SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

STATE OF TEXAS, Petitioner, For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules -against- TAYLOR BRUCK, Acting County Clerk, Ulster County Respondent.	:	Index No. EF 2025-2536 **PETITIONER'S MEMORANDUM OF LAW OPPOSING RESPONDENT'S MOTION TO DISMISS**

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Page(s)

Cases:

Constitutional Provisions, Statutes, and Rules:

Other Authorities:

Petitioner, the State of Texas, submits this memorandum of law in opposition to Respondent's motion to dismiss Texas's Verified Petition.

PRELIMINARY STATEMENT

Respondent Taylor Bruck, Acting County Clerk for Ulster County, is obligated to file Texas's motion for summary judgment in lieu of complaint (Texas's motion) so that a court can determine its merit. This is a mandatory duty under New York Civil Practice Law and Rules ("CPLR") 2102(c). Respondent's compliance is not excused by New York Executive Law § 837-x because that law does not "specifically direc[t]" Respondent to refuse to file Texas's motion.

This mandamus proceeding does not concern whether New York courts will ultimately enforce the Texas judgment against Dr. Carpenter. This proceeding concerns only whether the clerk must accept Texas's filing. After that filing is accepted, Dr. Carpenter will remain free to raise Executive Law § 837-x—or any other defense—in response. But before that can occur, Respondent must first accept the filing, a mandatory duty unaffected by Executive Law § 837-x.

To the extent that New York purported to enact a law that specifically directed Respondent to refuse to accept Texas judgments for domestication, it would, of course, be unconstitutional, but New York has not enacted such a law, and Executive Law § 837-x does not excuse Respondent's refusal to accept the filing. Indeed, Respondent's argument proves far too much. Respondent offers no reason that the underlying motion for summary judgment could not be accepted for filing, but this mandamus proceeding could be accepted.

Fundamentally, Respondent misconceives of the duties of a county clerk. Regardless of any personal disagreement with the Texas judgment, Respondent has no right, much less an obligation, to refuse to accept the filing. Whether Texas can register or enforce the judgment it obtained, whether Dr. Carpenter engaged in legally protected activity, whether New York can authorize doctors licensed in New York to perform telemedicine abortions in other States, and how the Full

Faith and Credit Clause impacts the resolution of these issues are all questions of significance that deserve full briefing and the attention of a court—not dismissal by a county clerk.

FACTUAL AND PROCEDURAL BACKGROUND

Because Dr. Carpenter declined to appear and defend herself in a Texas court, the facts supporting the judgment against her are undisputed. Dr. Carpenter violated Texas law in two ways: (1) she practiced medicine in Texas without a license, Tex. Occ. Code tit. 3, subch. B; 22 Tex. Admin. Code § 174.8; and (2) she performed an unlawful abortion in Texas, Tex. Health & Safety Code § 170A.002.[1] Dkt. 8 at 19 (Aff. of Ernest C. Garcia in Support of Verified Petition).

Texas, through its Attorney General, sued Dr. Carpenter in a civil proceeding in a Collin County district court. Dkt. 8 at 19-20. Although Texas properly served Dr. Carpenter, she declined to appear, and Texas received a default judgment against her. Dkt. 8 at 19. Under the judgment, Dr. Carpenter must (1) pay a civil penalty of $100,000 for performing an unlawful abortion, Tex. Health & Safety Code § 170A.005; (2) pay court costs and attorneys' fees; and (3) cease prescribing abortion-inducing drugs to Texas women and practicing medicine in Texas. Dkt. 8 at 20.

In March 2025, Texas attempted to file a motion for summary judgment in lieu of complaint to have its judgment recognized in New York. Dkt. 8 at 1 ¶ 2, 14-15. Texas asked the New York court to make the Texas judgment a judgment of the State of New York, to register and enforce it, and to authorize collection upon it. Dkt. 8 at 16 ¶ 3. Respondent refused to file Texas's motion,

[1] Rule 174.8, which generally prohibited practicing telemedicine in Texas without a Texas medical license has been repealed and replaced by 22 Tex. Admin. Code § 175.1, which imposes a similar requirement.

citing New York Executive Law § 837-x.[2] Dkt. 8 at 4. When Texas attempted to again file its motion in July, Dkt. 8 at 6, Respondent again rejected the filing, Dkt. 8 at 36.[3]

Because Respondent failed to perform his ministerial duty under CPLR 2102(c), Texas filed the instant mandamus petition—a filing Respondent did not reject under § 837-x—seeking an order requiring Respondent to comply with the ministerial duty to file Texas's motion. Dkt. 3 & 4. Respondent has moved to dismiss pursuant to CPLR 7804(f) and 3211(a)(7).

ARGUMENT

Dismissal is unwarranted under CPLR 3211(a)(7) because Texas has stated a claim upon which relief can be granted. Mandamus is appropriate when a governmental officer "has failed to perform a duty enjoined upon [him] by law, the performance of that duty is mandatory and ministerial rather than discretionary, and there is a legal right to the relief sought." *Matter of Hoffmann v. N.Y. State Indep. Redistricting Comm'n*, 41 N.Y.3d 341, 364 (2023). Mandamus is appropriate here because CPLR 2102(c) enjoins Respondent to perform the mandatory and ministerial duty of filing Texas's motion. New York Executive Law § 837-x does not authorize Respondent to refuse to do so.

The plain text of § 837-x, rules of construction, precedent, and common sense all demonstrate that Respondent has erred in concluding that § 837-x prohibits him from filing Texas's motion. To the extent that New York enacted a law specifically directing Respondent to refuse to accept filings to domesticate out-of-state judgments, such a law would violate the Full Faith and Credit Clause,

[2] Ulster County Clerk, Statement from Acting County Clerk Taylor Bruck on Filing from Attorney General Ken Paxton, https://clerk.ulstercountyny.gov/news/countyclerk/327-clerk-rejects-filing-texas-attorney.

[3] Ulster County Clerk, Acting County Clerk Taylor Bruck Bucks Texas—Again, https://clerk.ulstercountyny.gov/news/countyclerk/714-clerk-rejects-2nd-attempt-filing-texas-ag.

but because New York has not enacted such a law, this Court need not address this issue. Whether Texas can register or enforce its judgment against Dr. Carpenter in New York is a question for a court to decide following adversarial briefing, not for Respondent to adjudicate as a county clerk.

I. Texas Has a Clear Right to Relief Because Respondent Has a Mandatory Duty To File Texas's Motion.

Respondent does not deny that, absent an exception found in a statute, rule, or order, he has an explicit and mandatory duty to file Texas's motion. As provided by CPLR 2102(c), "[a] clerk shall not refuse to accept for filing any paper presented for that purpose except where specifically directed to do so by statute or rules promulgated by the chief administrator of the courts, or order of the court." The question presented here is whether Executive Law § 837-x is a statute that "specifically direct[s]" Respondent to "refuse to accept for filing" Texas's motion. It is not.

A. The text of section 837-x does not "specifically direct" Respondent to refuse to file Texas's motion.

CPLR 2102(c) imposes a mandatory duty on clerks to accept papers for filing unless "specifically directed" to "refuse to accept" them by a statute, court rules, or order. The purpose of this provision is "to strip clerks of any authority to reject papers offered for filing unless the refusal is directed by law, rule, or court order." *Gehring v. Goodman*, 884 N.Y.S.2d 646, 647 (Sup. Ct. 2009) (citing Alexander, Supp. Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 7B, Civil Practice Law and Rules 2102, 2009 Pocket Part, at 283).

The text of Executive Law § 837-x says nothing about clerks, filing, or refusing to accept papers. Instead, Respondent contends that his refusal fits within the law's broad and general statutory language. As detailed below, Respondent is incorrect, but more importantly, the statute's general language does not "specifically direc[t]" Respondent to "refuse to accept [papers] for filing." Neither the word "clerk" nor "filing" appears in the statute. Its general terms cannot constitute "specifi[c] direct[ion]."

Respondent relies heavily (at 8-9) on *V.G. v. Hanley*, 70 Misc.3d 392 (N.Y. Sup. Ct. 2020), but that case serves only to highlight the specificity necessary to "specifically direc[t]" a clerk to refuse to file papers within the meaning of CPLR 2102(c). That case discussed an Administrative Order issued by the Chief Administrative Judge of the Courts, directing during the COVID-19 pandemic that "no papers shall be accepted for filing by a county clerk or a court in any matter of a type not included on the list of essential matters." https://www.nycourts.gov/whatsnew/pdf/AO-78-2020.pdf (Administrative Order of the Chief Administrative Judge of the Courts AO/78/20). Note that the order specifically directs "county clerk[s]" regarding which "papers shall be accepted for filing."

This Administrative Order shows precisely what CPLR 2102(c) requires for clerks to be "specifically directed" to refuse to accept filings. The general language of Section 837-x falls far short of "specifi[c] direct[ion]."

Court orders regarding vexatious litigants provide another example of the specificity required. *See, e.g.*, *Cangro v. Marangos*, 72 N.Y.S.3d 444, 444 (App. Div. 2018) ("The Clerk of the Court is directed to accept no filings from plaintiff as to such matter without prior leave of the Court."); *Heilbut v. Heilbut*, 792 N.Y.S.2d 419, 425 (App. Div. 2005) (per curiam) ("[N]either the Clerk of Supreme Court, New York County, nor the Clerk of this Court is to accept further filings from defendant without prior leave of their respective courts."). Again, these orders specifically mention the clerk and specifically mention acceptance of filings.

The Administrative Code includes similarly specific directions regarding when clerks "shall refuse to accept for filing papers":

> (d)(1) In accordance with CPLR 2102(c), a County Clerk and a chief clerk of the Supreme Court or County Court, as appropriate, shall refuse to accept for filing papers filed in actions and proceedings only under the following circumstances or as otherwise provided by statute, Chief Administrator's rule or order of the court: . . .

N.Y. Comp. Codes R. & Regs. tit. 22, § 202.5. Again, note the specific reference to the clerk and the specific reference to "refuse to accept for filing." The "mandatory e-filing rules" from this section "are an example of a case in which the clerk is specifically authorized to reject hard-copy papers." Thomas F. Gleason, Supp. Practice Commentaries CPLR 2102 (McKinney).

The difference between general motions and arguments "specifically directed" at a particular issue is also deeply rooted in the rules of error preservation. "To preserve for this Court's review a challenge to the legal sufficiency of a conviction, a defendant must move for a trial order of dismissal, and the argument must be 'specifically directed' at the error being urged." *People v. Hawkins*, 900 N.E.2d 946, 950 (N.Y. 2008). "[G]eneral motions simply do not create questions of law for this Court's review." *Id.*

The requirement in CPLR 2102(c) that any exceptions "specifically direc[t]" clerks to "refuse to accept [papers] for filing" controls and requires the motion to dismiss be denied (and the petition for writ of mandamus to be granted). Even if the general language of Executive Law § 837-x could be read to encompass a clerk accepting the filing of Texas's motion (and, as detailed below, it cannot), this general language, which says nothing about "clerks" or "filing," does not constitute "specifi[c] direct[ion]" to Respondent to refuse to accept Texas's motion for filing.

B. Section 837-x does not apply to the filing of Texas's motion.

Moreover, even if the general language in Executive Law § 837-x could constitute "specifi[c] direct[ion]," it does not apply to Respondent accepting Texas's motion for filing. Because "the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof." *Matter of DeVera*, 117 N.E.3d 757, 764 (N.Y. 2018). That language "is generally construed according to its natural and most obvious sense . . . in accordance with its ordinary and accepted meaning, unless

the Legislature by definition or from the rest of the context of the statute provides a special meaning." *Samiento v. World Yacht Inc.*, 883 N.E.2d 990, 993 (N.Y. 2008) (citation omitted); *see also* N.Y. Statutes § 94.

The language of Executive Law § 837-x does not, in its natural and most obvious sense, encompass Respondent refusing to file Texas's motion. 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 or provide information to 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 or criminal 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). Respondent errs when he contends that this law prohibits him from filing Texas's motion.

1. Respondent wrongly asserts (at 7) that the judgment against Dr. Carpenter is for "legally protected health activity" that occurred in New York. It is not. Although New York purports to define "legally protected health activity" to include the provision of any "reproductive health services" when the doctor is "physically present" in New York, "regardless of the patient's location," N.Y. Crim. Proc. Law § 570.17(1)(b)(ii), there is no evidence or allegation in Texas's petition that Dr. Carpenter was in New York at the time of her unlawful actions. Rather, a Texas court found Dr. Carpenter liable for unlawful acts that occurred in Texas. Dkt. 8 at 19-20. The Court may not look beyond the petition and attached affidavits when determining a motion to dismiss. *Green Harbour Homeowners' Ass'n, Inc. v. Town of Lake George Planning Bd.*, 766 N.Y.S.2d 739 (App. Div. 2003). Should Texas's motion be filed, it will be up to Dr. Carpenter to prove that her conduct falls within the protection of § 837-x. Respondent cannot draw that conclusion for himself on this record.

Moving beyond that basic defect, "[l]egally protected health activity," as it pertains to Dr. Carpenter, includes "any act . . . undertaken to aid . . . any person in the exercise or attempted exercise of rights to reproductive health services as secured by the constitution or laws of this state." N.Y. Crim. Proc. Law § 570.17(1)(b)(ii). Dr. Carpenter performed an abortion on a woman who was in Texas. Dkt. 8 at 19-20. Thus, Dr. Carpenter was not aiding a person who was exercising rights "secured by the constitution or laws of" New York, because New York laws do not secure rights to individuals in Texas. *See Bonaparte v. Appeal Tax Ct.*, 104 U.S. 592, 594 (1881) ("No State can legislate except with reference to its own jurisdiction.").

Moreover, "reproductive health services" includes only those services "provided in accordance with the constitution and the laws of" New York. *Id.* § 570.17(1)(a). Dr. Carpenter's "services" were performed in Texas, and her resulting conduct there is not governed by New York law. As the United States Supreme Court has explained, "[l]aws have no force of themselves beyond the jurisdiction of the State which enacts them, and can have extraterritorial effect only by the comity of other states." *Huntington v. Attrill,* 146 U.S. 657, 669 (1892); *see also New York Life Ins. Co. v. Head,* 234 U.S. 149, 161 (1914) ("[I]t would be impossible to permit the statutes of Missouri to operate beyond the jurisdiction of that State . . . without throwing down the constitutional barriers by which all the States are restricted within the orbits of their lawful authority and upon the preservation of which the Government under the Constitution depends."). Texas has not agreed to abide by New York abortion laws, and New York otherwise lacks the authority to tell Texas what conduct is lawful inside Texas. Thus, while New York is free to exempt doctors from New York regulations "regardless of the patient's location," it cannot exempt them from regulation by other States when they treat individuals outside of New York.

2. Respondent also claims (at 6) that performing his mandatory and ministerial duty to accept papers for filing amounts to "cooperat[ing] with" Texas. That stretches the definition of "cooperate" beyond its ordinary and accepted meaning. To "cooperate" is "to act or work with another or others to a common end," "to act together," and "to associate with another or others for mutual often economic benefit." *Cooperate*, Webster's Third New Int'l Dictionary, Unabridged (1961).

Respondent is not working together with Texas (or any other party that seeks to file documents) for a common end or mutual benefit when accepting filings; he is simply doing what the law requires. CPLR 2102(c). County clerks do not "cooperate" with parties by accepting their filings any more than judges "cooperate" with parties by ruling in their favor.

Further, contrary to Respondent's assertion (at 6, 7) Texas's motion is not a "proceeding that seeks to impose civil . . . liability" on Dr. Carpenter. Rather, a Texas court has already imposed civil liability on Dr. Carpenter and enjoined her from further violating Texas law. Dkt. 8 at 19-20. Under New York law, Texas is a "judgment creditor," CPLR 5406, that is, someone who arrives with a judgment in hand and a debt already established. Texas's motion does not "see[k] to impose" liability on Dr. Carpenter because the judgment against Dr. Carpenter already exists. Liability has already been imposed, and Respondent's argument would read "seeks to impose" out of the statute. By its plain text, Executive Law § 837-x is inapplicable to registration or enforcement of existing judgments. Moreover, the injunctive relief ordered in the Texas judgment certainly does not seek to "impose liability."

Not only does it not constitute "specifi[c] direct[ion]," but the text of Executive Law § 837-x does not prohibit Respondent from filing Texas's motion seeking to register or enforce an existing civil judgment and an injunction against Dr. Carpenter. Accordingly, Respondent's mandatory duty to do so remains intact, *see* CPLR 2102(c), and mandamus is appropriate.

C. Other interpretive doctrines counsel against Respondent's conclusion.

Even if the Court were to find some ambiguity in the text of Executive Law § 837-x, other interpretive doctrines point towards Texas's construction, not Respondent's. When the language of a statute is susceptible of two constructions, New York courts "will adopt that which avoids injustice, hardship, constitutional doubts or other objectionable results." *Matter of Jacob*, 660 N.E.2d 397, 405 (N.Y. 1995) (citation omitted). That rule counsels against Respondent's interpretation here. Respondent's construction raises significant constitutional issues because it would violate the Full Faith and Credit Clause, allow New York to impose its laws and policies on other States, and result in absurd consequences.

Respondent all but concedes (at 13) that Executive Law § 837-x would be unconstitutional under the Full Faith and Credit Clause if the judgment sought to be enforced were compensatory. *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998). If Dr. Carpenter had injured a patient in Texas and been found liable to that individual patient for damages, Respondent's construction of Executive Law § 837-x would prohibit the patient from filing a motion to recognize that compensatory judgment. But such refusal would violate the Constitution. *See* U.S. Const. art IV, § 1 (requiring "Full Faith and Credit" to be given to "judicial Proceedings of every other State"). The Court should construe any ambiguity in Executive Law § 837-x to avoid that unconstitutional outcome.

Further, by shielding New York doctors from liability, Respondent's interpretation would also permit New York to effectively license its doctors to perform abortions in every State via telemedicine, regardless of the laws of those States. But the "legislative power of a State" extends only to "act[ing] upon persons and property within the limits of its own territory." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 375 (2023) (quoting *Hoyt v. Sprague*, 103 U.S. 613, 630 (1881)). This limitation is "a feature of our constitutional order that allows 'different communities'

to live 'with different local standards.'" *Id.* (quoting *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989)). The Court should not interpret § 837-x to upset that feature of our constitutional order by construing it to allow New York to effectively impose its local abortion policy on every State. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 339 (2022) (Kavanaugh, J., concurring) (explaining that each State may decide how to address the issue of abortion).

Courts also reject constructions that would make a statute absurd. N.Y. Statutes § 145. Accordingly, courts decline to read statutes "in a manner that would produce such an 'objectionable, unreasonable or absurd consequenc[e].'" *Calabrese v. City of Albany*, 256 N.E.3d 654, 659 (N.Y. 2024) (citing *Long v. State of New York,* 852 N.E.2d 1150, 1153 (N.Y. 2006)). Under Respondent's construction of § 837-x, no government employee can spend a single minute, have a single conversation, send a single email, or stamp a single document "in furtherance of any . . . proceeding" in which Texas is attempting to have New York recognize its judgment. Yet Respondent filed the petition in this proceeding—which seeks to further the same goals as the proceeding Respondent refused to file. Respondent (and/or Ulster County) has also spent time, money, and resources on this proceeding, including hiring outside counsel to represent him. And if Respondent is correct, every act of this Court in this proceeding, apparently including spending time reading this very filing, has been illegal. Executive Law § 837-x could not have been intended to produce these absurd results, and the Court should not give it that interpretation.

D. New York precedent confirms that Respondent must file Texas's motion.

Dr. Bloom Dentist, Inc. v. Cruise, on which Respondent relies (at 9), does not apply. 182 N.E. 16 (N.Y. 1932). There, although an ordinance provided that "[a]ll permits for illuminated signs shall be issued by the city clerk," the Court determined that the city clerk had a measure of discre-

tion to decide whether to issue the permit. *Id.* at 17 (explaining that "'shall' ought not to be interpreted in a mandatory sense"). As a result, the clerk could lawfully exercise that discretion to decline to issue a permit for a sign that violated the law. *Id.* But no such discretion exists here. CPLR 2102(c) makes Respondent's duty mandatory and ministerial, absent "specifi[c] direct[ion]." And as detailed above, Executive Law § 837-x is not an exception.

This case instead resembles *Matter of Estate of Noichl*, in which a Surrogate Court's Clerk refused to accept a probate petition for filing. 113 N.Y.S.3d 275, 276 (App. Div. 2019). When the petitioner moved for an order directing the clerk to file his petition, the respondent defended the clerk's action by arguing the merits of the underlying petition, asserting that the will should not be admitted to probate. *Id.* But as the appellate court explained, drawing that conclusion would be "premature": "There is a difference between accepting a probate petition for filing and admitting a will to probate. The former merely commences the legal proceeding to determine the validity of a purported will; the latter is but one possible outcome of that process." *Id.* Likewise here, the decision to refuse to file Texas's motion is a premature decision on the merits of Texas's motion. Filing the motion does not mean it will be granted, and in response, Dr. Carpenter will be free to raise any defense, including any arguments under Executive Law § 837-x. But adjudicating that motion is the responsibility of a court, not Respondent.

E. Allowing the Clerk to refuse filing is a premature adjudication of the underlying merits.

"[P]ublic policy mandates free access to the courts." *Bd. of Ed. of Farmingdale Union Free Sch. Dist. v. Farmingdale Classroom Teachers Ass'n, Inc.*, 343 N.E.2d 278, 283 (N.Y. 1975); *see also* N.Y. Const. art. I, § 9 (guaranteeing the right to petition the government). This Court should be loath to adopt an interpretation of Executive Law § 837-x that infringes on this fundamental right. Even if the Texas judgment were ultimately unenforceable in New York (and, to be clear,

the Full Faith and Credit Clause mandates its registration and enforcement), there is a crucial difference between adjudicating and denying a motion and refusing to allow the motion to be filed at all. The latter threatens fundamental public policy regarding the rights of court access.

This fundamental right of access to the courts requires clerks to file even cases that are patently frivolous. *See, e.g.*, *Tasinari v. Dematteo*, No. 451467/2023, 2023 WL 8810496, at *7 (N.Y. Sup. Ct. Dec. 20, 2023) (dismissing "patently frivolous" lawsuit and sanctioning counsel); *Salami v. TD Bank*, 83 Misc. 3d 1277(A), *2-3 (N.Y. Sup. Ct. 2024) (discussing suits filed by plaintiff demanding, without explanation, $1-2 billion); *see also* N.Y. Ct. R. 130-1.1 (allowing courts to impose sanctions for frivolous lawsuits). Those cases were not rejected at the outset by county clerks but were filed and considered by courts. The proper procedure under a policy of free access to the courts is, therefore, to allow Texas to file its motion so that a court may determine its merit—including whether Dr. Carpenter can prove that her conduct falls within the protection of § 837-x.

The Court should reject Respondent's strained reading of Executive Law § 837-x, which raises constitutional concerns, creates absurd outcomes, and is contrary to this State's policy of access to the courts. Under CPLR 2102(c), Respondent has a ministerial duty to file Texas's motion, and mandamus should issue.

II. To the Extent That Filing Texas's Motion Depends on the Enforceability of the Underlying Judgment, Respondent's Arguments Fail.

Because Executive Law § 837-x does not specifically direct Respondent not to accept Texas's motion for filing, there is no need for the Court to reach the question of whether the Full Faith and Credit Clause requires him to do so. The meaning and constitutionality of Executive Law § 837-x should be determined, if at all, in the proceeding Texas seeks to file, not prejudged by Respondent before filing takes place. But if the Court sees no other option but to construe Executive Law

§ 837-x to prohibit Texas's filing, the law would be unconstitutional as applied to Texas, and Respondent would still have a mandatory duty to file Texas's motion.[4]

New York courts have confirmed that "a decree of a sister State in which [the] parties were subject to personal jurisdiction in that State is entitled to full faith and credit in the courts of New York." *Matter of Kemp v. Kemp*, 687 N.Y.S.2d 782, 783-84 (App. Div. 1999). Respondent does not assert that the Texas court lacked personal jurisdiction over Dr. Carpenter (and he would likely lack standing to do so). Rather, the only constitutional defense he offers (at 12-18) is that Texas's judgment is penal and not subject to the Full Faith and Credit Clause. Not only has the United States Supreme Court never created a penal exception applicable to civil money judgments, but the Texas judgment is not penal—it concerns harm to an individual unborn child rather than the public at large, provides a proportionate monetary award, and includes injunctive relief.

A. The Court can consider Texas's constitutional argument.

Respondent first attempts (at 10-12) to prevent the Court from even considering whether his actions are unconstitutional by arguing that Texas was required to affirmatively challenge the constitutionality of § 837-x in Texas's petition. But Respondent confuses Texas's claim with Texas's arguments in support of its claim, including those made to counter Respondent's own arguments.

Texas is not seeking an independent declaration that Executive Law § 837-x is unconstitutional in this litigation. Indeed, such a freestanding request would likely not fall within an Article 78 proceeding. CPLR 7803. Rather, Texas seeks only an order compelling Respondent to file Texas's motion. Dkt. 4. In support of its claim that Respondent has failed to perform a duty enjoined on him, Texas has many arguments—plain text, constitutional avoidance, absurd results,

[4] If the Court concludes that Texas's petition presents a constitutional challenge to Executive Law § 837-x such that the Attorney General should be notified, Texas will do so. *See* CPLR 1012(b)(3).

access to the courts, and premature judgment of the merits. One additional argument—made in response to Respondent's reliance on § 837-x—is that refusing to file Texas's motion under § 837-x would be unconstitutional under the Full Faith and Credit Clause.

Respondent's duty under CPLR 2102(c) is clear and not excused by § 837-x. But if Respondent insists that § 837-x ties his hands, Texas must be permitted to respond. The Court, however, need not reach the constitutional question because, for the reasons explained above, Executive Law § 837-x does not specifically direct Respondent to refuse to file Texas's motion: "It is hornbook law that a court will not pass upon a constitutional question if the case can be disposed of in any other way." *People v. Felix*, 446 N.E.2d 757, 759 (N.Y. 1983) (citations omitted).

Respondent's citations are not to the contrary, as they explain only that the *facts* establishing a plaintiff's claim must appear in the complaint or petition. *See, e.g.*, *Diamond v. Dougfield, Inc.*, 188 N.Y.S.2d 669, 670 (Sup. Ct. 1959) (referring to "certain facts" in the memorandum that were not in the complaint); *Kallista, S.A. v. White & Williams LLP*, 27 N.Y.S.3d 332, 339 (Sup. Ct. 2016) (explaining that the plaintiff's memorandum "se[t] forth the facts" that went beyond the plaintiff's complaint). Texas's petition sets out all the relevant facts—Texas submitted its motion for filing, and Respondent refused to file it. Dkt. 4 ¶¶ 10-15. Texas's memorandum then makes legal arguments based on those facts. Dkt. 12. Accordingly, Texas has complied with its pleading requirements.

B. The Full Faith and Credit Clause requires New York to domesticate and enforce the Texas money judgment.

The Full Faith and Credit Clause requires New York to recognize the judgment against Dr. Carpenter. U.S. Const. art. IV, § 1. As the United States Supreme Court has explained, "the full faith and credit obligation is exacting." *Baker*, 522 U.S. at 233. Under that Clause, "[a] final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and

persons governed by the judgment, qualifies for recognition throughout the land." *Id.* And despite the difference in the public policies of New York and Texas regarding abortion, the Supreme Court's decisions "support no roving 'public policy exception' to the full faith and credit due judgments." *Id.*

Without the Full Faith and Credit Clause, the States would be "free to ignore obligations created under the laws or by the judicial proceedings of the others." *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 276-77 (1935). But the Clause alters their status and makes them "integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." *Id.* New York is, therefore, not free to ignore the obligation imposed on Dr. Carpenter in a Texas judicial proceeding, even if it concerns actions New York would prefer were legal under Texas law. Texas may demand that New York recognize its judgment.

1. There is no "penal exception" to money judgments.

Respondent relies (at 12-18) on a "penal" exception to the Full Faith and Credit Clause to argue that New York may prohibit Respondent from filing Texas's motion. *See Huntington*, 146 U.S. at 673-74. And while criminal judgments may be appropriately characterized as penal, *id.* at 674-75, money judgments obtained outside criminal proceedings are not.

The Supreme Court has never held that civil money judgments, as opposed to criminal sentences, may be considered sufficiently "penal" such that they can avoid recognition under the Full Faith and Credit Clause. In 1935 (more than forty years after *Huntington*), the Court referred to a "suit upon a judgment for an obligation created by a penal law" and explained that it "intimate[d] no opinion . . . whether full faith and credit must be given to such a judgment even though a suit for the penalty before reduced to judgment could not be maintained outside of the state where imposed." *M.E. White Co.*, 296 U.S. at 279. In 1943, the Supreme Court squarely held that it was

"aware of no such exception [to the Full Faith and Credit Clause] in the case of a money judgment rendered in a civil suit." *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 438 (1943).

Most recently, the Court quoted *Magnolia Petroleum* for the proposition that it is "aware of [no] considerations of local policy or law which could rightly be deemed to impair the force and effect which the full faith and credit clause and the Act of Congress require to be given to [a money] judgment outside the state of its rendition." *Baker*, 522 U.S. at 234 (quoting *Magnolia Petroleum*, 320 U.S. at 438).

These holdings control. The default judgment that Texas seeks to enforce against Dr. Carpenter is a money judgment rendered in a civil suit. Contrary to Respondent's assertion (at 14-15), Texas's criminal and civil penalties for performing abortions are not "housed within the same section of the statute." They are separate statutes. Tex. Health & Safety Code §§ 170A.004, .005. Dr. Carpenter was not subjected to criminal proceedings in absentia for her performance of an unlawful abortion. Rather, she defaulted in a civil lawsuit that imposed civil liability. The Supreme Court has not recognized an exception to the Full Faith and Credit Clause for the money judgment rendered in the civil suit against Dr. Carpenter.

2. The Texas judgment is remedial, not penal.

a. Even if there were a penal exception for money judgments in civil suits, it would not apply here. After surveying years of precedent, the Supreme Court in *Huntington* considered enforceable, as non-penal, "[a] statute of a state, manifestly intended to protect life, and to impose a new and extraordinary civil liability upon those causing death, by subjecting them to a private action for the pecuniary damages thereby resulting to the family of the deceased." 146 U.S. at 675. With one understandable exception, that is what Texas's Human Life Protection Act does. It is "a statute of a state" that is "manifestly intended to protect life" that "impose[s] a new and extraordinary civil liability upon those causing death." Tex. Health & Safety Code §§ 170A.002, .005. The

only difference is that it is the Attorney General, rather than the child's parents, who brings the action. But that substitution makes sense in the context of elective abortion, in which a parent is not likely to seek damages for the death of their child.

New York has applied a similar rule, finding that a statute mandating a minimum recovery of damages following the death of an individual, although penal in one sense, was not penal in the international sense. *Loucks v. Standard Oil Co. of N.Y.*, 120 N.E. 198, 198-99 (N.Y. 1918). The Court of Appeals did emphasize that the recovery went, not to the State, but to the individual's family. *Id.* at 199-200. But again, in the context of abortion, the unborn child's family is unlikely to seek damages, so recovery necessarily must go to the public as a whole. Further, by recognizing a judgment created by a Massachusetts statute, *Loucks* also puts to rest Respondent's argument (at 17) that Texas's judgment is penal because it rests on a statute, rather than a common-law tort. *Id.* at 198.

b. The Sixth and Seventh Circuits have applied a three-part test to distinguish between penal and remedial suits. As those courts have described it, "[t]he distinction between penal versus remedial turns on three factors: '(1) whether the purpose of the action is to redress individual wrongs or wrongs to the public; (2) whether recovery runs to the individual or to the public; (3) whether the authorized recovery is wholly disproportionate to the harm suffered.'" *FTC v. Day Pacer LLC*, 125 F.4th 791, 807 (7th Cir. 2025) (citation omitted), *petition for cert. filed* (U.S. Aug. 4, 2025) (No. 25-129); *Parchman v. SLM Corp.*, 896 F.3d 728, 738 (6th Cir. 2018). Under that test, the balance of the factors confirms that Texas's judgment is remedial, not penal.

First, Texas law addresses individual wrongs, specifically, the death of an identifiable unborn child. The judgment here is not, as Respondent suggests (at 14), "untethered to any harm to any living person." It is tethered to the harm that was experienced by the living unborn child. The only

case Respondent cites that refused to give full faith and credit to a civil monetary judgment on the grounds that it was "penal" had no identifiable victims. *City of Oakland v. Desert Outdoor Advert., Inc.*, 267 P.3d 48, 54 (Nev. 2011) (violation of billboard code).

Second, recovery is to the State in this instance. Tex. Health & Safety Code § 170A.005. But that is only one factor and should not be determinative in the unique context of elective abortion, where the death of the unborn child was likely the desired outcome of one of the parents, who would otherwise be the parties to recover. Moreover, the mere fact that the judgment will go to the State has not been outcome determinative in other situations, such as the payment of taxes, *M.E. White Co.*, 296 U.S. at 279; qui tam recovery, *Healy v. Root*, 28 Mass. 389, 397-98 (1831); or recission of a contract, *Connolly v. Bell*, 141 N.Y.S.2d 753, 762-63 (App. Div. 1955), *modified*, 309 N.Y. 581 (1956).

Third, the authorized recovery of $100,000 is not wholly disproportionate to the harm suffered—the death of an unborn child. Courts have awarded similar or greater amounts when an unborn child has been killed. *See, e.g.*, *Castro v. Melchor*, 414 P.3d 53, 69 (Haw. 2018) ($250,000); *Jones v. Karraker*, 457 N.E.2d 23, 24 (Ill. 1983) ($125,000). And when a parent brings suit for the death of an unborn child, courts typically award far more than $100,000 in emotional distress damages. *Kammer v. Hurley*, 765 So. 2d 975, 977 (Fla. Dist. Ct. App. 2000) ($2.5 million); *Hopkins v. McBane*, 427 N.W.2d 85, 86 (N.D. 1988) ($150,000); *Bullock v. Pace*, 94 S.W.3d 925, 925-26 (Ark. 2003) (per curiam) ($1.5 million compensatory and $3 million punitive). This factor, as well, confirms that the money judgment in Texas's case is remedial and not penal.

Thus, even if the Court were to consider whether Texas's judgment is penal, these factors demonstrate that it is not. Texas seeks to recover for the death of a specific unborn child; there is no other reasonable plaintiff; and the amount owed is certainly proportionate to the taking of a life.

C. The Full Faith and Credit Clause requires New York to domesticate and enforce the Texas injunction.

Finally, Texas's judgment includes injunctive relief. The Supreme Court "has never placed equity decrees outside the full faith and credit domain." *Baker*, 522 U.S. at 234. Although States control "the time, manner, and mechanisms for enforcing judgments," "such measures remain subject to the *evenhanded* control of forum law." *Id.* at 235 (emphasis added). While *Baker* may leave much to be determined about how to enforce an out-of-state injunction, it never suggests that injunctions could be rejected as "penal."

Respondent gives short shrift to this point. He first asserts (at 18-19) that recognition of the injunction is not the true purpose of Texas's motion. But the injunction is equally as important as the monetary award, perhaps even more so, because it should prevent Dr. Carpenter from ending additional unborn lives in Texas. Respondent also suggests (at 19) that prohibiting Dr. Carpenter from violating Texas laws is a punishment because it concerns deterrence, not compensation. But injunctions provide prospective relief, not retrospective punishment. They "prevent a wrong where damages would not give adequate relief." *Osborn v. Bank of U.S.*, 22 U.S. 738, 800 (1824). It cannot be said that Texas is punishing Dr. Carpenter by mandating that she comply with Texas's laws when treating patients in Texas. The injunction is not "penal" and should be recognized by New York.

CONCLUSION

For the foregoing reasons, the Court should deny Respondent's motion to dismiss Texas's Verified Petition.

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CERTIFICATION OF WORD COUNT

I hereby certify that the word count of this memorandum of law complies with the word limits of 22 New York Codes, Rules and Regulations § 202.8-b(a) and the page-limits granted by this Court on September 29, 2025 (Dkt. No. 59) of no more than twenty (20) pages. According to the word-processing system used to prepare this memorandum of law, the total word count for all printed text exclusive of the material omitted under 22 New York Codes, Rules and Regulations § 202.8-b(b) is 6,663 words.

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