13
<i>Republic of Philippines v. Westinghouse Elec. Corp.,</i> 821 F. Supp. 292 (D. N.J. 1993)	16
<i>Schaefer v. H. B. Green Transp. Line, Inc.,</i> 232 F.2d 415 (7th Cir. 1956)	16
<i>Texas v. Carpenter,</i> No. 471-08943-2024 (Collin Cnty Dist. Ct. Nov. 19, 2024)	15
<i>V.G. v. Hanley,</i> 70 Misc.3d 392 (Sup. Ct. Richmond Cnty 2020)	8
<i>Vestal Teacher’s Ass’n v. Vestal Cent. Sch. Dist.,</i> 5 A.D.3d 922 (3d Dep’t 2004)	10

Statutes

22 Tex. Admin. Code § 174.....	2
--------------------------------	---

CLPR 3211.....	4, 11
CPLR 7803.....	1, 3, 4
CPLR 1012.....	12
CPLR 2102.....	passim
CPLR 7804.....	4, 11
Executive Law § 837	passim
N.Y. Crim. Pro. § 570.....	7
N.Y. Exec. Law § 71.....	12
Tex. Health & Safety Code § 170.....	3, 14, 15, 16
Tex. Health & Safety Code § 171	18
Tex. Occ. Code	2
Texas Medical Practice Act	2
Other Authorities	
Laws of 2023 (S.1066-B / A.1709-B).....	7
N.Y. Committee Report, 2023 NY S.B. 1066	7
N.Y. Spons. Memo., 2024 S.B. 1066.....	7
Constitutional Provisions	
Art. IV, § 1 of the Constitution.....	2, 13

Respondent submits this memorandum of law in support of his motion to dismiss Petitioner's Verified Petition pursuant to CPLR 7804(f) and 3211(a)(7).

PRELIMINARY STATEMENT

In February 2025, Petitioner the State of Texas obtained a civil judgment against Dr. Margaret Carpenter, a licensed physician and a resident of Ulster County, for prescribing abortion-related medication to a patient residing in Texas (the "Texas Judgment"). Dkt. No. 4, ¶¶ 1-2. The relief obtained in the Texas Judgment was a civil penalty of \$100,000, plus costs, fees, and interest. Seeking to domesticate the Texas Judgment in New York, in March 2025, Petitioner presented a Motion for Summary Judgment in Lieu of a Complaint (the "Texas Filing") to Respondent Taylor Bruck, the Acting Clerk of Ulster County, for filing in this Court.

Respondent refused to accept the Texas Filing pursuant to two interrelated provisions of New York State law: CPLR 2102(c) and Executive Law § 837-x. CPLR 2102 provides that a clerk is required to accept a paper for a filing *except* where a state statute otherwise directs. And Executive Law 837-x—New York's "Shield Law"—specifically forbids local officials from "cooperat[ing] with" or "otherwise expend[ing] or us[ing]" government resources "in furtherance of any proceeding that seeks to impose civil ... liability ... upon a person... for any legally protected health activity occurring in this state." N.Y. Exec. Law § 837-x. These provisions, read in the context of Texas's request that Respondent expend public resources to process the Texas Filing, bar Respondent from accepting the Texas Filing.

This case presents the simple question of whether an Ulster County official is required to adhere to state law. The obvious answer is yes. The Petition's assertion that Mr. Bruck's refusal to process the Texas Filing constitutes "failure to perform a duty enjoined by law" under CPLR 7803(1) seeks to write out of the statute books both CPLR 2102(c)'s exception to the filing mandate, and the Shield Law itself, which expressly forbids local officials from using

government resources to assist out-of-state entities in imposing civil penalties on reproductive health care providers like Dr. Carpenter. Respondent had no obligation, no authority, and certainly no ministerial duty to violate these laws and accept the Texas Filing; accordingly the Petition fails to state a cause of action and should be dismissed. *See* Section I, *infra*.

Desperate to avoid the impact of state law, Texas asserts, in its Memorandum of Law, that, to the extent Executive Law § 837-x bars Respondent from processing the Texas Filing, it violates the Full Faith and Credit Clause of the United States Constitution; Texas seeks an order invalidating the Shield Law. Texas's constitutional attack on § 837-x is both procedurally barred and substantively meritless. As to the former, Petitioner's argument to invalidate § 837-x appears nowhere in the Verified Petition, the operative pleading in this proceeding—and Texas is barred from injecting it into this case by raising it in its accompanying Memorandum of Law. *See* Section II. A, *infra*. And, as to the latter, the Shield Law does not violate the Full Faith and Credit Clause of Art. IV, § 1 of the Constitution in any event, because, under long-settled precedent, out-of-state judgments that are penal in nature —like the Texas Judgment here—are subject to the penal judgment exception and not due full faith and credit in sister states. *See* Section II. (B)-(C), *infra*.

FACTS AND PROCEDURAL BACKGROUND

The Verified Petition alleges as follows:

On February 13, 2025, the State of Texas obtained a final judgment by default (the “Texas Judgment”) in Collin County, Texas, against Dr. Margaret Daley Carpenter, a New York physician. *See* Dkt. No. 8 (Affidavit of Ernest C. Garcia, Attachment B) at 19. The Texas Judgment imposes liability on Dr. Carpenter for violating the Texas Medical Practice Act, Tex. Occ. Code, Title 3 Health Professions, Subtitle B Physicians and 22 Tex. Admin. Code § 174.8 (practicing medicine without a license and registration in the State of Texas), and for violating

Tex. Health & Safety Code § 170A.002 (“A person may not knowingly perform, induce, or attempt an abortion.”). Dkt. No. 4, ¶¶ 2, 9; Dkt. No. 5 at 19. The Texas Judgment imposes upon Dr. Carpenter a penalty of \$100,000 (plus attorneys’ fees, costs, and post judgment interest) pursuant to Tex. Health & Safety Code § 170A.005. Dkt. No. 4, ¶ 9. It also permanently enjoins Dr. Carpenter from: (1) prescribing abortion-inducing drugs to Texas residents and (2) practicing medicine in the State of Texas without a license and registration in the State of Texas. *See* Dkt. No. 5 at 20.

On March 17, 2025, Petitioner submitted a Notice of Motion for Summary Judgment in Lieu of Complaint (the “Texas Filing”) to the Ulster County Clerk’s Office, requesting that this Court “domesticate the [Texas Judgment] . . . as a judgment of the State of New York and . . . enforce and authorize collection upon it.” Dkt. No. 4, ¶ 10. Acting County Clerk of Ulster County, Respondent Taylor Bruck, rejected the filing by notice dated March 27, 2025. *Id.* ¶ 11. On July 11, 2025, Petitioner sent a Demand to Respondent to file the Texas Judgment by July 16, 2025. *Id.* ¶ 12. Respondent again refused, citing New York Executive Law § 837-x as the basis. *Id.* ¶¶ 14, 20.

On July 25, 2025, Petitioner filed the instant Verified Petition and accompanying affirmations and exhibits pursuant to CPLR 7803(1).¹ The Petition seeks a writ of mandamus to compel Respondent to accept the Texas Filing. The Petition alleges that: (i) CPLR 2102(c) imposes a duty on Respondent to accept and process the Texas Filing; (ii) Respondent failed to perform that duty; and (iii) Petitioner has a clear legal right to the performance of that duty. *Id.* ¶¶ 18-22.

¹ On July 29, 2025, Petitioner filed the affirmation of Ernest Garcia, Assistant Attorney General for the State of Texas, *see* Dkt. No. 5, and the affidavit of Catherine Hughes, legal assistant for the Office of the Attorney General of Texas, *see* Dkt. No. 9. Garcia’s Affirmation attached Respondent’s rejection notice to Petitioner, Petitioner’s Demand, and Respondent’s rejection of the Demand as exhibits. *See* Dkt. 5, Exs. A-C.

On July 28, 2025, Petitioner filed a Memorandum of Law (in support of the Petition). *See* Dkt. No. 12. The Memorandum of Law raises an argument not set forth in the Verified Petition, to wit: that, assuming *arguendo* that Executive Law § 837-x has the effect of barring Respondent from accepting the Texas Filing, that statute is unconstitutional under the Full Faith and Credit Clause of the U.S. Constitution. *See* Dkt. No. 12 at 8.

Respondent now moves to dismiss the Petition pursuant to CPLR 7804(f) and 3211(a)(7). Dismissal is warranted because the Petition fails to state a claim upon which relief can be granted.

ARGUMENT

Mandamus is “an extraordinary remedy,” *Clements v. New York Sec’y of State*, 227 A.D.3d 84, 86 (3d Dep’t 2024)—and the relief of mandamus cannot be used to compel a government official to act unlawfully. *See Council of City of New York v. Bloomberg*, 6 N.Y.3d 380, 388 (2006). The Petition should be dismissed, and Petitioner’s claims of constitutional infirmity should be denied, for three reasons.

First, dismissal is warranted because the Petition does not, and cannot, allege the core element of any application for a writ of mandamus to compel: the existence of a “clear legal right” to require an official to “perform a duty enjoined upon it by law.” CPLR 7803(1). Because CPLR 2102(c) includes an exception for filings barred by statute, Respondent here had no mandatory or ministerial duty to process the Texas Filing, and he was certainly not “enjoined” to do so. In fact, the opposite is true: New York Executive Law § 837-x—the “Shield Law”—expressly *forbids* Respondent from processing the Texas Filing, because doing so would result in an expenditure of government resources and personnel in furtherance of an out-of-state proceeding imposing civil liability on a New York reproductive health care provider. Thus, the *only* legal duty Respondent had under state law was to *refuse* to process the Texas Filing.

Because CPLR 2102(c) requires a clerk to “refuse” to accept filings when directed to by state law, Respondent’s rejection of the Texas Filing was lawful, and the Petition fails to state a cause of action.

Second, this Court should not construe the Verified Petition as including a constitutional claim to invalidate Executive Law § 837-x for the simple reason that no such claim appears *anywhere* in that pleading. It is settled law that the Court’s review of the adequacy of pleadings is limited to the face of the pleadings—here, the Petition and its attachments. A memorandum of law is not a pleading, and an Article 78 petitioner cannot add a claim or expand its prayer for relief merely by mentioning it in its memorandum of law. Petitioner’s attempt to do so here must be rejected. *See* Section II. A, *infra*.

Third, and finally, were this Court to reach the constitutional issue, it should hold that Executive Law § 837-x does *not* violate the Full Faith and Credit Clause. The Texas Judgment, by its terms, is penal in nature; as such, under long-standing precedent, New York can refuse to enforce it consistent with the penal judgment exception to the Full Faith and Credit Clause. *See* Section II. (B)-(C), *infra*.

I. PETITIONER’S WRIT FAILS BECAUSE RESPONDENT COMPLIED WITH NEW YORK STATE LAW

A. Mandamus is An Extraordinary Remedy

Mandamus to compel is an extraordinary remedy; it is available “only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law.” *N.Y. Civil Liberties Union v. State of New York*, 4 N.Y.3d 175, 184 (2005) (citing CPLR 7803(1)); *see All. to End Chickens as Kaporos v. New York City Police Dep’t*, 32 N.Y.3d 1091, 1093 (2018). “[I]f there is any reasonable doubt or controversy regarding the petitioner’s entitlement to

performance, the petition for mandamus to compel must be denied.” *Johnstown Water Bd. v. City of Johnstown*, 71 Misc.3d 1212(A), 2021 WL 1621651, at *6 (N.Y. Sup. Ct. 2021).

Here, even accepting the allegations of the Petition as true, Petitioner has not pled, and cannot show, a “clear legal right” to the relief it seeks. For the reasons set forth below, the Petition should be dismissed for failure to state a cause of action.

B. Petitioner Has No “Clear Legal Right” to Relief; New York Executive Law § 837-x Prohibited Respondent from Processing the Texas Filing

Petitioner cannot establish a “clear legal right” to relief, or that Respondent had a ministerial duty for Respondent to accept the Texas Filing, under state law. In fact, the opposite is true: acceptance and processing of the Texas Filing would have required Respondent to act in violation of State law—specifically, Executive Law §837-x, the Shield Law. For this reason, mandamus to compel must be denied.

Section 837-x provides in relevant part as follows:

No state or local government employee or entity or other person acting on behalf of state or local government shall cooperate with . . . any out-of-state individual or out-of-state agency or department regarding any legally protected health activity in this state, or otherwise expend or use time, moneys, facilities, property, equipment, personnel or other resources in furtherance of any investigation or proceeding that seeks to impose civil . . . liability or professional sanctions upon a person or entity for any legally protected health activity occurring in this state.

N.Y. Exec. Law § 837-x (2)(a) (emphasis added). The Shield Law, which is undisputedly implicated by Dr. Carpenter’s conduct in prescribing medication by telehealth, flatly prohibits government officials from “cooperating with” or expending public resources “in furtherance of” a civil penalty directed at reproductive health care practitioners located in New York. In refusing to process the Texas Filing, which included the Texas Judgment, Respondent was acting in compliance with N.Y. Exec. Law § 837-x and CPLR 2102(c).

The circumstances here satisfy the elements of § 837-x. As alleged in the Petition, Dr. Margaret Carpenter is a New York-licensed and based physician who prescribed “abortion inducing drugs” to a patient residing in Texas. Dkt. No. 5 at 20, 26. Such conduct is “legally protected health activity occurring in this state” under the Shield Law. N.Y. Exec. Law 837-x. *See* N.Y. Crim. Pro. § 570.17(1)(a)-(b). Furthermore, the Texas Judgment, the core element of the Texas Filing, was a “proceeding to impose [civil] . . . liability” on Dr. Carpenter for what New York defines as “legally protected health activity occurring in this state.” *Id.*; *see also* Dkt. No. 4, ¶¶ 2,3; N.Y. Exec. Law § 837-x (protecting reproductive health care practitioners for prescribing abortion-inducing medication in New York). As a “local government employee,” Dkt. No. 4, ¶ 5, Respondent, the Acting Clerk of Ulster County, was called upon to expend county resources—including his own time and other “resources, equipment, or personnel” of the Clerk’s office—“in furtherance of a proceeding to impose liability” on a reproductive health services provider. N.Y. Exec. L. § 837-x. Respondent concluded that the Shield Law forbade him from doing so and he rejected the Filing.² *See* Dkt. No. 5 at 11.

² The legislative history of the Shield Law compels the same conclusion. The current iteration of N.Y. Exec. Law § 837-x was first introduced in 2023. *See* Chapter 138 of the Laws of 2023 (S.1066-B / A.1709-B). Section 3 of 2024 S.B. 1066 amended §837-w of the executive law, renumbering it as §837-x, to protect health care providers in New York from precisely this type of extraterritorial enforcement action seeking to penalize conduct that is lawfully protected in this state:

This legislation builds upon the abortion and reproductive health services laws signed in June 2022 by explicitly adding protections for telehealth and telehealth services. As many states across the country have enacted abortion bans and draconian reproductive rights restrictions following the Dobbs decision, this bill fills an important gap by safeguarding health care practitioners in New York from out-of-state activities that impede upon their ability to provide necessary reproductive health services to patients.

N.Y. Spons. Memo., 2024 S.B. 1066.

The amendment also expanded protections for reproductive health service providers, including by incorporating telehealth services into the definition of “legally protected health activity occurring in New York.” *See* N.Y. Committee Report, 2023 NY S.B. 1066, May 24, 2023. In the final version, the prohibition on cooperating with out-of-state proceedings expanded to *any* state or local government employee or individual acting on behalf of the government—not just law enforcement. N.Y. Exec. Law § 837-x.

None of these facts are in dispute; indeed, they are confirmed by the Petition itself. Of course, the nature of Dr. Carpenter’s conduct as alleged in the Petition—prescription of abortion-inducing medication that is legal to prescribe in New York—is not in dispute; it was precisely that conduct that stimulated Texas to seek and obtain a \$100,000 civil penalty against her. Neither can it be disputed that Respondent, a “local government employee,” would be required to “expend time, resources, equipment, or personnel” to process the Texas Filing. Papers don’t docket themselves, and require the use of resources—personnel (including Respondent’s own time), computers, phones, and more.³ Docketing activities in this case are all “in furtherance of” what the Petition itself alleges is a proceeding “imposing liability” and “penalties” on a New York-based doctor for providing reproductive health services that are lawful in New York. This is exactly what § 837-x forbids.⁴

Indeed, § 837-x did not just *permit* Respondent to refuse to accept the Texas Filing; it *requires* him to refuse it. Thus, the absence of a mandatory, ministerial duty to accept the filing is patent.

This case is analogous to *V.G. v. Hanley*, 70 Misc.3d 392 (Sup. Ct. Richmond Cnty 2020), which held that CPLR 2102 did not require the Chief Clerk of the Family Court to accept

Thus, both the plain language and legislative history of §837-x required Respondent to refuse Petitioner’s filing, and mandamus cannot compel a local government official to violate state law.

³ The correspondence between Petitioner and Respondent in February 2025 and then July 2025—which is attached to the Petition as exhibits—supports this conclusion. *See* Dkt. No. 5 at 35-36 (email correspondence between Respondent and Petitioner regarding the Texas Filing, the County’s response, and Respondent’s follow-up to confirm that the Filing had been rejected).

⁴ Petitioner does not dispute that the Shield Law precludes Respondent from accepting the Texas Filing. Petitioner’s passing assertion that § 837-x “does not specifically direct such refusal and is therefore an impermissible basis for rejecting Petitioner’s filing,” Dkt. No. 4 at 20, is makeweight and a bare legal conclusion; it is entitled to no deference. *See Levy v. SUNY Stony Brook*, 185 A.D.3d 689, 690 (2d Dep’t 2020) (no deference given to “legal conclusions drawn by the pleader nor [its] interpretation of the statutes . . . involved”) (quoting *City of Albany v. McMorran*, 16 A.D.2d 1021, 1022 (3d Dep’t 1962)); *F.F. v. State*, 194 A.D.3d 80, 83 (3d Dep’t 2021) (“[T]he favorable treatment accorded to a plaintiff’s complaint is not limitless and, as such, conclusory allegations — claims consisting of bare legal conclusions with no factual specificity — are insufficient to survive a motion to dismiss.” (citation omitted)).

a parenting petition for filing in light of the COVID-19 Administrative Orders that prohibited clerks from accepting “nonessential” filings. The court explained: “[P]etitioner has failed to allege how the Chief Clerk . . . has a ministerial duty to accept his filing when the AOs that are currently in effect prohibit her from doing just that.” *Id.* at 400 (denying Article 78 petition for failure to state a cause of action). *V.G.* is consistent with the principle articulated in *Dr. Bloom Dentist v. Cruise*, 259 N.Y. 358, 362-64 (1932) (holding that petitioner had no clear legal right to an advertising permit where the proposed advertisements would deceive the public in violation of a professional code of conduct) (subsequent history omitted). In *Dr. Bloom Dentist*, the Court of Appeals held that mandamus cannot be used to compel a clerk “into participating in transactions which are forbidden by law or by rules having the force of law.” *Id.* at 364.

CPLR 2102(c) does not require a clerk to process any and all filings without exception or qualification in every case. In fact, it does the opposite: it expressly contemplates, countenances, and compels a clerk to “refuse to accept” a filing where a “statute, . . . rule[] . . . or order” “specifically [so] direct[s].” CPLR 2102(c). Here, in keeping with his filing duties under CPLR 2102(c), Respondent recognized that a New York state statute—the Shield Law—required him to refuse the Texas Filing. In order to reach that conclusion, an official in Respondent’s role must read and understand the filing and then determine, in the first instance, whether a statute, rule, or order precludes its filing. Whether such review does or does not involve some measure of discretion or reasonable judgment, what is clear is that the very existence of the exception to CPLR 2102’s requirement to accept paper for filing defeats any allegation that Petitioner had a “clear legal right” to Respondent’s “performance,” or that Respondent had an unequivocal ministerial duty to accept the Texas Filing. Dkt. No. 4 at 22. Because mandamus “requires a showing [of] a clear legal right to the relief sought[,]” the “right to performance *must be so clear*

as not to admit of reasonable doubt or controversy.” Ass’n of Surrogates & Supreme Ct. Reps. v. Bartlett, 40 N.Y.2d 571, 574 (1976) (emphasis added) (citations omitted). Absent these elements, mandamus must be denied. *Vestal Teacher’s Ass’n v. Vestal Cent. Sch. Dist.*, 5 A.D.3d 922, 924 (3d Dep’t 2004). Moreover, because the Shield Law prohibited Mr. Bruck from processing the Texas Judgment, it is, under CPLR 2102(c) a “specific[]” state statute that “direct[s]” him to refuse the Filing. It is well-settled that “mandamus is never granted for the purpose of compelling the performance of an unlawful act.” *Bloomberg*, 6 N.Y.3d at 388.

For these reasons, the Petition should be dismissed.

II. PETITIONER’S AS-APPLIED CONSTITUTIONAL CHALLENGE TO N.Y. EXEC. LAW § 837-X FAILS

Petitioner’s alternative support for entitlement to mandamus—an as-applied constitutional challenge to N.Y. Exec. Law § 837-x—is both procedurally barred and substantively meritless.

A. Petitioner’s Unpleaded Constitutional Claim Is Procedurally Barred

First, there is the matter of procedure. In its brief to this Court, the State of Texas argues that the Shield Law, as applied here, violates the Full Faith and Credit Clause of the United States Constitution. *See* Dkt. 12 at 6-8. Importantly, however, nowhere in the Verified Petition—not in the “Introduction,” not in the section on “Statutory Authority,” not in the “Statement of Facts,” not in the “First Cause of Action,” and not in the “Prayer for Relief”—do the words “Full Faith and Credit Clause,” “Constitution,” or anything even remotely suggesting a constitutional challenge, much less an “as-applied” challenge, appear.⁵ These words, and the

⁵ The affidavits and exhibits attached to the Verified Petition also make no mention of a constitutional claim. *See* Dkt. No. 5 (Garcia Affidavit and Exhibits).

very concept of invalidating § 837-x on constitutional grounds, are *only* introduced into this proceeding via Petitioner’s Memorandum of Law.⁶

The case law is clear: *only* claims that are articulated in the operative pleading—in an Article 78 special proceeding, the petition; and, in a plenary action, the complaint—are reviewable on a motion to dismiss. *Green Harbour Homeowners’ Ass’n, Inc. v. Town of Lake George Plan. Bd.*, 1 A.D.3d 744, 745 (3d Dep’t 2003) (determining motions to dismiss under CPLR 7804(f) or CPLR 3211, the “court may not look beyond the petition” and its attached affidavits and exhibits); *see also Bronx-Lebanon Hosp. Ctr. v. Daines*, 101 A.D.3d 1431, 1432 (3d Dep’t 2012) (courts are limited to review of the petition and its attachments when considering a motion to dismiss).

A petitioner may *not* expand, add to, or materially change or modify, its legal claims or factual assertions by way of subsequent briefing, nor should the Court consider any such additions. *See Diamond v. Dougfield, Inc.*, 17 Misc.2d 914, 915 (N.Y. Sup. Ct. 1959) (statements contained in plaintiff’s memorandum of law “may not be considered on this motion which must be limited to a consideration of the four corners of the complaint itself”); *Edison III Fund Ltd. v Partners*, 2007 N.Y. Slip Op. 32327[U], 2007 WL 2815477, at *3 (N.Y. Sup. Ct, July 23, 2007) (“Allegations in a [plaintiff’s] memorandum of law are not considered on a motion.”).⁷ In an Article 78 special proceeding, a supporting memorandum of law is *not* a pleading, nor may it be used to supplement the petition. *Gonzalez v. Annucci*, 171 A.D.3d 1265,

⁶ Petitioner’s Memorandum of Law is not a pleading—in fact, a petitioner is not even required to file a memorandum of law in support of an Article 78 petition. *See de Blasio v. New York City Conflict of Int. Bd.*, No. 155404/2023, 2025 WL 97708, at *20 (N.Y. Sup. Ct. Jan. 13, 2025).

⁷ *See, e.g., Kallista, S.A. v. White & Williams LLP*, 51 Misc.3d 401, 409-10 (N.Y. Sup. Ct. 2016) (“In setting forth the facts upon which Plaintiffs’ memorandum relies, Plaintiffs have . . . gone beyond the boundaries of the complaint” and when no such allegations appear in the complaint, “[t]he court must rely exclusively on the actual content of the pleading and its fair intendments”); *see id.* at n.4 (plaintiffs “cannot simply make assertions in their memorandum of law that they did not make in their complaint” and the court will not consider “elaborations and embellishments offered[], without citation to the pleading, in the . . . memorandum of law”).

1266 (3rd Dep’t 2019) (“[P]etitioner’s claim that the Hearing Officer failed to address petitioner’s asserted mental health issues was not raised in the verified petition and, as such, is not properly before this Court.”); *see de Blasio v. New York City Conflict of Int. Bd.*, No. 155404/2023, 2025 WL 97708, at *20 (N.Y. Sup. Ct. Jan. 13, 2025) (“[T]he verified petition sets forth the grounds upon which the petitioner seeks review and reversal of the agency action A memorandum of law may not introduce new alleged grounds for reversal not included in the verified petition.”).

The reason for the rule prohibiting expansion-by-brief is obvious: to prevent parties from using their subsequent memoranda of law to amend the pleading unfairly (and potentially endlessly), to raise new issues, and to inject uncertainty and unpredictability into the proceedings. A party’s causes of action and factual assertions are set forth in its pleadings and nowhere else. Because the Verified Petition here makes no mention of a constitutional challenge to the Shield Law, the Court cannot consider it, and even if it does, the challenge fails on additional grounds set forth below.⁸

B. The Texas Judgment Is Not Entitled to Full Faith and Credit under U.S. Const. Art. IV. § 1 Because it Falls Within the Penal Judgment Exception

Quite apart from its procedural impropriety, as a substantive matter, Petitioner’s constitutional challenge to § 837-x does not withstand scrutiny. *See* Dkt. No. 12 at 6-8. The Texas Judgment, by its terms, is penal in nature: it imposes a mandatory \$100,000 penalty as its principal relief, and it does so at the behest of a sovereign—the State of Texas—that seeks to

⁸ The constitutional challenge is also improper for a different and independent reason: Petitioner failed to provide notice to the Attorney General’s office, which is required in an Article 78 proceeding that calls into question the constitutionality of a state statute. *See* CPLR 1012(b)(1); *see also* N.Y. Exec. Law § 71 (“The court having jurisdiction in an action or proceeding in which the constitutionality of a statute, rule or regulation is challenged, shall not consider any challenge to the constitutionality of such statute, rule or regulation unless proof of service of the notice required by this section or required by subdivision (b) of section one thousand twelve of the civil practice law and rules is filed with such court.”).

punish what it sees as a public wrong. It is not a judgment entered on behalf of a private party seeking compensation for injury inflicted or harm suffered. Because the Texas Judgment falls squarely into the penal judgment exception to the Full Faith and Credit Clause, New York is not obliged to enforce it. Far from being invalid under the Full Faith and Credit Clause, N.Y. Exec. Law § 837-x, as applied here, is fully consistent with it.

Article IV, Section 1 of the U.S. Constitution—the Full Faith and Credit Clause—provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” U.S. CONST. Art. IV, § 1. The general rule is that civil judgments entered in one state must be enforced by the courts of the sister states. For more than a century, however, the United States Supreme Court has recognized an exception, drawn from international law, to the general rule: where the out-of-state judgment is penal in nature—where it seeks to punish and deter, rather than compensate the party who obtained the judgment—the Full Faith and Credit Clause does not require sister-state enforcement. *See Huntington v. Attrill*, 146 U.S. 657, 666-67 (1892); *Nelson v. George*, 399 U.S. 224, 229 (1970) (“[T]he Full Faith and Credit Clause does not require that sister States enforce a foreign penal judgment.”).

The term “penal judgment” is construed to mean any judgment whose purpose is to punish an offense against “public justice,” as opposed to one granting a private remedy to a person injured by wrongful conduct. *Huntington*, 146 U.S. at 674-75; *see id.* at 677 (penal judgments “are those imposing punishment for an offense committed against the state”).

Criminal judgments are quintessentially penal in nature and thus do not enjoy the protection of the Full Faith and Credit Clause. *See Farmland Dairies v. Barber*, 65 N.Y.2d 51, 56-57 (1985).

Civil judgments that are penal “in . . . character and effect” also fall within the “penal judgment” exception to the Full Faith and Credit clause. *Huntington*, 146 U.S. at 683.

The test for whether a civil judgement is penal is “whether the wrong sought to be redressed is a wrong to the public or a wrong to the individual.” *Id.* at 668. Private wrongs “are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals, and are thereupon frequently termed ‘civil injuries.’” *Id.* Judgments aimed at remedying private wrongs are entitled to full faith and credit under the Clause. Public wrongs, on the other hand, “are a breach and violation of public rights and duties, which affect the whole community . . .,” *id.* at 668-69, and remedies therein are designed to punish and deter rather than compensate. Judgments that impose civil *penalties*—monetary fines fixed by the sovereign, pursuant to a statute seeking to vindicate public wrongs, and untethered to any harm to any living person—can be penal in nature; and under those circumstances, they are not entitled to full faith and credit under the Clause. *Huntington*, 146 U.S. at 674-75.

The central question here, which is purely legal, is whether the Texas Judgment is penal in nature. The question all but answers itself—in the affirmative—as a review of the underlying statute, the underlying petition, and the Texas Judgement itself make clear.

The Texas Judgment was rendered under Tex. Health & Safety Code § 170A.002-170A.005, a statutory scheme designed to enforce Texas’s ban on abortion and to broadly “protect” (from Texas’s perspective) Texas residents from medical practitioners who are not licensed by the State of Texas. Tex. Health & Safety Code §§ 170A.002 *et seq.* The statute prohibits the provision of reproductive health activities in the State of Texas, and it subjects violators to criminal prosecution, potential imprisonment, and penalties. *See id.* The mandatory

monetary penalty is also housed within the same section of the statute imposing criminal liability—first- and second-degree felony offenses. § 170A.004.

Under § 170A.002, only the State of Texas Attorney General (currently, Ken Paxton) is authorized to bring suit; no private citizen has standing to enforce this provision of the statute or seek the relief it offers against violators.⁹ *See* § 170A.005. Plainly, the purpose of the Texas Health & Safety Code is to “protect” the Texas public broadly from public wrongs, not create a private cause of action. Likewise, the underlying petition underscores that the Texas statute is intended to punish “violations of Texas law [that] places women and unborn children in Texas at risk.” Pet. & Appl. for Temporary & Permanent Inj. Relief 1, *Texas v. Carpenter*, No. 471-08943-2024, at *6 (Collin Cnty Dist. Ct. Nov. 19, 2024).

The key feature of the Texas Judgment itself is the *mandatory* \$100,000 “penalty” it assesses against Dr. Carpenter. “Penalty” is the statutory term; it is, definitionally, a punishment.

⁹ Attorney General Paxton has also made abundantly clear that the statute—and penalty imposed—is intended to punish and deter Dr. Carpenter and other reproductive health services providers. In public statements, General Paxton has said:

In Texas, we will always protect innocent life and uphold the laws that protect mothers and unborn babies. Radical out-of-state doctors will not be allowed to peddle dangerous and illegal drugs in Texas to kill unborn babies. Any doctor attempting to do so *will be punished to the full extent of the law*.

Attorney General Ken Paxton Stops Radical Abortionist from Unlawfully Supplying Dangerous Drugs to Kill Unborn Babies, KEN PAXTON ATTORNEY GENERAL OF TEXAS (Feb. 14, 2025), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-stops-radical-abortionist-unlawfully-supplying-dangerous-drugs-kill#:~:text=Attorney%20General%20Ken%20Paxton%20has,in%20violation%20of%20state%20law.>

Speaking publicly about Dr. Carpenter, Paxton stated in a press release:

Dr. Carpenter is a radical abortionist who must face justice, not get legal protection from New York liberals intent on ending the lives of as many unborn children as they can. No matter where they reside, pro-abortion extremists who send drugs designed to kill the unborn into Texas will face the full force of our state’s pro-life laws.

Adam Schwager, *Ken Paxton goes after New York Clerk for refusing to enforce abortion pill judgement*, THE HILL (July 29, 2025), <https://thehill.com/homenews/state-watch/5424154-ken-paxton-goes-after-new-york-clerk-for-refusing-to-enforce-abortion-pill-judgement/>.

See § 170A.005 (“A person who violates Section 170A.002 is subject to a civil penalty.”); *see also* Dkt No. 5 at 20 (granting State’s request for “civil penalties”). In this case, the statutory penalty is payable to the State of Texas, not to any injured individual, and the amount is arbitrary—\$100,000—not tied to compensation for a specific loss or injury. Tex. Health & Safety Code § 170A.005. *See, e.g., Schaefer v. H. B. Green Transp. Line, Inc.*, 232 F.2d 415, 418 (7th Cir. 1956) (noting that “if the amount sought to be recovered is arbitrarily exacted for some act or omission of defendant, the action is essentially penal”).¹⁰ Critically, the statute explicitly states that a penalty arising under this provision is *separate and distinct* from civil remedies. *See* Tex. Health & Safety Code § 170A.006 (penalty imposed under this provision “does not abolish or impair any remedy for the conduct that is available in a civil suit”).

Every element of the Texas Judgment supports the conclusion that its purpose is essentially penal—to punish what Texas views as “public wrongs” and to “protect” the public generally, and does not compensate any individual for harm or injury. Having been rendered pursuant to the Texas Health & Safety Code § 170A.002 *et seq.*, as part of its effort to punish and deter what Texas views as a public wrong—the provision of abortion medication to a Texas resident—the Texas Judgement is penal in nature; as such, it is not entitled to full faith and credit under the Clause.

Longstanding precedent confirms that penalties like the one imposed by the Texas Judgment fall within the penal exception to the Full Faith and Credit Clause. *Loucks v. Standard*

¹⁰ The language of the statute also supports that this is a penal judgment in other respects as well. Section 170A.004(a) provides: “A person who violates Section 170A.002 commits an offense,” which “offense” is punishable by a mandatory civil “penalty” of “not less than \$100,000” for each violation. Penalties and similar sanctions that are designed to deter the commission of public wrongs in the future are penal in nature. *See, e.g., Republic of Philippines v. Westinghouse Elec. Corp.*, 821 F. Supp. 292, 297 (D. N.J. 1993) (considering whether punitive sanctions imposed by sister state were, among other characteristics, intended to “deter future acts” and therefore penal in nature).

Oil Co. of New York, 224 N.Y. 99, 102 (1918) (penal judgment is “one that awards a penalty to the state, or to a public officer in its behalf, . . . suing in the interest of the whole community to redress a public wrong”); *Connelly v. Bell*, 286 A.D. 220, 229 (1st Dep’t 1955), *modified*, 309 N.Y. 581 (1956) (penal judgments intended “to avoid future offenses or vindicate public justice”). In *Connelly*, the Appellate Division, First Department found that a judgment will be deemed penal—and thus not entitled to full faith and credit—where it is based on “a claim created by statute as a method of enforcing a [foreign] state’s governmental interests,” and that foreign state was “suing to collect a penal sum fixed by a statute of a foreign State in the nature of a fine.” *Id.* at 229. The court in *Connelly* found a New Jersey judgment not to be penal in nature because the underlying New Jersey cause of action “rested on the common law of tort,” not a state statute, and the judgment amount was in the nature of disgorgement (“based on defendants’ financial gain”), rather than being a penalty. *Id.*¹¹

Here, the Texas Judgment rests upon on a statute, not a common-law tort, and it indeed, imposes a “penal sum fixed by statute in foreign State,” *id.*—the mandatory \$100,000 penalty—not an amount measured by compensation or ill-gotten gains.¹² Under the analysis performed in *Connelly*—a case that Petitioner fails to mention in its brief—the Texas Judgment is clearly

¹¹ Out-of-jurisdiction courts perform the same analysis—and have held, contrary to Petitioner’s assertion, that a civil penalty can be penal in nature. In *City of Oakland v. Desert Outdoor Advert., Inc.*, 127 Nev. 533, 542 (2011), for example, the Supreme Court of Nevada refused to give full faith and credit to a California judgment that was civil in nature, but that imposed statutory penalties on a company for zoning ordinances violations. The Nevada court found the penalties to be “penal in nature”: Oakland’s action was brought under an unlawful business practice statute that “[did] not address private harms but rather address[ed] only public wrongs . . . in this case, the abatement of a public nuisance—and [was] intended to deter conduct deemed wrongful under California law.” *Id.* at 543. Even as the City of Oakland claimed that it had suffered injury, the court held, the resulting judgment for penalties was intended “to punish an offense against the public justice of the state,” not provide a private remedy to a person injured by a wrongful act. *Id.* at 543 (citation omitted).

¹² Petitioner’s support for its position, *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 271 (1935), does not nullify the general principle that full faith and credit is not accorded to out-of-state penal judgments. *See id.* at 275-76 (considering the narrow question of whether the courts of one state, even though not required to entertain a suit to recover *taxes* levied under another state’s statute, must nevertheless give full faith and credit to judgments for such taxes).

penal in character and effect. Unlike the New Jersey statute at issue in *Connelly*, the Texas Judgment imposes a mandatory monetary penalty untethered to the specific violation or harm and is enforced by and paid to the State. As such, it falls within the exception to the Full Faith and Credit Clause.

C. Petitioner's Arguments To Invalidate §837-x Are Without Merit

Petitioner's arguments to invalidate §837-x are without merit.

First, contrary to Petitioner's suggestion, *see* Dkt. No. 12 at 7, Respondent is *not* arguing that he can reject the Texas Filing simply because New York and Texas view the issue of abortion differently. Such policy differences do not excuse a sister state from enforcement of a non-penal judgment—and Respondent does not assert otherwise. *Baker, ex rel. Thomas v. General Motors*, 522 U.S. 222, 233 (1998) (holding that there is no free-standing “public policy” exception to the Full Faith and Credit Clause). Respondent relies solely on the *penal judgment* exception to Art. IV, § 1—not on some public policy “exception” to enforcement of sister-state judgments that the Supreme Court expressly disavowed nearly two decades ago.

Second, Petitioner's single-line claim that, somehow, the injunctive aspect of Texas Judgment renders the entire judgment non-penal, Dkt. No. 12 at 7, is also wrong. While the Texas Judgment “permanently enjoin[s] [Dr. Carpenter] from prescribing abortion-inducing drugs to Texas residents,”¹³ Dkt. No. 8 at 20, Petitioner's stated purpose in proffering the Texas Filing is so the New York courts will “*authorize collection upon*” the \$100,000 penalty (plus fees and interest) against Dr. Carpenter. *See* Dkt. No. 4 at 3 (emphasis added). The Texas Filing is

¹³ Interestingly, the injunction aimed at Dr. Carpenter is more restrictive than the Texas Health Code itself, which expressly permits abortion-inducing medication to be prescribed under limited circumstances. *See, e.g.,* Tex. Health & Safety Code § 171.063.

about getting access to Dr. Carpenter’s property in order to punish and deter her. The injunction is beside the point.

That said, the injunctive penalties imposed on Dr. Carpenter are no different in purpose and effect than the civil penalty: each seek to “punish an offense against the public justice of the State.” *Huntington*, 146 U.S. at 674-75. More concerning, Petitioner’s reference to the injunction signals its intent to seek to prohibit Dr. Carpenter from providing abortion-inducing drugs to Texas residents *anywhere*. A focus on deterrence, as well as punishment, is a hallmark of a penal judgment.¹⁴

In all events, Petitioner’s passing reference to injunctive relief should not detain this court. Texas’s goal in domesticating its judgment against Dr. Carpenter is to “collect[]” its \$100,000 penalty, Dkt. 4, ¶ 10. There is no other way to understand the Texas Filing.

Third, and finally, Petitioner’s argument—that, because the underlying Texas Judgment “did not involve *criminal* prosecution or punishment,” Dkt. 12 at 7 (emphasis added), and only involved an “obligation to pay money,” it is “not penal” in nature—is straightforwardly wrong, *id.* This simplistic analysis ignores the teaching of *Huntington*, *Loucks*, *Connelly*, and other longstanding precedent, which holds that even civil judgments for money may be “penal in nature,” where the payment of money is punitive rather than compensatory. Merely labelling a judgment “civil” rather than “criminal” is not sufficient to avoid the application of the penal exception to the Full Faith and Credit Clause. A court must analyze the substance and nature of the relief obtained, not just its naming convention.

¹⁴ Of course, if Dr. Carpenter were to travel to Dallas or Houston and seek to treat patients there, she would be subject to the Texas injunction—the Texas courts would be allowed to enforce it via contempt. “Sanctions for violations of an injunction, in any event, are generally administered by the court that issued the injunction.” *Baker*, 522 U.S. at 236. But orders commanding action or inaction have been denied enforcement in a sister state when they purported to accomplish an official act within the exclusive province of that other state. *See id.* at 235.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the Court dismiss the Verified Petition, together with such other and further relief the Court warrants just and proper.

Dated: September 19, 2025
New York, New York

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CERTIFICATE OF COMPLIANCE

This Memorandum of Law in Support of Respondent's Motion to Dismiss complies with the type-volume limitation of CPLR 202.8-b(a) and the so ordered page-limit granted by this Court on September 11, 2025 (Dkt. No. 38) of no more than twenty (20) pages.

Dated: September 19, 2025

/s/ Andrew G. Celli, Jr.

Andrew G. Celli, Jr.