

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 FURTHER SUPPORT OF RESPONDENT'S
MOTION TO DISMISS PETITIONER'S VERIFIED PETITION**

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

PRELIMINARY STATEMENT

In the wake of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the State of New York, acting through its Legislature, embarked upon a project: to protect New York-based doctors who provide abortion-related medication by telemedicine from being punished via out-of-state prosecutions and proceedings. The result was N.Y. Exec. Law § 837-x (McKinney's 2024), which, in relevant part, forbids all state and local government employees from using or expending public resources in furtherance of such proceedings. Petitioner the State of Texas concedes, as it must, that Respondent Taylor Bruck, the Acting Clerk of Ulster County, is a government employee, and that the processing of the Texas Filing—which imposed a \$100,000 penalty on a New York doctor for allegedly prescribing abortion-inducing medication to a Texas resident—would have resulted in the expenditure of public resources. *See* Dkt. 5. Given these concessions, which inhere in the Petition and the Texas Judgment itself, Respondent's sole legal duty under § 837-x and CPLR 2102(c) was to *refuse* the Texas Filing. *See* Part I.B. *infra*.

Unable to contest this conclusion, Texas seeks to avoid the application of § 837-x altogether. But Petitioner's arguments ignore § 837-x's plain language, which is designed to prevent out-of-state actors from commandeering this State's resources to punish reproductive health care providers *in New York*. In enacting the Shield Law, the Legislature left no doubt: *every* government employee—even county clerks like Taylor Bruck—is subject to its restrictions and *no* expenditures of public money are allowed “in furtherance” of such purposes. Petitioner's insistence that Respondent must expend resources that the Legislature forbids him to expend—a

claim motivated by Texas’ desire to punish Dr. Carpenter for practicing medicine in a manner that New York allows—is directly at odds with § 837-x’s capacious language. *See* Part I. *infra*.

Texas’ demand that this Court find § 837-x unconstitutional under the Full Faith and Credit Clause fails because it ignores United States Supreme Court precedent, which recognizes an exception to the Full Faith and Credit Cause for civil judgments, like the Texas Judgment here, that are “penal . . . [in] character and effect.” *Huntington v. Attrill*, 146 U.S. 657, 683 (1892). *See* Part II. *infra*.

For these reasons, the Verified Petition fails to state a claim and should be dismissed.

ARGUMENT

It is a proposition that Petitioner does not, and cannot, contest: 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). Petitioner’s effort to do so here must be rejected.

I. SECTION 837-X REQUIRED RESPONDENT TO REFUSE THE FILING

In 2024, two years after the decision in *Dobbs*, the State Legislature amended Executive Law 837-x to expressly forbid *all* state or local government employees from expending public resources “in furtherance of” out-of-state civil proceedings against New York-based doctors. *See* Respondent’s Memorandum of Law in Support of Motion to Dismiss (“Resp. Mem.”), Dkt. 49, at 7 n.2. The statute’s directive could not be more clear: “No state or local government employee . . . shall . . . 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). When presented with the Texas Filing, Respondent faithfully adhered to § 837-x and declined to process the filing.

A. Section 837-x's Language Is Broad and Unambiguous

CPLR 2102(c) requires clerks like Respondent to “refuse” filings where a state law or rule so directs. CPLR 2102(c). Texas claims that § 837-x is not such a law because the words “clerk,” “filing,” or “papers” do not appear in that statute. *See* Petitioner’s Memorandum of Law Opposing Motion to Dismiss (“Pet. Mem.”), Dkt. 69, at 4. This assertion ignores what the Legislature put on the printed page: that *all* state and local employees—county clerks included—are covered by its scope, and that *any* “use” or “expend[iture]” of government resources in furtherance of punitive out-of-state proceedings is forbidden.

“[C]ourts are obliged to interpret a statute to effectuate the intent of the Legislature, and, when the statutory language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used.” *In re Arb. between Cap. Siding & Const., LLC*, 138 A.D.3d 1265, 1266 (3d Dep’t 2016) (internal quotation marks and citations omitted), *lv. denied* 27 N.Y.3d 911 (2016). The plain meaning of § 837-x is that “*no . . . local official*”—including Ulster County Clerk Taylor Bruck—can expend *any* resources “in furtherance” of a judgment like the Texas Judgment here. Petitioner’s claim that, for that statute to fall within CPLR 2102(c)’s exception, the Legislature would have had to include in § 837-x a *specific reference* to county clerks and paper filings, is nonsensical. Obviously, the Legislature need not specify in legislation each and every discrete situation it wishes to cover; it can capture a variety of circumstances by using general language covering whole categories of actors (all “state or local government employees”) or conduct (“expend or use . . . resources”), just as it did here.

Likewise, contrary to Petitioner’s suggestion, *V.G. v. Hanley*, 70 Misc.3d 392 (Sup. Ct. Richmond Cnty. 2020), does not hold that CPLR 2102(c)’s exception to the filing mandate only applies to laws or rules that include the phrase “clerks” or “filing.” That case simply reflects an *example* of how a clerk may be “specifically directed” not to accept a filing—in that case, by an

Administrative Order. It in no way suggests that *only* such an order, or *only* language referring specifically to “filings,” can have that effect. It is for this reason—in addition to the fact that *V.G. v. Hanley* pre-dates the passage of § 837-x and does not account for its broad sweep—that Respondent did not describe *V.G. v. Hanley* as controlling. *See* Resp. Mem. at 8-9.

Other authorities cited by Petitioner are either irrelevant (because they do not involve CPLR 2102(c) at all)¹ or supportive of Respondent’s position. The New York Administrative Code, for instance, which is cited by Petitioner, specifically reflects that a county clerk may refuse papers “as otherwise provided by statute”—it does not state that, to fall within the CPLR 2101(c) exception, a “statute” must use the words “clerk” or “filing.” *See* N.Y. Comp. Codes R. & Regs. 22 § 202.5 (d)(1).

B. The Record Demonstrates That § 837-x Applies Here

Petitioner argues that § 837-x does not apply here because there is no evidence that “Dr. Carpenter was in New York at the time of her unlawful actions,” Pet. Mem. at 7, a requirement for “legally protected health activity” under N.Y. Crim. Proc. Law § 570.17(1)(b)(ii). This argument ignores the record evidence. The Texas Filing, as well as public records and statements made by the Texas Attorney General and available to Respondent at the time of refusal, all provided ample grounds for Respondent to conclude that Dr. Carpenter prescribed the medication from New York, where she lives and is licensed to practice medicine. The Collin County petition that resulted in the Judgment, a public record, *see* Pet. & Appl. for Temporary & Permanent Inj. Relief 1, *Texas v. Carpenter*, No. 471-08943-2024 (Collin Cnty. Dist. Ct. Dec. 12, 2024), alleged that Dr. Carpenter is a physician licensed in New York, *id.* ¶¶ 6, 16, with home and business addresses in New York, *id.* ¶¶ 6, 21. It also alleged that the abortion-

¹ *Cangro v. Marangos*, 160 A.D.3d 580, 580 (1st Dep’t 2018) and *Heilbut v. Heilbut*, 18 A.D.3d 1, 6 (1st Dep’t 2005) (per curiam) both involve vexatious litigation orders, not CPLR 2102(c).

inducing medication was provided via telehealth, *id.* ¶¶ 26, 28, and cites Tex. Occ. Code § 151.056(a) (applies to “[a] person who is physically located in another jurisdiction”), Tex. Admin. Code § 174.8 (concerns telehealth), and Tex. Health & Safety Code § 171.063(b-1) (concerns the provision of abortion-inducing drugs by courier, delivery, or mail service), *Carpenter*, No. 471-08943-2024, at *2-3, ¶¶ 7, 11, 12. The Texas Filing itself includes the same information. *See, e.g.*, Dkt. No. 5 at 20, 25. These statements are more than sufficient for Respondent to reasonably conclude that Dr. Carpenter was in New York when she prescribed the medication.

Petitioner also argues that, in order to meet the definition of “legally protected health activity,” a term that appears in § 837-x but is defined in N.Y. Crim. Proc. Law § 570.17(1)(b)(ii), the person who received medical care must be in the process of “exercise[ing] or attempt[ing to] exercise of rights to reproductive health services as secured by the constitution or laws” of New York—a condition, Petitioner asserts, that no woman located in Texas could ever meet, since the “constitution and laws” of New York do not extend beyond New York’s borders. *See* Pet. Mem. at 8. Texas’ reading of § 570.17(b)(ii) is a willful *misreading* of the statute. The language referring to rights “as secured by the constitution or laws of [New York]” is simply a descriptor of the *right* that New York recognizes—the right to receive abortion care—not a requirement that the person receiving the care be physically located in New York, or herself possess the same rights as someone who is. To read the provision in the manner that Texas suggests is to render the statute pointless: § 837-x’s purpose is to protect providers who prescribe medicine from within New York to patients who are *not* located in New York and do *not* enjoy and cannot “exercise” the rights available to New Yorkers.

Petitioner’s other arguments to avoid the application of § 837-x are makeweight.

First, contrary to Petitioner’s suggestion, *see* Pet. Mem. at 9, the language of § 837-x that Respondent relies upon here is that no public official shall “use or expend resources in furtherance of” a judgment imposing liability on a New York provider for engaging in legally protected reproductive health services—*not* that a clerk’s processing of paperwork constitutes “cooperation” with an out-of-state investigation. Resp. Mem. at 4, 8.

Second, the argument that § 837-x does not apply here because the “Texas court has *already imposed* civil liability on Dr. Carpenter,” (emphasis added), rather than merely “seek[ing] to impose” such liability, Pet. Mem. at 9, proves too much. Imposing liability, by its very nature, must also encompass collection and enforcement. Petitioner would have this Court rule that, so long as civil liability has already been found, then Texas can commandeer New York’s resources in an effort to punish New York providers by collecting on judgments here. That is the opposite of the Legislature’s intent in enacting § 837-x. *See* Resp. Mem. at 7 n2.

Third, *Matter of Est. of Noichl*, 176 A.D.3d 1364 (3d Dep’t 2019), which Petitioner cites, is easily distinguished. In that case, the clerk’s refusal to accept a petition was not based on a statute or rule that directed the clerk to refuse the filing under CPLR 2102(c) because processing of the paper would be unlawful, as is the case here. Rather, the refusal arose from the clerk’s own substantive conclusion that a testamentary document submitted for filing did not conform to New York law—a conclusion that the Third Department correctly held was the court’s, not the clerk’s, to make. *Noichl*, 176 A.D.3d at 1365. While it may well be true that court clerks must process “even cases that are patently frivolous,” Pet. Mem. at 13, that does not mean that they are required to expend public resources in a manner that the Legislature has expressly forbidden.² Petitioner offers no reason why this Court should ignore the critical holding of *Dr.*

² Petitioner cites two other cases, neither of which concern a clerk’s duty to accept filings or the text of an order or statute directing clerks to refuse the filings. *See Tasinari v. Dematteo*, No. 451467/2023, 2023 WL 8810496, at *7 (N.Y. Sup. Ct. Dec. 20, 2023); *Salami v. TD Bank*, 83 Misc. 3d 1277(A), at *2-3 (Sup. Ct. Kings Cnty. 2024).

Bloom Dentist v. Cruise, 259 N.Y. 358 (1932), to wit: 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.

Fourth, Petitioner’s assertion that § 837-x has the effect of extending New York’s licensing authority over doctors beyond its own borders is wrong. Under *Dobbs*, each state does, indeed, have the right to control the abortion-related conduct of doctors it licenses and other persons within its jurisdiction, including women who reside in that state. *Dobbs*, 597 U.S. at 302. But, under the Full Faith and Credit Clause’s penal judgment exception, *see infra* at 8, each state has the right to decline to lend its resources to foreign states seeking to punish local doctors who have done nothing illegal under local law. This situation is not an overreach by New York; it is a feature of modern constitutional jurisprudence, our federalism, and *Dobbs* itself.

Fifth, § 837-x is not so broad, as Texas suggests, to bar Respondent from defending this case, or this Court from hearing it. *See* Pet. Mem. at 12-13. This Article 78 special proceeding is not an out-of-state “proceeding” of the sort covered by § 837-x. Moreover, the legislative intent of the New York Shield Law would be wholly undermined if local government employees could not defend themselves in court against efforts to compel them to violate § 837-x’s directive. And the due process principles governing the Rule of Necessity, along with separation of powers principles and the power of judicial review, may compel judges to hear such proceedings to ensure that “neither the parties nor the Legislature will be left without [a] remedy provided by law” if no other court or body has jurisdiction to hear the issue. *Matter of General Motors Corp.-Delco Prods. Div. v. Rosa*, 82 N.Y.2d 183, 188 (1993); *see, e.g., Ctr. for Jud. Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1408 (3d Dep’t 2018).

Sixth, this Court need not entertain Petitioner’s hypothetical as to how § 837-x *might* violate the Full Faith and Credit clause if an individual patient injured in Texas was awarded

compensatory damages against a New York doctor and attempted to enforce the judgment here, *see* Pet. Mem. at 10. Those circumstances are not before the Court and thus not implicated by this as-applied constitutional challenge. *Cf. Soares v. State*, 68 Misc. 3d 249, 257 (Sup. Ct. N.Y. Cnty. 2020).

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Mandamus “requires a showing [of] a clear legal right to the relief sought[.]” *Ass’n of Surrogates & Supreme Ct. Reps. v. Bartlett*, 40 N.Y.2d 571, 574 (1976) (citations omitted). Petitioner cannot meet this high standard. Accordingly, mandamus must be denied. *Vestal Teacher’s Ass’n v. Vestal Cent. Sch. Dist.*, 5 A.D.3d 922, 924 (3d Dep’t 2004).

II. THE TEXAS JUDGMENT IS SUBJECT TO THE PENAL JUDGMENT EXCEPTION AND IS NOT ENTITLED TO FULL FAITH AND CREDIT

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. *See* Resp. Mem. at 10-12. Quite apart from its procedural defects, which Texas makes no serious attempt to correct,³ the challenge does not withstand scrutiny.⁴

Petitioner’s assertion that “money judgments obtained outside criminal proceedings are not” subject to the penal judgment exception, Pet. Mem. at 16, flatly ignores *Huntington, Loucks, Connolly*, and other longstanding precedent, which acknowledge that even civil judgments for money can be “penal in nature” when they are based on penalties fixed by the sovereign, pursuant to a statute seeking to vindicate “public wrongs.” These cases firmly hold that a case-

³ Petitioner argues that the constitutional challenge is “[o]ne additional argument” to counter Respondent’s “insist[ence]” that § 837-x applies, distinguishing between factual allegations and “arguments.” Pet. Mem. at 15. But Petitioner requests that the Court find its constitutional challenge to be further grounds for mandamus, Dkt. 12 at 8—such an alternative basis for relief must be pled *in the pleadings*. *See, e.g., de Blasio v. New York City Conflict of Int. Bd.*, 86 Misc.3d 895, 962 (Sup. Ct. N.Y. Cnty. Jan. 13, 2025) (“A memorandum of law may not introduce *new alleged grounds for reversal not included in the verified petition.*”) (emphasis added).

⁴ Petitioner again misstates Respondent’s position that there is a “roving public policy exception.” Pet. Mem. at 16 (internal quotations omitted). There is no allegation in Petitioner’s filings that Respondent has expressed or communicated a public policy rationale for refusing to file the Texas Judgment.

by-case analysis of the “character and effect” of the judgment is required. *Huntington*, 146 U.S. at 668, 683. Here, that analysis shows conclusively that the Texas Judgment is penal in nature.

Petitioner fails to credit the wall of controlling precedent. It all but ignores *Connolly v. Bell*, where the First Department expressly applied the *Huntington* test to a money judgment and found that whether a judgment is considered penal “depends upon the question whether its purpose is to punish an offense against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act.” 286 A.D. 220, 230 (1st Dep’t 1955) (quoting *Huntington*, 146 U.S. at 668, 674-75). *Connolly* emphatically did not hold that “there is *no* penal exception to money judgments.” Pet. Mem. at 16 (emphasis added). Likewise, Petitioner misstates the relevant aspect of *Loucks v. Standard Oil Co. of New York*, where the Court of Appeals determined that a statute mandating a minimum recovery of damages after a person’s death was “not penal in the international sense[.]” 224 N.Y. 99, 103, 106 (1918). *Loucks* did not rest on the monetary character of the judgment, but rather that “[t]he executor or administrator who sues under this statute is not the champion of the peace and order and public justice of the [state]. He is the representative of the outraged family. He *vindicates a private right*.” *Id.* at 106 (emphasis added). Even *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 276-77 (1935) and *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 438 (1943),⁵ which Petitioner cites, do not expressly hold that no money judgment from civil proceedings may be penal in nature.

Applying the factors acknowledged by Petitioner to be relevant to this inquiry,⁶ the Texas Judgment is clearly penal in nature.⁷ It enforces an arbitrarily set penalty recoverable to the State

⁵ *Milwaukee* considered the narrow question of taxes levied under another state’s statute. See Resp. Mem. at 17 n. 12. And *Magnolia* is of no relevance here, as the civil money judgments at issue were workers *compensation* awards, sought and recovered by the employee, not penalties recovered by the state. 320 U.S. at 438. Workers compensation statutes are clearly not penal in nature.

⁶ See Pet. Mem. at 18 (citations omitted).

⁷ For the reasons set forth in Resp. Mem. at 18-19, the imposition of injunctive relief does not alter the conclusion that the Judgment as a whole is penal in nature and thus is not entitled to full faith and credit. Petitioner again

as a mechanism for Texas to punish what it deems a moral or communal wrong—precisely the kind of public grievance that renders the judgment penal in nature. *See* Resp. Mem. at 14-16. The assertion that “harm to an individual unborn child” by abortion renders the Texas Judgment compensatory, and comparing the \$100,000 penalty to wrongful death awards, *see* Pet. Mem. at 14, proves too much. There is nothing about the statutory penalty due to the State of Texas here that resembles a damage award recovered by the family members of the deceased. And, even if one accepts Petitioner’s premise that no family member would pursue damages in the elective abortion context, that only reinforces the reality that there is no private grievance at stake. *See* Pet. Mem. at 18. Here, the sole entity with standing under the statute is the Attorney General—not an injured party—stepping in⁸ to vindicate wrongs done to “all unborn life.”⁹ The court’s reasoning in *Loucks* resonates here, distinguishing between “champion[s] of . . . public justice” and “representative[s] of the outraged family.” *Loucks*, 224 N.Y. 99 at 106.

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.

misses the mark and cannot credibly claim that its Texas injunction means that, while in her home state of New York, Dr. Carpenter can be held in contempt by a New York court for violating Texas rules outside of Texas.

⁸ Similarly, as early as *Adam v. Dick*, 103 Misc. 259 (Sup. Ct. N.Y. Cnty. 1918), New York courts recognized that so-called “qui tam” actions are penal in nature because they are “brought to enforce the criminal law of the state.” 103 Misc. at 264. Relying on *Huntington*, the court explained that when a suit seeks to impose penalties for violations of public law—even if nominally pursued by a private actor—it remains a penal action. *Id.*

⁹ *See* Resp. Mem. at 15 n.9. The punitive, rather than remedial nature of the judgment here is further emphasized when compared to Texas’ wrongful death statute providing for private rights of action to recover damages “for the exclusive benefit of the surviving spouse, children, and parents of the deceased,” Sec. 71.004, where a jury “may award damages *in an amount proportionate to the injury*,” Sec. 71.010 (emphasis added).

Dated: October 3, 2025
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CERTIFICATE OF COMPLIANCE

This Memorandum of Law in Support of Respondent's Motion to Dismiss complies with the Court Rules of Honorable David M. Gandin, J.S.C. concerning page limitations for memoranda of law of no more than ten (10) pages.

Dated: October 3, 2025

/s/ Andrew G. Celli, Jr.

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