Nos. 03-22-00420-CV & 03-22-00587-CV

In the Court of Appeals for the Third Judicial District Austin, Texas

GREG ABBOTT IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS; JAIME MASTERS IN HER OFFICIAL CAPACITY OF COMMISSIONER OF THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; AND THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,

Appellants,

v.

PFLAG, INC.; MIRABEL VOE, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF ANTONIO VOE, A MINOR; WANDA ROE, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF TOMMY ROE, A MINOR; ADAM BRIGGLE AND AMBER BRIGGLE, INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF M.B., A MINOR,

Appellees.

On Appeal from the
201st Judicial District Court, Travis County

APPELLANTS' BRIEF

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STATEMENT OF THE CASE

Nature of the Case: Appellees sued the Governor, the Commissioner of the Department of Family and Protective Services, and the Department of Family and Protective Services (DFPS) to enjoin them from investigating alleged child abuse as discussed in an Attorney General Opinion concluding that certain medical procedures can constitute child abuse under the Texas Family Code.

Trial Court: 353d Judicial District, Travis County
Hon. Amy Clark Meachum presiding
Case No. D-1-GN-22-002569

Course of Proceedings: The trial court issued a temporary injunction against the DFPS and its Commissioner that bars DFPS's investigation into the reports of child abuse against the Roes and Voes. CR.546. It later issued a second temporary injunction doing the same regarding the Briggles and all of PFLAG's members. 2SCR.3-6[1]. DFPS timely noticed interlocutory appeals from each injunction, (CR.535; 2SCR.9), which this Court consolidated.

DFPS's appeal automatically stayed the effect of the temporary injunction. *see* Tex. Civ. Prac. & Rem. Code § 6.001(b); Tex. R. App. P. 24.2(a)(3), 29.1(b). Appellees moved for temporary relief under Texas Rule of Appellate Procedure 29.3 in both appeals. This Court granted Roe and Voes motion, reinstating the effectiveness of the injunction pending the outcome of the consolidated appeal, but has not yet ruled on PFLAG and the Briggle's motion. *See* Order (July 20, 2022).

[1] There are two supplemental clerk's records in this case and one supplemental reporter's record. They are cited as 1SCR, 2SCR, and SRR, respectively.

Statement Regarding Oral Argument

The trial court's temporary injunctions prevent a state agency from carrying out its statutory duty to investigate reported child abuse. An order empowering the courts to superintend the executive branch in this way raises not only significant separation-of-powers questions, but also the questions regarding standing, ripeness, and sovereign immunity. More, Plaintiffs-Appellees' lawsuit rests on a novel interpretation of the Administrative Procedure Act's limited waiver of sovereign immunity. And it depends on a theory of ultra vires that cannot survive; DFPS is well within its statutory authority to investigate claims of child abuse, including claims that children are taking chemicals that alter them physically and mentally. Oral argument would aid the Court in assessing and addressing these important and complex issues.

Introduction

This case was filed because Defendant-Appellant DFPS exercised its statutory authority to investigate reports of possible medical and/or physical abuse based on giving young, nonconsenting children chemicals—chemicals that have known, severe risks—to deliberately, and possibly permanently, alter their bodies and minds. The trial court enjoined DFPS from so much as investigating reported abuse. If a bare denial of wrongdoing warranted an injunction barring the State from so much as investigating alleged child abuse, every DFPS investigation could immediately be enjoined. That would make it impossible for the State to protect Texas's vulnerable children. And that is why courts refuse to enjoin investigations, the very point of which are to determine whether there has been any wrongdoing. But here, the trial court barred DFPS from so much as investigating the possibility of such abuse, not only as to the individual Appellees, but as to anyone who, when faced with such a report, says, "I'm in PFLAG."

The trial court issued those injunctions in the face of serious questions over its subject-matter jurisdiction and the limits of its remedial power—serious questions that the trial court answered wrong. "[T]he need for courts to mind their jurisdictional bounds is perhaps at its greatest in cases" like this, "involving questions of public importance, where the potential for undue interference with the

other two branches of government is most acute." *Morath v. Lewis*, 601 S.W.3d 785, 789 (Tex. 2020).

And the trial court's injunctions went further than enjoining DFPS from investigating reports related to three individual children. The second order issued, in effect, a "statewide" injunction barring DFPS from investigating anyone for a particular type of potential abuse. Judicial power does not extend so far. Any court's authority to issue injunctive relief is limited to remedying a particularized injury to the party before it. The trial court ignored this limitation, entirely prohibiting DFPS—under penalty of contempt—from investigating anyone who claims to be a member of PFLAG or joins PFLAG after learning that they are the subject of an investigation. That is a barely disguised attempt to circumvent Supreme Court guidance emphasizing that courts cannot properly issue injunctions prohibiting DFPS from so much as investigating reported child abuse as to the world at large. The trial court has prohibited DFPS from ensuring the safety and wellbeing of Texas children. That is an abuse of discretion, and the temporary injunction should be vacated.

Issues Presented

1. Does a government agency's investigation into possible wrongdoing cause a cognizable injury sufficient to create standing to sue?

2. Does the Texas Administrative Procedure Act's waiver of sovereign immunity for challenges to "rule[s]" apply to (a) communications between the Governor and an executive agency or to (b) an executive agency's statement to the press about the agency's internal operations?

3. Does a government official act *ultra vires* by exercising discretion conferred by a statute?

4. DFPS has the statutory authority to assess and investigate reports of child abuse. Does an injunction that bars it from doing so upset, rather than maintain, the status quo and therefore constitute an abuse of discretion?

5. Does a court abuse its authority by issuing an injunction that protects against speculative, rather than imminent, harm?

Statement of Facts

The Department of Family and Protective Services (DFPS) is charged with protecting children from abuse, which includes any conduct causing "physical injury that results in substantial harm to the child." Tex. Fam. Code § 261.001(1)(C). As most people accused of child abuse deny wrongdoing, this requires that DFPS be able to investigate reports of abuse. If there is no abuse, that is the end of the matter. If there is, DFPS may ask a court to intervene.

As the Texas Supreme Court recently explained:

> **DFPS does not need permission from courts to investigate**. . . . The normal judicial role in this process is to act as the gatekeeper against unlawful interference in the parent–child relationship, **not to act as overseer of DFPS's initial, executive-branch decision to investigate** whether allegations of abuse may justify the pursuit of court orders.

In re Abbott, 645 S.W.3d 276, 282 (Tex. 2022) (emphasis added). Despite this explicit holding, Appellees continue to seek court intervention to do precisely what the Supreme Court has said not to do: prohibit DFPS from investigating reports of child abuse. Appellees consist of three sets of individuals, each with a transgender child, as well as one national organization, PFLAG, Inc.,[2] which purports to sue on

[2] PFLAG—short for Parents and Friends of Lesbians and Gays—promotes LGBTQ+ advocacy organization and claims approximately 600 members in Texas. *See* CR.7.

behalf of its Texas members. They raise UDJA, *ultra vires*, APA claims and constitutional claims against the Governor, DFPS, and DFPS's Commissioner.

I. Correspondence and Opinions

DFPS is the executive state agency tasked with investigating reports of child abuse. Everyone in Texas is a mandatory reporter and, once a report is made, DFPS has the sole statutory responsibility to "make a prompt and thorough investigation" of that report. Tex. Fam. Code § 261.301(a). Before it can impose consequences beyond an investigation, DFPS generally must seek court orders authorizing it to intervene. *See generally* Tex. Fam. Code § 262.001 *et seq.*

On August 6, 2021, the Governor sent a letter to the DFPS Commissioner inquiring whether genital mutilation (sex reassignment) of a child for purposes of gender transitioning through reassignment surgery constituted child abuse. CR.238–39. The Commissioner responded that surgical sex reassignment of a child "may cause a genuine threat of substantial harm from physical injury to a child" as defined under the Texas Family Code. CR.241–42**.** The response noted that the surgical procedure might not constitute abuse if it were medically necessary. *Id.* The letter concluded by acknowledging that all such allegations would be investigated. *Id.*

A few months later, the Office of the Attorney General of Texas released Opinion No. KP-0401, which concluded that some sex-change treatments and

procedures for minors could constitute child abuse. Op. Tex. Att'y Gen. No. KP-0401 (2022); CR.244–56. In its own words, the "opinion does not address or apply to medically necessary procedures." CR.245. Instead, it focused on elective procedures and treatments that could result in permanent sterilization. The Attorney General opined that in some cases these procedures could constitute child abuse because of a child's inability to provide informed consent for such treatments and procedures. CR.250–51.

Shortly thereafter, the Governor wrote to the Commissioner and directed DFPS to follow the law as explained the OAG opinion by investigating child abuse claims of this nature. CR.258–59 (Letter from the Governor to the DFPS Commissioner (Feb. 22, 2022)).

II. DFPS's Investigatory Process

DFPS is statutorily tasked with determining what falls under the scope of child abuse and with investigating allegations of abuse. Tex. Fam. Code § 261.001(1), (4); CR.278 (Decl. of Stephen Black) at ¶24 ("DFPS generally considers the Opinions of the Attorney General as persuasive authority in the absence of a law or judicial decision ruling otherwise."). After the Attorney General opinion was issued, DFPS,

for the first time, received reports[3] of the use of pubertal blockers and hormone therapy (PBHT) on children. CR.278 at ¶¶24, 26; RR.228:13–17.

DFPS is statutorily authorized to prioritize reports of abuse, *see* Tex. Fam. Code § 261.301(d), and it does so based on the immediacy of the risk and the severity of the possible harm to the child. CR.276 at ¶14. Reports can be categorized as Priority 1 (P1), Priority 2 (P2), or Priority None (PN). *Id.* P1 assignments are for reports that indicate an immediate risk of abuse or neglect to a child that could result in death or serious harm. *Id.* at ¶15. PN assignment occurs where the allegation does not rise to the level of abuse/neglect and, therefore, there is no current safety threat to the child whatsoever. CR.277 at ¶17. DFPS determined that the claims in the reports at issue here—a child receiving medication that is potentially harmful, but not emergently so—would be a P2 assignment and that the other two possible assignments would have been inappropriate. CR.276–77 at ¶¶15–17, 21.

As of the date of the temporary injunction hearing — July 6, 2022 — DFPS had received a total of 11 reports that advanced to investigations regarding the administration of hormone therapy or puberty suppressants to minors. CR.277 at ¶18. DFPS investigated these reports the same as any other report of potential abuse involving a medical concern. CR.278 at ¶28; RR.264:19–20. Reports of a child

[3] A reporter's identity is confidential. *See* Tex. Fam. Code § 261.201(a)(1).

transitioning genders or socially transitioning, without medical intervention, were screened and closed at intake. CR.277 at ¶18. As of August 15, 2022, at least 8 out of the 11 reported cases have been closed—either because the child was not taking PBHT or the child's treating medical providers supplied information sufficient for DFPS verify that the treatments were medically necessary. CR.278 at ¶26; 1SCR.14. Two of those closed investigations were of Appellees here: those of the Roes and the Briggles. *Id*; RR.273:7–10. The results of these cases demonstrate that DFPS has treated reports of minors receiving PBHT like all other cases involving abuse with underlying medical issues or concerns. CR.278 at ¶28.

III. DFPS's Investigations of Appellees

Appellees are PFLAG and three sets of parents: (1) Mirabel Voe, individually and as parent and next friend of Antonio Voe, a minor; (2) Wanda Roe, individually and as parent and next friend of Tommy Roe; and (3) Adam Briggle and Amber Briggle, individually and as parents and next friends of M.B., a minor. Appellees' characterization of how DFPS conducts its investigations and, specifically, how it conducted its investigations of the individual Appellees, is not supported by the evidence in their DFPS investigation records.

The Briggles.[4] Adam and Amber Briggle are the parents of M.B. Briggle, a 14-year-old biological female who identifies as a male. CR.312.[5] [redacted] The DFPS investigation against the Briggles has been closed as "ruled out" and DFPS is not currently investigating them. RR.273:7–10.

The Voes. Plaintiff Mirabel Voe is the mother of Antonio Voe. CR.313. [redacted]

[4] The following sections regarding the Roes, Voes, and Briggles are redacted in the public filing of this Brief in accordance with state law and the Court's order sealing the records (1SCR.3), and information contained therein, of DFPS' investigations into the individual Appellees.

[5] The DFPS investigatory files for the Briggles, Voes, and Roe were filed under seal as Exhibits 6–8 to Defendants' Response to Plaintiffs' Temporary Injunction Motion in the trial court in accordance with its sealing order. Those sealed files were previously made available to this Court concurrent with DFPS' Response to Roe and Voe's Motion for Rule 29.3 relief.

[redacted]

The Roes. Wanda Roe is the mother of Tommy Roe, a biological female who identifies as male. CR.314.[6] [redacted]

[6] *See, supra,* n.3.

[redacted]

On July 26, 2022, the DFPS investigation against the Roes was closed as "ruled out." 1SCR.10. DFPS is not currently investigating the Roes; no investigation can be initiated in the future based on the same allegations already investigated. CR.278 (Black Dec.) at ¶27. Despite having been made aware of this development, the trial court has not since modified its temporary injunction order. 1SCR.10.

Statement of Procedural History

Following a day-long hearing, the trial court issued its ruling on Appellees' temporary injunction application on July 8, 2022. CR.546–549. The trial court granted relief only as to the Roes and Voes—the only parties with active investigations at the time. *Id.* Specifically, it enjoined the DFPS Commissioner and DFPS from further investigating the reports of medical abuse against the Voes and the Roes. *Id.* The trial court did, however, permit DFPS to "administratively close or issue a 'ruled out' disposition in any of these open investigations based on the

information DFPS has to date—if this action require[d] no additional contact with members of the VOE or ROE families." CR.549. The Court did not grant the Briggles or PFLAG a temporary injunction, instead holding those requests "under advisement." CR.547.

Two and a half months later, the trial court granted PFLAG and the Briggles a temporary injunction against DFPS as well. 2SCR.3–6. The trial court granted blanket relief for all 600 PFLAG members, along with anyone who joins PFLAG upon learning they are under investigation. *Id.* The injunction insulates them entirely from any investigation into child abuse where the allegations are "that the person(s) have a minor child who is gender transitioning, or receiving or being prescribed gender-affirming medical treatment." *Id.* DFPS timely appealed both orders. 2SCR.9–11.

Summary of the Argument

This Court should vacate the temporary injunctions. Appellees were required to satisfy four factors to be entitled to an injunction; they satisfied zero.

First, Appellees did not allege a cause of action against DFPS. Their allegations did not state a claim and therefore failed to confer jurisdiction on the trial court. As to all of their claims, Appellees cannot demonstrate they are likely to succeed. To prevail, Appellees require two findings: one, that DFPS operated outside of its

statutory authority; two, that giving a child PBHT is never unsafe. The law and evidence supported neither, and Appellees are no more likely to have the requisite law and evidence at trial. DFPS has the statutory authority to prioritize and investigate reports that it determines could potentially meet the characteristics of child abuse under Texas law. And even Appellees could never rationally argue that there are *no* circumstances in a which giving PBHT to a child could create a risk to the child's health and welfare.

Second, a temporary injunction was not necessary to maintain the status quo. DFPS does not have authority to interfere in parents' medical decision-making unless it goes to court, and it has never claimed otherwise. The status quo when Appellees sued—indeed, the status quo before the gubernatorial letter Appellees complain about—was that DFPS was statutorily authorized to intake, assign a priority to, and investigate a report of potential child abuse. This is exactly what Appellees sought an injunction to prevent, and it is exactly what the temporary injunction does: disturb, rather than preserve, the status quo.

Finally, there is no evidence that Appellees face an imminent, irreparable harm. The only harms they have identified are speculative and they have no evidence to support even those. The evidence before the trial court was unchallenged: every investigation of a child taking PBHT that has not been stayed by the courts, and

allowed to be completed, has closed with no abuse found. Appellees' sole basis for claiming irreparable harm—the risk of being registered as child abusers based *solely* on a claim that they are giving their children PBHT—was both directly contradicted by this evidence and entirely unsupported by any other evidence. It has become even less of a likelihood during this appeal; the Roes' investigation has since been closed as "ruled out."

The trial court erred in issuing Appellees' requested injunctions. That error was an abuse of discretion. The temporary injunction should be reversed.

ARGUMENT

The temporary injunction should be vacated because Appellees did not carry their heavy burden to obtain the extraordinary remedy of injunctive relief. Appellees had a duty to "plead and prove three specific elements: (1) a cause of action against the defendants; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). They did not.

I. APPELLEES HAVE NOT ALLEGED A CAUSE OF ACTION.

Appellees did not plead a cause of action against DFPS that conferred jurisdiction on the trial court. Because a court that lacks subject-matter jurisdiction

cannot enter injunctive relief "even temporarily," the trial court's injunction was error. *In re Abbott*, 601 S.W.3d at 805.

A. Appellees Lack Standing.

Texas's standing requirements parallel the federal ones: a plaintiff must allege a "personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Tex. Propane Gas Ass'n v. City of Houston*, 622 S.W.3d 791, 799 (Tex. 2021).

1. *The Individual Appellees Lack Standing.*

The individual Appellees mere allegation that they were being investigated by DFPS did not show an actual or imminent injury. The bare existence of an investigation is not a legally cognizable injury. *See Laird v. Tatum*, 408 U.S. 1, 9 (1972). A constitutionally cognizable "injury" may arise later—for example, if DFPS were to seek a subpoena. But the "theoretical possibilit[y]" that such a thing might occur in the future is not enough to establish standing now. *In re Gee,* 941 F.3d 153, 164 (5th Cir. 2019) (per curiam); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013).

A litigant cannot "claim[] a hypothetical or possible impairment of rights because of a rule or its possible application" because doing so "calls for an advisory opinion," which a court does not have jurisdiction to issue. *Fin. Comm'n of Tex. v.*

Norwood, 418 S.W.3d 566, 592 (Tex. 2013) (Johnson, J., concurring). To demonstrate standing to challenge a rule, "[a] plaintiff['s] pleadings must contain more than conclusory statements that their rights have been or probably will be impaired." *Id.* They must instead allege "facts showing how a particular rule has already interfered with the plaintiff['s] rights or how that rule in reasonable probability will interfere with the plaintiff['s] rights in the future." *Id.* (citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993)).

This Court has already recognized as much when it held in *Texans Uniting for Reform & Freedom v. Saenz* that, "[t]o have standing to challenge a governmental action . . ., a claimant generally must demonstrate that he has suffered a **particularized injury** distinct from that of the general public." 319 S.W.3d 914, 919 (Tex. App.—Austin 2010, pet. denied) (emphasis added) (citing *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555–56 (Tex. 2000)). As the Supreme Court explained in *Bland*, "[g]overnments cannot operate if every citizen who concludes that a public official has abused his discretion is granted the right to come into court and bring such official's public acts under judicial review." 34 S.W.3d at 555 (quoting *Osborne v. Keith,* 142 Tex. 262 (1944)). Here, none of the Appellees have suffered a "particularized injury," but rather, can only speculate that harm may befall them based on an alleged policy in the future.

Waco ISD v. Gibson illustrates the distinction. 22 S.W.3d 849 (Tex. 2000). There, parents sued the school district sued over a policy that set testing standards that would determine whether and how students would be promoted to the next grade. *Id.* at 850. When the suit was filed, no student had actually been promoted to or retained in a particular grade. *Id.* Instead, the district had sent letters informing parents that particular students were at "risk of retention" based on projected test scores. *Id.* at 852.

The Texas Supreme Court reversed the appellate court's determination that the plaintiffs had alleged a concrete injury sufficient to confer standing. *Id.* "When th[e] lawsuit was filed, no student . . . had been retained or given notice of retention." *Id.* Instead, "the alleged harm to the students caused by retention was still contingent on uncertain future events[.]" *Id.* And that meant the impact of the policy "was only hypothetical when the suit was filed; it may not occur as anticipated or may not occur at all." *Id.* The possible threat that the policy would cause students to be retained was, therefore, not a concrete injury. *Id.*

So too here. Both now and when this suit was filed, Appellees' alleged harm—that DFPS would find child abuse occurred based solely on allegations that a child is transgender and taking PBHT (CR.33 ¶103; CR.75 ¶287)—is nothing more than a hypothetical future risk. Indeed, the evidence is to the contrary. First, none of the

individual Appellees have become the subject of an investigation based *purely* on the fact that their child is transgender and receiving PBHT. None of the individual Appellees or PFLAG members have actually had a finding of child abuse issued on such a basis. Moreover, *none* of the existing investigations based on such claims have resulted in court intervention or placement on the child-abuse registry, as described further in Argument § II.B. Even the trial court, that ultimately found the mere presence of an investigation to constitute an injury, later noted it actually understood the distinction. 1RR.16:23-24 ("in general, when there's a CPS investigation, **we don't have court action**.") (emphasis added). The only conclusion is that future placement on the registry "may not occur as anticipated" or even "occur at all." *Waco ISD*, 22 S.W.3d at 852. And, given that "DFPS will not investigate new reports involving the same allegation that has already been investigated," CR.278 at ¶27, Appellees and PFLAG members whose investigations have been closed have *no* basis to claim a possible future harm.

2. *PFLAG Lacks Associational Standing.*

As the individual Appellees lack standing, PFLAG lacks associational standing. An association has standing to sue on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted

nor the relief requested requires the participation of individual members in the lawsuit." *Texas Ass'n of Bus.*, 852 S.W.2d at 447 (quoting *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)). None of those conditions are present here.

a. PFLAG's members lack individual standing.

First, PFLAG's members do not have standing to sue in their own right. The purpose of this requirement is "to weed out plaintiffs who try to bring cases, which could not otherwise be brought, by manufacturing allegations of standing that lack any real foundation." *New York State Club Ass'n v. City of New York,* 478 U.S. 1, 9 (1988). As discussed above, none of the Appellees, all of whom are PFLAG members, are suffering a cognizable harm. *See* Argument § I.A.1. There are no court orders or requests for court orders pending against them, much less pending against them based on the sole claim that one of their children is taking PBHT. All that is currently occurring—and, at this point, only to Appellee Voe—is an investigation. If the fruits of an investigation lead the agency to take further action, a court must determine whether the agency may do; courts do not squelch the investigations themselves because a subject denies culpability. If the mere presence or threat of an investigation by DFPS were sufficient for a subject of that investigation to not only

have standing but to then use that standing to *halt* the investigation, DFPS would be unable to investigate anything.

Moreover, PFLAG fails this prong because it does not identify members actually injured or facing imminent injury. To obtain a preliminary injunction, a plaintiff must make a "clear showing" of standing, which requires that PFLAG submit evidence of specific members who would have standing to sue. *See Barber v. Bryant*, 860 F.3d 345, 352 (5th Cir. 2017); *Campaign Legal Center v. Scott*, 49 F.4th 931, 938 (5th Cir. 2022) (organization did not have standing to sue where "[a]t best, they might at some future date seek to vindicate the rights of third part[ies] whom they (and their counsel) do not represent").

PFLAG does no such thing. PFLAG merely claims its members are being harmed by virtue of a policy that "subject[s] [them] . . .to the peril and stigma of being labeled a 'child abuser' and having the child removed from the parent's care." CR.38 ¶108. But the only five members PFLAG mentions—the individual Appellees, Samantha Poe, and Lisa Stanton—have not been subject to a "child abuser" label or had their children taken from them. *See* CR.37–39. PFLAG does not identify any members who *have* had that occur or are in imminent danger of it occurring. *See id.* "[T]o establish associational standing, general references to members are usually insufficient." *Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d

681, 692 (Tex. 2022). Thus, neither PFLAG's reliance on named members who have not suffered harm nor its general reference to "[o]ther current and future PFLAG members with transgender or nonbinary children," CR.35 at ¶107, satisfies the first associational standing prong.

b. The interests PFLAG seeks to protect are not germane to its purpose.

PFLAG also fails to meet the second requirement of associational standing: that the interests it seeks to protect are germane to its purpose. *Tex. Ass'n of Bus.*, 852 S.W.2d at 447. "[T]o satisfy this element, the interest that is germane to the organization's purpose 'must also relate to the interest by which its members would have standing to sue in their own right.'" *Abbott*, 647 S.W.3d at 694 (quoting *Save Our Springs All., Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 886 (Tex. App.—Austin 2010, pet. denied)).

For example, in *Save Our Springs All., Inc. v. City of Dripping Springs*, an organization (SOS Alliance) that was formed to protect the Edwards Aquifer and to prevent and reverse pollution of Barton Springs claimed associational standing to challenge a city's development agreements. 304 S.W.3d 871, 886 (Tex. App.—Austin 2010, pet. denied). That claim, however, was based on injuries to SOS Alliance's members that were unrelated to increased pollution to the aquifer, such as increased traffic and decreased property values. 304 S.W.3d at 886. Because the

members' interests that gave them individual standing to bring the claims asserted were not themselves germane to SOS Alliance's purpose, SOS Alliance could not satisfy the second prong of associational standing. *Id.* at 886–87.

Here, members of PFLAG would presumably have standing to sue in their own right if they suffered an injury in the form of being placed on the child-abuse registry or having their child removed from their home. But PFLAG is not an organization whose purpose is to assist parents from being wrongfully labelled child abusers. It claims its purpose is "[t]o create a caring, just, and affirming world for LGBTQ+ people and those who love them." *PFLAG*, https://pflag.org/ (last visited Oct. 4, 2022). In other words, PFLAG cannot satisfy the second prong of associational standing based on its members' general concerns about "a caring, just, and affirming world" while satisfying the first prong solely based on certain members' unrelated concerns about being found to have abused their child. *See Abbott*, 647 S.W.3d at 694.

c. This suit requires participation by individual members.

Finally, the claims asserted and relief sought in this case require individual members to participate in this lawsuit themselves. Associational standing exists only if neither the claims asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt,* 432 U.S. at 343. PFLAG's claims,

however, require individuals' participation to demonstrate both an injury and entitlement to the requested relief.

Indeed, all of PFLAG's claims require individual participation. PFLAG's claims will require its affected members to participate in the litigation if they are to demonstrate the particular injuries they have suffered and the relief they are entitled to. *Warth v. Seldin*, 422 U.S. 490, 515–16 (1975) (association lacked standing to sue because "whatever injury may have been suffered is peculiar to the individual member concerned, and both the fact and extent of injury would require individualized proof"). Any claim to the contrary is belied by the fact that three of PFLAG's members are individual parties in this suit making individualized allegations about the investigations they underwent. That the Briggles, whose investigation is now closed, did not immediately receive temporary injunctive relief while the Voes and Roes did further indicates that any relief in this case will need to be determined on an individual, not mass, basis. 2SCR.3–8.

Moreover, no two reports received or investigations conducted by DFPS are exactly the same. It cannot be the case that this Court would affirm a trial court order that effectively deprives DFPS of its statutory discretion to determine the proper action to take on reports of child abuse. Determining whether a PFLAG member is

being harmed, in what way, and the appropriate relief requires an inquiry tailored to each potential victim, not an averaging or agglomeration of disparate situations.

But this is precisely what the trial court's second injunction allows to happen by giving PFLAG an injunction that shields all of its members without the prerequisite of demonstrating a harm. Such is not a benefit granted to parties by way of associational standing. Instead, "[i]f in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association **actually injured**." *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 553 (1996) (quoting *Warth v. Seldin,* 422 U.S. 490, 515 (1975)). Providing relief to *all* PFLAG members regardless of the individual harm they do, or do not, suffer, violates this long-standing precedent. In other words, even if PFLAG had identified certain members with standing to sue, it could obtain, at most, an injunction preventing DFPS from investigating *those members*.

In addition to this fundamental issue with the trial court's PFLAG injunction, the Supreme Court previously prohibited this Court from granting relief to parties that were not before it, with the goal of providing statewide relief, in the *Jane Doe* companion case. *In re Abbott*, 645 S.W.3d at 283. That ruling makes sense. It would violate the basic tenets of law to issue an order meant to provide relief to *non-parties*

in a suit. *See, e.g.*, *In re Target Corp.*, No. 02-21-00120-CV, 2021 WL 3144481, at *2 (Tex. App.—Fort Worth July 26, 2021, no pet.) ("A trial court does not possess jurisdiction over an entity that is not a party to the lawsuit.").

Moreover, a broad injunction as to all Texas citizens does nothing to inform DFPS of what actions it is actually prohibited from undertaking and against whom. This goes against "the obvious purpose of [Rule 683,]" which "is to adequately inform a party of what he is enjoined from doing and the reason why he is so enjoined." *In re Krueger*, No. 03-12-00838-CV, 2013 WL 2157765, at *5 (Tex. App.—Austin May 16, 2013, no pet.) (mem. op.) (citing *El Tacaso, Inc. v. Jireh Star, Inc.*, 356 S.W.3d 740, 744 (Tex. App.—Dallas 2011, no pet.)).

Here, PFLAG's presence creates the exact same statewide injunction that Jane Doe, similarly situated to the individual Appellees, was already denied. After all, PFLAG states it has "600 members" throughout Texas, which, alone, allows any relief granted to it to operate on a statewide basis. Moreover, the trial court's temporary injunction order does not require PFLAG to actually provide proof of membership. Thus, those 600 members will inevitably increase given that there is nothing to prevent any person from simply uttering the phrase "I'm a PFLAG member" to a DFPS investigator to immediately freeze efforts to investigate reported child abuse. *See* 2SCR.3–8. And for those that do not utter those words

despite being, or becoming, PFLAG members necessarily place DFPS in the position of having unknowingly violated the court's order as a result of its vagueness. *Drew v. Unauthorized Practice of Law Comm.,* 970 S.W.2d 152, 156 (Tex. App. —Austin 1998, pet. denied) ("[t]he injunction must spell out the details of compliance in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed upon him.").

What's more, to the extent the court's temporary injunction order allows parents to join as PFLAG members *after* the date of entry of the order and receive relief under the order—it clearly does—this creates an additional problem. An individual's injury in fact "cannot be imputed to [an] association for purposes of standing" if he "was not a member of [the association] when [the incidents at issue] occurred." *Nat. Arch & Bridge Soc'y v. Alston*, 209 F. Supp. 2d 1207, 1219 (D. Utah 2002). To hold any differently creates an absurd result: members can avoid being bound by unfavorable court rulings or a final judgment but join the organization after the fact if the organization succeeds.

As the trial court's injunction granted to PFLAG suffers from the very same maladies as the statewide injunction previously sought, it should be vacated just as its predecessor was.

B. The Roe and Briggle Claims are Moot.

A trial court lacks jurisdiction to hear Roe and Briggle's claims because they are moot. A case becomes moot when a justiciable controversy between the parties ceases to exist or when the parties cease to have a legally cognizable interest in the outcome. *See Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001). When a case becomes moot, the court loses jurisdiction, because any decision would constitute an advisory opinion that is "outside the jurisdiction conferred by Texas Constitution article II, section 1." *Matthews v. Kountze Indep. Sch. Dist.*, 484 S.W.3d 416, 418 (Tex. 2016); *see also Iweanya v. Nat'l Alumni Ass'n of Queen's Sch. Enugu USA, Inc.*, No. 14-21-00311-CV, 2022 WL 4376744, at *3 (Tex. App.—Houston [14th Dist.] Sept. 22, 2022, no pet. h.). If a case is, or becomes, moot, the court must vacate any order or judgment previously issued and dismiss the case for want of jurisdiction. *See Speer v. Presbyterian Children's Home & Serv. Agency*, 847 S.W.2d 227, 229–30 (Tex. 1993); s*ee also Texas Quarter Horse Ass'n v. American Legion Dep't of Tex.*, 496 S.W.3d 175, 180–82 (Tex. App.—Austin 2016, no pet.) (discussing justiciability doctrines including mootness).

As discussed further in Argument § I.C, an investigation is not a "live controversy." But even if it were, that would not confer jurisdiction over Roe's and Briggle's claims as DFPS has already closed those investigations—and done so with

a "ruled out" determination in each one. 1SCR.10; RR.273:7–10. A "ruled out" finding means that DFPS did not find abuse or neglect of the child. RR.234:8–10. Other than conclusory assertions to the contrary, nothing in the record suggests an investigation on the same allegations will occur in the future. Indeed, the *only* evidence in the record demonstrates that an investigation *cannot* occur in the future. RR. 221:8–15; CR.278 at ¶27; *see Tex. State Bd. of Veterinary Med. Examiners v. Jefferson*, No. 03-14-00774-CV, 2016 WL 768778, at *5 (Tex. App.—Austin Feb. 26, 2016, no pet.) (noting, when finding case was moot, the significance that counsel for agency defendant assured the Court that the agency would not institute new disciplinary proceedings against the plaintiff for the same conduct, absent some material change in circumstances).

Even if there were some possibility the same investigation would re-occur, the result would not change. There is no actual threat of a future investigation currently; therefore, Appellees must ask this Court to engage in pure speculation as to when, and under what circumstances, a future investigation could occur. Speculation does not resolve a mootness problem because "an action does not vest a court with the power to decide hypothetical or contingent situations." *Robinson v. Alief Indep. Sch. Dist.*, 298 S.W.3d 321, 324 (Tex. App.—Houston [14th Dist.] 2009, pet. denied). And the fact that investigations occurred in the past does not change that. *See, e.g.,*

Williams v. Lara, 52 S.W.3d 171, 184 (Tex. 2000) (past exposure to illegal conduct does not present a controversy conferring jurisdiction if unaccompanied by continuing, present, adverse effects). Neither Roe nor Briggle can obtain injunctive or declaratory relief in this case because any live controversy they once had no longer exists.

C. Appellees' Claims Are Not Ripe.

To the extent Voe or PFLAG's claims rest on the fact that they have ongoing investigations where the possibility exists that DFPS might take action against them in the future, the court lacks subject-matter jurisdiction because those claims are not ripe. Ripeness is a threshold issue that implicates the trial court's subject matter jurisdiction. *Waco ISD*, 22 S.W.3d at 851; *Rea v. State*, 297 S.W.3d 379, 383 (Tex. App.—Austin 2009, no pet.). A claim is ripe if, at the time the lawsuit was filed, the facts involved show that "'an injury has occurred or is likely to occur.'" *City of Austin v. Whittington*, 385 S.W.3d 28, 33 (Tex. App.—Austin 2007, no pet.) (quoting *Patterson v. Planned Parenthood of Houston & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998)). In other words, there must be a concrete injury for the claim to be ripe. *See Atmos Energy Corp. v. Abbott*, 127 S.W.3d 852, 857 (Tex. App.—Austin 2004, no pet.). A case is not ripe when its resolution depends on contingent or hypothetical facts, or upon events that have not yet come to pass. *City of Austin*, 385 S.W.3d at 33.

To determine whether a plaintiff's claims are ripe, courts look to the facts and evidence existing when the suit was filed. *Lindig v. City of Johnson City*, No. 03-08-00574-CV, 2009 WL 3400982, at *5 (Tex. App.—Austin Oct. 21, 2009, no pet.) (mem. op.) (citing *Waco ISD*, 22 S.W.3d at 851–52). Courts review "the entire record to ascertain if any evidence supports the trial court's subject matter jurisdiction." *Perry v. Del Rio*, 66 S.W.3d 239, 260 (Tex. 2001); *see also Waco ISD*, 22 S.W.3d at 853. A trial court lacks jurisdiction if the plaintiff "cannot demonstrate a reasonable likelihood that the claim will soon ripen." *See Drexel Corp. v. Edgewood Dev., Ltd.*, 14-13-00353-CV, 2013 WL 5947007, at *3 (Tex. App.—Houston [14th Dist.] Nov. 7, 2013, no pet.) (internal quotations omitted).

Declaratory judgment actions are subject to a ripeness review. *See Firemen's Ins. Co. of Newark, N.J. v. Burch*, 442 S.W.2d 331, 333 (Tex. 1968) (Declaratory Judgments Act does not empower courts to issue advisory opinions). Texas courts have held that a declaratory judgment action is premature if other proceedings that will affect the parties' respective rights remain pending. For example, in *Rea*, a Texas Medical Board investigation and expert panel concluded that Rea, a physician, likely violated the Texas Medical Practice Act. 297 S.W.3d at 381. While the State Office of Administrative Hearings ("SOAH") was considering the Board's complaint against the physician, he sued for a declaratory judgment that the Board violated the

APA and his constitutional rights during its investigation. *Id.* at 382. This Court rejected those claims as unripe because there was no final agency action. *Id.* at 383–84. The Court explicitly rejected the contention that being investigated by the Texas Medical Board and being made a party to an enforcement action at SOAH, despite the associated time and costs, were concrete harms entitling the physician to sue. *Id.* at 384.

This Court's ruling in *Gates* is even more on point. There, this Court similarly rejected a plaintiff's claim—that DFPS's investigation of reported child abuse, which resulted in her placement on its central child abuse registry, violated her rights—as unripe because the administrative appeals process challenging that designation was ongoing. *Gates v. DFPS*, No. 03-11-00363-CV, 2013 WL 4487534, at *1 (Tex. App.—Austin Aug. 15, 2013, pet. denied) (mem. op.). This Court concluded the claims were not ripe because "the parent's relationship with her children was not legally affected by [DFPS's] actions." *Id.* at *4 (citing *L.C. v. DFPS*, No. 03-07-00055-CV, 2009 WL 3806158 (Tex. App.—Austin Nov. 13, 2009, no pet.). The plaintiff "did not lose custody or visitation of her children or otherwise have her parental rights affected in any way." *Id.* Finally, "[w]hatever disruption or disintegration of family life the [parent] may have suffered as a result of **[a] child abuse investigation does not, in and of itself, constitute a constitutional**

deprivation." *Id.* at 5 (quoting *Croft v. Westmoreland Cnty. Children & Youth Servs.*, 103 F.3d 1123, 1125–26 (3rd Cir.1997)) (emphasis added). Appellees have never distinguished *Gates* nor can they; this Court has no reason to deviate from its finding in *Gates* when ruling in this case.

Appellees' claims, like those in *Rea* and *Gates*, are not yet ripe because no court order affects their parent-child relationships. DFPS is required to investigate reports of child abuse and neglect; however, it generally does not have the authority to intervene in the parent-child relationship without a court order. *See* DFPS Handbook Ch. 5000 (CPS Legal Functions); *see also* Tex. Fam. Code § 261.501 (protective orders); *id.* at § 262.101 *et seq.* (taking possession of a child). Thus far, DFPS has closed nearly all cases involving the provision of PBHT to minors with a finding of "ruled out." CR.278 at ¶26. The cases that remain are only unresolved because the Court has either enjoined DFPS from completing its investigations, or the families are refusing to cooperate with the investigations. No court proceedings have been initiated to remove any children. Unless, and until, DFPS obtains a final court order affecting their parent-child relationships, Appellees' claims are not yet ripe for review.

Alternatively, Appellees' claims are not yet ripe for review because DFPS has not made even an *initial* determination that they engaged in child abuse. *Rea*, 297

S.W.3d at 383–84 (finality requirement—in the context of ripeness—concerns whether initial decision-maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury). Here, the initial decision-maker, DFPS, has not arrived at a definitive position that would inflict concrete harm on the Appellees, so Appellees' claims are not yet ripe. Unless, and until, DFPS concludes that Appellees engaged in child abuse and then seeks court intervention, their claims are not yet ripe.

D. Appellees' Claims are Barred by Sovereign Immunity.

Appellees' claims cannot overcome sovereign immunity. Appellees asserted claims for (1) violations of APA; (2) *ultra vires* acts by the Governor and the Commissioner; (3) violations of substantive due-process rights; and (4) violations of various aspects of the Texas Constitution. CR.53–74. This may no longer be true; Appellees made clear at the temporary-injunction hearing that "**this is an APA challenge**. It is a rule of general applicability that . . . plaintiffs are alleging that defendants violated. It is not about any individual disposition of a case. It's about the procedural and substantive violations of the Administrative Procedures Act." RR.16:14–19 (emphasis added). Appellees' counsel went on to stress the same point throughout the hearing that this suit involves only an APA challenge. *See*, *e.g., id.* at RR.24:13–15, 26:9–13, 28:1–11,276:1–6.

DFPS nonetheless addresses all of Appellees' potential claims, none of which can overcome sovereign immunity.

1. *The DFPS Commissioner is Immune from Appellees' APA Claim.*

"Not every statement by an administrative agency is a rule for which the APA prescribes procedures for adoption and for judicial review." *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 443 (Tex. 1994). For APA purposes, a "rule" is "a state agency statement of general applicability that: (i) implements, interprets, or prescribes law or policy; or (ii) describes the procedure or practice requirements of a state agency." Tex. Gov't Code § 2001.003(6)(A). Under that definition, DFPS's press statement that it would follow Texas law as explained in Opinion KP-0401 is not a rule, and the Appellees' argument that it is invalid because it did not go through the formal rulemaking process, CR.51 at ¶217, is wrong.

The DFPS statement was not a rule because it was not a statement of general applicability that implements, interprets, or prescribes a law or policy. *Id.*; *R.R. Comm'n of Tex. v. WBD Oil & Gas Co.*, 104 S.W.3d 69, 79 (Tex. 2003) (the term "general applicability" under the APA references "statements that affect the interest of the public at large such that they cannot be given the effect of law without public input," as contrasted with statements made in determining individual rights). The DFPS statement at issue in this case merely stated that the agency would

"follow Texas law as explained in Attorney General opinion KP-0401 . . . [and] if any such allegations are reported to us they will be investigated under existing policies." Texas law already prohibits female genital mutilation, Tex. Health & Safety Code § 167.001; impairing a child's growth and development, Tex. Fam. Code § 261.001(1)(a); and allowing, permitting or encouraging a child to use a controlled substance, such as testosterone, *id.* § 261.001(k). So the DFPS statement cannot be said to be implementing, interpreting, or prescribing a *new* law or policy. On the contrary, this is exactly the type of "informal agency statement that does no more than merely restate its own formally promulgated rules would not in itself be a rule." *Teladoc, Inc. v. Tex. Med. Bd.*, 453 S.W.3d 606, 616 (Tex. App.—Austin 2014, pet. denied); *accord Texas Dep't of Pub. Safety v. Salazar*, 304 S.W.3d 896, 904 (Tex. App.—Austin 2009, no pet.) (DPS internal memorandum prescribing that drivers' licenses will include statement of bearer's immigration status "merely reiterates" rule already imposing that requirement). The DFPS statement merely said that it would continue to comply with the law, as interpreted by the Attorney General—it did not create a rule.

Moreover, a ruling otherwise would lead to the absurd result that a state agency that relies on an Attorney General opinion quietly does *not* adopt a rule until it publicly acknowledges that it is doing so. Tex. Gov't Code § 2001.003(6)(A)

(defining a "rule" as "a state agency statement"). The Attorney General is authorized to issue opinions by the Texas Constitution and the Texas Government Code. *See* Tex. Const. art. IV, § 22; Tex. Gov't Code § 402.042–.043. The opinions of the Attorney General are not controlling authority, *Skypark Aviation, LLC v. Lind*, 523 S.W.3d 869, 874 (Tex. App.—Eastland 2017, no pet.), and are not binding on the courts, *In re Texas Dep't of State Health Servs.*, 278 S.W.3d 1, 4 (Tex. App.—Austin 2008, no pet.), but may be considered as persuasive, *id.*, and are entitled to great weight, *Plainview Indep. Sch. Dist. v. Edmonson Wheat Growers, Inc.*, 681 S.W.2d 299, 302 (Tex. App.—Amarillo 1984, writ ref'd n.r.e.), and careful consideration, *Treadway v. Holder*, 309 S.W.3d 780, 785 (Tex. App.—Austin 2010, pet. denied). State agencies regularly rely on the Attorney General's opinions interpreting the law. Never before has a court required an agency to go through a formal rulemaking process before it can do so; Appellees ask this Court to radicalize Texas administrative law by becoming the first. There is no warrant to do so in the Administrative Procedure Act or Texas precedent. It would render superfluous the Constitutional and statutory grant of power to the Attorney General to issue opinions. It would upset decades of Texas jurisprudence and the agency practice that has arisen in reliance upon it. The Court should reject the Appellees' invitation to institute this change.

Alternatively, even if the press statement could be considered a rule, it would fall within an express exception. The APA excludes from the definition of "rule" a "statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures." Tex. Gov't Code § 2001.003(6)(C). "[S]uch statements have no legal effect on private persons absent a statute that so provides or some attempt by the agency to enforce its statement against a private person," neither of which applies here. *Brinkley v. Tex. Lottery Comm'n*, 986 S.W.2d 764, 770 (Tex. App.—Austin 1999, no pet.). "Although the distinction between a 'rule' and an agency statement that concerns only 'internal management or organization . . . and not affecting private rights' may sometimes be elusive, the core concept is that the agency statement must in itself have a binding effect on private parties." *Slay v. Tex. Comm'n on Envtl. Quality*, 351 S.W.3d 532, 546 (Tex. App.—Austin 2011, pet. denied) (footnote omitted).

At most, the press statement about which Appellees complain suggests that DFPS applies the law as set out in the Attorney General's opinion when investigating and identifying child abuse. That would not "itself have a binding effect on private parties." *Id.* In the child-abuse context, private rights may be affected when an abuser is found guilty of a crime or when a child is removed from a home, but the press statement does neither of those things. Even if the press statement itself caused

investigations (and there is no reason to think it has or will), an investigation does not affect private rights. *See Laird*, 408 U.S. at 9. Investigations are what the agency does to determine whether it would be proper for it to try to convince a decisionmaker—a Texas judge—to affect private rights. So too here. The press statement does not bind the agency to any attempt to affect private rights, much less any determination about a particular complaint. And the fact that an individual would prefer not to be investigated for child abuse does not mean that private rights have been affected, much less determined. *See Gates*, 2013 WL 4487534, at 5.

2. *Appellees' Ultra Vires Claims Lacks Merit.*

An *ultra vires* action succeeds only if a plaintiff proves that an "'officer acted without legal authority or failed to perform a purely ministerial act.'" *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017) (cleaned up). Neither the Governor's letter nor the Commissioner's agreement with it meets this standard, and Appellees therefore do not overcome sovereign immunity.

Appellees incorrectly insist the Governor's letter was ultra vires and that the Commissioner acted ultra vires by "implementing" the Attorney General's legal analysis. CR.59-66. The Supreme Court has already reviewed the Governor's letter at issue here, as well as the Attorney General opinion to which it refers, and found that "[t]he Governor and the Attorney General were certainly well within their

rights to state their legal and policy views on this topic." *In re Abbott*, 645 S.W.3d at 281. There is nothing *ultra vires* about the Governor's decision to send a letter to DFPS.

In any event, the Governor's letter did not cause the injury Appellees claim, namely, DFPS's initiation of investigations. That decision came from DFPS, which continued its investigations into the Voe, Roe, and Briggle allegations even after the Supreme Court's opinion on gubernatorial authority. *Id.* Even if the Governor's letter prompted DFPS to review the law and interpret it consistent with the Attorney General's opinion, there is no chance DFPS mistakenly believed it was bound by that letter. The Supreme Court made certain of that.

Nor did the Commissioner act beyond her authority when she agreed with the Governor's and Attorney General's interpretation of the law. For that to be true, it would have to be true "that any legal mistake is an *ultra vires* act," but that is "[n]ot so." *Hall*, 508 S.W.3d at 241. So long as a mistaken conclusion is not made while "exceed[ing] the scope of [an agency's] authority," it is not *ultra vires*. *Schroeder v. Escalera Ranch Owners' Ass'n, Inc.*, 646 S.W.3d 329, 335 (Tex. 2022). The Legislature granted to DFPS the statutory responsibility to "make a prompt and thorough investigation of a report of child abuse or neglect." *In re Abbott*, 645 S.W.3d at 281 (citing Tex. Fam. Code § 261.301(a)). And "when deciding whether and how

to exercise that authority, DFPS . . . naturally must assess whether a report it receives is actually 'a report of child abuse or neglect.'" *Id.* Even if the Governor, the Attorney General, and the Commissioner were wrong on the law—they were not—the Commissioner's decision to initiate investigations could not be *ultra vires* because it was made while she was exercising authority specifically vested in DFPS: deciding whether a report of potential abuse warrants investigation. *In re Abbott*, 645 S.W.3d at 281 (quoting Tex. Fam. Code § 261.301(a)).

Nor does any decision by the Commissioner to find the Attorney General or Governor's opinions helpful exceed her authority. The Commissioner has the authority to "oversee the development and implementation of policies and guidelines needed for the administration of [DFPS's] functions." Tex. Human Res. Code § 40.027(c)(2). The Commissioner, that is, has the authority to decide that the Attorney General's explanation of the Family Code is persuasive. Appellees' suggestion that this decision violated DFPS's general statutory duty to protect children and support families misinterprets both that duty and the Commissioner's authority; disagreements about discretionary questions or conclusions about the best way to help children cannot be superintended through *ultra vires* suits. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

3. *Appellees' Constitutional Claims Are Barred by Sovereign Immunity.*

Appellees have failed to plead a viable claim under the Texas Constitution, therefore, sovereign immunity bars their suit. *See, e.g., City of Houston v. Johnson*, 353 S.W.3d 499, 504 (Tex. App.—Houston [14th Dist.] 2011, pet. denied) ("[I]f the plaintiff fails to plead a viable claim, a governmental defendant remains immune from suit for alleged [Texas Constitution] violations.").

Appellees' separation-of-powers claim is meritless. The Governor does not, by writing in a letter to DFPS (another executive agency) that it should follow the law as set forth in an opinion of the Attorney General (another executive official), "interfere[] with the state Legislature's sole authority to establish criminal offenses and penalties" *cf.* (CR.65 at ¶264). "The Separation of Powers Clause is violated (1) when one branch of government assumes power more properly attached to another branch or (2) when one branch unduly interferes with another branch so that the other cannot effectively exercise its constitutionally assigned powers." *In re D.W.*, 249 S.W.3d 625, 635 (Tex. App.—Fort Worth 2008, pet. denied). The Governor's letter does neither. It does not purport to change the law in an assumption of power over the Legislature; it notes that the Attorney General's opinion confirmed the state of "**existing** Texas law" and states that "DFPS and all other state agencies must follow the law as explained in OAG Opinion No. KP-

0401." CR.258 (emphasis added). The Supreme Court has already rejected the notion that this violates the law: the Governor "ha[s] every right to express [his] views on DFPS's decisions and to seek, within the law, to influence those decisions[.]" *In re Abbott*, 645 S.W.3d at 281.

Appellees also claim the Commissioner and Governor have usurped the role of the Legislature—and thus violated the separation of powers—by expanding the definition of "child abuse." CR.65-66. Wrong: both the Commissioner and the Governor did no more than give their interpretation of current law dictating what constitutes child abuse. Neither purported to change Texas law; indeed, both explicitly stated they were applying the definition of abuse already codified in the Family Code.

More, as explained further below, *see* Argument § II.A, giving a child PBHT can constitute abuse under current Texas law because PBHT cause—in fact, are prescribed precisely to cause—"material impairment in the child's growth, development, or psychological functioning." Tex. Fam. Code § 261.001(1)(A). The law did not need expanding; giving harmful chemicals with risks to a non-consenting child could constitute child abuse under the law as it stands now. *See* CR.260–272. But even if the Court ultimately disagrees on this point and believes the Commissioner's or Governor's interpretation of the law incorrect, Appellees still

have no separation-of-powers claim. Interpreting the law is not creating law, and the Commissioner and the Governor did only the former.

Nor do Appellees plead a cognizable equal-protection claim. The Texas Constitution's Equal Protection Clause guarantees equal rights and that those rights "shall not be denied or abridged because of sex, race, color, creed, or national origin." Tex. Const. art. I, §§ 3, 3a. Pleading a claim under this clause requires two steps. First, "determine whether equality under the law has been denied." *In re McLean*, 725 S.W.2d 696, 697 (Tex. 1987). Next, determine "whether equality was denied because of a person's membership in a protected class of sex, race, color, creed, or national origin." *Id.*

Appellees cannot satisfy either step. Appellees assert that post-*Bostock*, discrimination on the basis of transgender status entails discrimination based on sex. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1747 (2020); *cf. Tarrant Cnty. Coll. Dist. v. Sims*, 621 S.W.3d 323, 329 (Tex. App.—Dallas 2021, no pet.). But neither the Governor's letter nor the DFPS statement mentions transgender youth, much less suggests that they should be treated differently than non-transgender youth. CR.257-272; Isaac Windes, *Texas AG says trans healthcare is child abuse. Will Fort Worth schools have to report?*, Fort Worth Star-Telegram (Feb. 23, 2022), (https://bit.ly/3tqucsm). And even if they did, the distinction made is not based on

transgender status, but rather on the age of the individual child and the child's medical diagnosis. PBHT, which are endocrine drugs, are not approved by the FDA for use on children with gender dysphoria, which is not an endocrine condition but a psychological one. It does not violate equal-protection rights for DFPS to differentiate between the use of medication on one group of patients[7] and use of the same medication on another, dissimilar group who have a diagnosis that the medication is not approved to treat, nor does it violate equal-protection rights for DFPS to conclude that only one of those uses potentially constitutes child abuse.

Finally, Appellees cannot establish a claim under the Texas Constitution's Due Process clause. Their claim is based entirely on their theory that a government must provide due process before "infring[ing] parental rights."[8] CR.69 at ¶278. Texas provides due process: DFPS cannot interfere with parental rights until it obtains authorization in court, where parents and interested persons have notice and the opportunity to be heard. *In re Abbott*, 645 S.W.3d 276, 282 (citing Tex. Fam. Code § 262.001 *et seq.*) ("Before it can impose consequences on a family beyond an

[7] For example, when a child much younger than the normal age to begin puberty has been diagnosed with central precocious puberty—an endocrine condition—the standard, FDA-approved treatment is to use PBHT to delay puberty until the normal age of onset. *Lupron Prescribing Information*, FDA (available at https://bit.ly/3TojME3).

[8] Appellees also make a due process claim based on "vagueness" alleging that the "new rule" is an "overbroad interpretation of 'child abuse' under the Family Code." CR.70 at ¶274. It is not, for the reasons explained; this claim therefore lacks merit on those same grounds.

investigation, DFPS generally must seek court orders authorizing it to intervene."). Investigations do not violate due process, according to this Court. *Gates*, 2013 WL 4487534, at *4 (holding "parent had not stated a due process violation based upon the Department's procedure in its investigation [into child abuse].").

As explained above, the Governor's letter and DFPS's press statement do not violate anyone's parental rights, and no Defendant has infringed upon those rights. Across the width and breadth of the State, no parents have had their parental rights even threatened through court procedures, much less had their children removed or been placed on the child abuse registry, solely because they were giving their children PBHT as part of a course of medically necessary treatment. This directly contradicts Appellees' claim that Defendants are "criminalizing the act of providing medically necessary care to their children," CR.69 at ¶278—an assertion for which, almost 10 months since the Attorney General's opinion, Governor's letter, and DFPS's statements were issued, Appellees have not uncovered a shred of evidence to support.

4. *The UDJA Does Not Abrogate Sovereign Immunity.*

Finally, the Uniform Declaratory Judgment Act does not help Appellees avoid sovereign immunity. *Contra* CR.61-62. The UDJA does not enlarge courts' jurisdiction beyond an implied, limited waiver of immunity for constitutional

challenges to ordinances or statutes. *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 621–22 (Tex. 2011) (per curiam); *see* Tex. Civ. Prac. & Rem. Code § 37.006(b). Appellees do not challenge an ordinance or a statute; they contend Defendants have misinterpreted a statute. CR.62. The UDJA's limited waiver does not extend to a "bare statutory construction claim[]" like that. *McLane Co., Inc. v. Tex. Alcoholic Beverage Comm'n*, 514 S.W.3d 871, 876 (Tex. App.—Austin 2017, pet. denied); *see Sefzik*, 355 S.W.3d at 622.3.[9]

II. APPELLEES DID NOT DEMONSTRATE A PROBABLE RIGHT TO RELIEF.

Even if the trial court had jurisdiction to hear Appellees' claims, they were not entitled to an injunction because they did not demonstrate a probable right to the relief sought. Appellees "must demonstrate both standing to bring their claims and that the claims will probably succeed on the merits in order to establish a probable right to relief." *Abbott v. Anti-Defamation League Austin, Sw., & Texoma Regions*, 610 S.W.3d 911, 917 (Tex. 2020). "The failure of either showing means a probable right to relief is lacking and a temporary injunction is unavailable." *Id.*

Regardless of what claims Appellees intend to continue pursuing, they must prove two things: First, that administering PBHT to a child can *never* be a form of

[9] And to the extent Appellees mean to invoke the UDJA in support of claims against the Governor or Commissioner, they cannot. The UDJA authorizes suit against governmental units, not *ultra vires* claims against officials. *See Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 77 (Tex. 2015).

child abuse. Second, that DFPS created a "new rule" without the proper procedures or otherwise acted outside its authority under state or federal law. Neither is true.

A. Appellees Cannot Establish the Factual Premise Underlying Their Claims.[10]

Appellees' case fails on the merits based on one primary fact: they did not and cannot prove that PBHT are *always* safe and reversible.[11] Not even their own expert witness would testify that PBHT should be given to any child or even any child diagnosed with gender dysphoria. RR.112:7–13; RR.119:10–19; *see also* CR.122–23 (report of Appellees' expert, Dr. Brady) at ¶71 ("[P]roceeding from pubertal suppression to gender-affirming **can impair** fertility[.]"). This makes sense. Medical abuse is a type of child abuse for a reason—because a medical treatment absolutely necessary for one child can simultaneously be unnecessary for, and indeed actively harmful to, another. PBHT are no exception to this, and Appellees never proved—could not have proved—otherwise.

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[10] Defendants do not concede that giving PBHT to non-consenting children is ever safe or fully reversible. However, the Court does not need to address that issue. This case is about what DFPS is, and has been, statutorily permitted to investigate. For that, this Court only need recognize that there are *some* instances in which PBHT will not be an appropriate medical treatment.

[11] Appellees may have abandoned this bold position, which they recognized was tenuous even when they made it. *Compare* CR.26 (these chemicals are "safe" and "reversible" and "do not cause infertility") *with* CR.24 (chemicals "could impact infertility") *and* Pls.' Rule 29.3 Mot. at 12 (chemicals are "safe, effective, and widely accepted in the medical community"). To the extent they have done so, they acknowledge that they cannot establish the factual premise necessary for to support a temporary injunction and thus acknowledge that it should be reversed.

Instead, Appellees attempted to trivialize the risks of PBHT and harms to misdirect attention from an obstacle they could not, and cannot, overcome: that PBHT have an inherent potential for harm, particularly when used on kids, that can meet the current definition of child abuse. Those possible harms "are *not* trivial and include potential sterility, sexual dysfunction, thromboembolic and cardiovascular disease, and malignancy." CR.320 (report of Defendants' Expert, Dr. Laidlaw). PBHT are **not** unequivocally safe and **not** unequivocally reversible. There is nothing trivial about the potential side effects and complications that can occur when medications meant for *endocrine* conditions are used to treat a child's *psychological* condition.

For example, PBHT directly affects a child's fertility long-term. PBHT can "**permanently** damage the immature sex organs leading to sterilization." CR.330 (Laidlaw Report); *see also* CR.24 (Appellees' acknowledgment that PBHT "could impact fertility"). The very purpose of PBHT are to cause children receiving them to "continue their chronological age progression toward adulthood and yet remain with undeveloped genitalia." CR.340 (Laidlaw Report). This can "lead to sexual dysfunction including potential erectile dysfunction and inability to ejaculate and orgasm for the male. For the female with undeveloped genitalia potential sexual dysfunction may include painful intercourse and impairment of orgasm." *Id.*

Unlike Appellees' theories of how they might be harmed without an injunction, this real potential for long-term damage to children's fertility and sexual function is not speculative. For Lupron, one of the drugs Appellees want this Court to find "perfectly safe" and "reversible,"[12] the FDA "has over 25,000 adverse event reports . . .including more than 1500 deaths" as of 2019. Spears, Darcy, *More women come forward with complaints about Lupron side effects*, KTNV https://bit.ly/3UrjCx6 And Lupron is given not only to children with gender dysphoria, but to sex offenders—because it accomplishes the specific goal of chemical castration. Abigail Shrier, *Affirmative Abandonment*, City Journal (available at https://bit.ly/3oLnzOR). And the use of testosterone, another drug championed by Appellees for use in children, can increase the incidence of, to name a few, ovarian and breast cancer, liver damage, stunted growth, and clotting in the heart. CR.334 (Laidlaw Report); *see also Testosterone, Side Effects* (available at https://bit.ly/3TwUP9v). Less

[12] It is also profitable. Indeed, Lupron's makers have long been aggressive in monetizing it: In 2001, its creator TAP Pharmaceuticals paid $875 million to resolve civil and criminal charges that it engaged in "fraudulent drug pricing and marketing conduct with regard to Lupron," including a $290-million criminal fine resulting from violations of the Prescription Drug Marketing Act. *See Tap Pharm. Prods., Inc. and Seven Others Charged With Health Care Crimes*, U.S. Dep't of Justice Press Release (October 3, 2001), available at https://bit.ly/3JntP9d. This was "the largest criminal fine ever in a health care fraud prosecution." *Id.* Currently, Lupron is produced solely by Japan's Takeda Pharmaceuticals (which was, with Abbott Labs, one of TAP's two former co-owners) and sold in the U.S. solely by AbbVie (an Abbott spin-off). *See AbbVie Endocrine, Inc. v. Takeda Pharm. Co., Ltd.*, No. 2020-0953, 2021 WL 4059793, at *1 (Del. Ch. Sep. 7, 2021).

seriously, but perhaps more noticeably, it can also cause permanent changes to the vocal cords. *Id.*

Additionally, puberty is a time of rapid bone development; it is critical to obtaining "peak bone density or the maximum bone density that one will acquire in their lifetime." CR.330 (Laidlaw Report). "**Any** abnormal lowering of sex hormones occurring during this critical time **will** stop the rapid accumulation of bone and therefore lower ultimate adult bone density." *Id.* at 15 (emphasis added). A person who does not achieve peak bone density is "at future risk for osteoporosis and the potential for debilitating spine and hip fractures as adults." *Id.*

The recent closing of the UK's Tavistock Gender Clinic, a treatment center for gender-dysphoric children, highlights the unknowns and dangers to giving nonconsenting children body-altering chemicals. Tavistock's senior pediatrician, Dr Hilary Cass, took the position that the gender clinic was "not a safe or viable long-term option." John Ely & Laurence Dollimore, *NHS will SHUT its controversial Tavistock transgender clinic for children after damning report warned it was 'not safe'*, Daily Mail Online (Jul. 28, 2022) (https://bit.ly/3FYU4mv). As part of her review of the use of PBHT on children, Dr. Cass found there was "a lack of evidence to support families in making informed decisions about interventions that may have

life-long consequences." *Implementing Advice From the Cass Review*, NHS England (https://bit.ly/3Lgx7M5). She also noted:

> A further concern is that adolescent sex hormone surges may trigger the opening of a critical period for experience-dependent rewiring of neural circuits underlying executive function (i.e. maturation of the part of the brain concerned with planning, decision making and judgement). If this is the case, brain maturation may be temporarily or permanently disrupted by puberty blockers, **which could have significant impact on the ability to make complex risk-laden decisions, as well as possible longer-term neuropsychological consequences**. To date, there has been very limited research on the short-, medium- or longer-term impact of puberty blockers on neurocognitive development.

Ely & Dollimore, *supra* (emphasis added).

The conclusion that PBHT have the high risk of harm is not just the result of one physician's extensive review (though it is that). The FDA has added an explicit warning on pubertal-blocker medication about the risk these chemicals pose to a child's brain. Specifically, their use has been linked to Pseudotumor cerebri—a spontaneous increase of pressure inside the skull that can cause brain swelling, severe headaches, nausea, double vision, and even permanent vision loss. Alec Schemmel, *FDA warns puberty blocker may cause brain swelling, vision loss in children*, ABC News (Jul. 26, 2022) (https://bit.ly/3znDvvK). This risk can manifest anywhere from 3 to 240 days after a child is given pubertal blockers, which is plenty of time for the other risks associated with PBHT to develop.

These are only examples of the actual, irreparable harm with which this Court should concern itself. *See also* CR.360; CR.315 (Dr. Cantor and Dr. Laidlaw's Expert Reports). All the more so because "[t]here do not yet exist prospective outcomes studies either for social transition or for medical interventions for people whose gender dysphoria began in adolescence." CR.397–98 (Cantor Report); *see also* The Cass Review, *Independent review of gender identity services for children and young people: Interim report*, at § 3.34 (Feb. 2022) ("there is very limited follow-up of the subset of children and young people who receive hormone treatment, which limits our understanding about the long-term outcomes of these treatments") (available at https://bit.ly/3t7HA4n).

Even setting aside these medical risks, children with gender dysphoria "outgrow this condition in **61% to 98% of cases** by adulthood" across the large studies of cases.[13] CR.321 (Laidlaw Report); *see also* Kaltiala-Heino, Riittakerttu, *Gender dysphoria in adolescence: current perspectives*, Adolescent Health, Medicine and Therapeutics (Mar. 2, 2018) ("Evidence from the 10 available prospective follow-

[13] "Rates of persistence of gender dysphoria from childhood into adolescence or adulthood vary. . . . In natal males, persistence has ranged from 2.2% to 30%. In natal females, persistence has ranged from 12% to 50%" CR.349 (Laidlaw Report) (citing *American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5). Arlington, VA, American Psychiatric Association, 2013).

up studies from childhood to adolescence . . . indicates that for ~80% of children who meet the criteria for GDC, the GD recedes with puberty.").

In sum, giving PBHT to children risks causing them serious irreversible harm, and a person coercing—or worse, forcing—a child to take those chemicals could potentially be causing "observable and material impairment in the child's growth, development, or psychological functioning" or "physical injury that results in substantial harm," Tex. Fam. Code § 261.001(1)–(3), especially as gender-dysphoric children are more likely than not to return to their biological sex when they reach adulthood, meaning that the child's permanent welfare may be getting sacrificed for an unfulfilled promise of temporary respite.

Simply put, it is not—cannot be—the case that administering PBHT to children is at all times, and for all children, free from risk; it is not—cannot be—the case that the administration of those chemicals is categorically free from abuse. As DFPS's closed investigation demonstrate, child abuse can be ruled out in many such cases, but that does not mean that *none* should be investigated. The Court should not countenance the trial court's conclusion to the contrary, and the temporary injunctions should be reversed.

B. DFPS Investigates These Particular Claims of Child Abuse No Differently than It Does Other Investigations.

That DFPS investigates claims that children are being given chemicals to alter them physically, mentally, and emotionally does not mean it created a new rule or that the Commissioner acted without authority. DFPS did not need a new rule, and the Commissioner did not need to exceed her authority. There is no dispute that "the Legislature has granted to DFPS . . . the statutory responsibility to 'make a prompt and thorough investigation of a report of child abuse or neglect.'" *In re Abbott*, 645 S.W.3d at 281 (quoting Tex. Fam. Code § 261.301(a)). And the Legislature has defined child abuse for DFPS as:

- "mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning." Tex. Fam. Code § 261.001(1)(A).
- "causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning" *Id.* § 261.001(1)(B).
- "physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child." *Id.* § 261.001(1)(D).
- "failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child[,]" particularly by parents, counselors, and physicians. *Id.* § 261.001(1)(D).

As explained above, PBHT have the potential—and, arguably, are intended—to impair a child's growth, development, and psychological functioning. *See, supra.*

And it is in DFPS's statutory authority to make the determination whether such impairment causes a mental, emotional or physical injury to the child.

DFPS's investigations of reports that a child is taking PBHT do not support an *ultra vires* claim even if the Commissioner were wrong—she was not—to conclude DFPS had that authority. "[I]t is not an *ultra vires* act for an official or agency to make an erroneous decision while staying within its authority." *Hall*, 508 S.W.3d at 242–43. "Only when these improvident actions are *unauthorized* does an official shed the cloak of the sovereign and act *ultra vires*." *Id.*

Similarly, DFPS's statement on these investigations was a statement "regarding . . . the internal management or organization of a state agency[.]" *See Slay*, 351 S.W.3d at 547 (challenged policy lacked the required prescriptive element to constitute a rule because "[t]he executive director may . . . announce the manner in which the agency expects to exercise its discretion in future proceedings). Informing the public of the "guidelines" an agency will use "to achieve a level of consistency when similar circumstances [are] present" does "not require a specific result in all cases" and therefore does not create a rule. *See Tex. State Bd. of Pharmacy v. Witcher*, 447 S.W.3d 520, 533 (Tex. App.—Austin 2014, pet. denied).

Appellees make much of the fact that DFPS did not investigate claims that a child was taking PBHT until after the Attorney General's opinion and the

Governor's letter came out. But that is unremarkable. First, DFPS *did not receive* reports of a child taking PBHT before then, RR.228:13–17, so there logically cannot be evidence of how DFPS treated these reports previously. Second, that adults may have found a new and novel way to harm children does not prevent DFPS from investigating those actions as potential child abuse. One can easily imagine examples of reports alleging details of abuse of a child that DFPS had never before received and acknowledge that DFPS would be well within its statutory authority to investigate. Appellees' suggested standard—that DFPS violates the APA or exceeds its legal authority every time it receives a report that someone has found a new way to harm a child—is unworkable and illogical.

That giving children PBHT is a newer phenomenon does not make it beyond DFPS's authority to determine whether abuse has occurred. As explained, giving PBHT to children "can impair" a child physically, mentally, and emotionally. *See* Argument § II.A; *see also* CR.122–23 (Brady expert report) at ¶71 ("[P]roceeding from pubertal suppression to gender-affirming care **can impair** fertility[.]") (emphasis added). Moreover, Appellees agree that PBHT, like any other medication, are not uniformally medically necessary for a child with gender dysphoria. RR.112:21–113; RR.118:20–119:1; RR.122:7–16. Because this is so, investigations into allegations that PBHT are being used to harm children fell within

the statutes under which DFPS operates before the Attorney General or the Governor opined that it is so. 40 Tex. Admin. Code § 707.447, *et. seq.*

Appellees presented no evidence that DFPS is investigating these reports any differently than any other reports involving abuse with underlying medical issues or concerns. The only witness who attempted to testify to the contrary, former DFPS employee, Randa Mulanax, admitted that:

- She had not worked for DFPS since March 2022, four months before Appellees sued. RR.141:17–21.
- She had not been a part of any DFPS intakes, investigations or meetings with supervisors or leadership since before that time. RR.141:22–142:17.
- She "[didn't] have information on any directives that have currently been sent out." RR.142:24–25.
- "No, [she didn't] have any current information," when specifically asked whether she had any information that would contradict testimony from DFPS's director of investigations on current DFPS practices and policies. RR.143:14.

The testimony by both DFPS's Director of Investigations and its Associate Commissioner for Statewide Intake, on the other hand, established that DFPS conducts these investigations like any other. The record disproves Appellees' allegations—that they might be placed on a list of child abusers solely because their children are trasnsgender and taking PBHT—were wrong. The Associate Commissioner, Stephen Black, explained that "reports that a child is regarded as transexual or transgender have been screened and **closed** at the intake stage **unless** there is also an allegation involving medical interventions like puberty suppressants

or hormone therapy" CR.278–79. In the latter instance, "[t]hese cases are treated like all other cases involving abuse with underlying medical issues or concerns." CR.278 at ¶28. Specifically, reports of children taking PBHT were categorized at the same priority level as any other case where the concern is the "possibility of internal injury." CR.277 at ¶16, 21.

Black explained how DFPS had handled the 11 reports it had received of a child taking PBHT. Far from ruling that child abuse occurred simply because of that fact, DFPS had actually closed 7 of the reports after finding "the child was either not taking puberty suppressants or hormone therapy, or because **their treating medical providers affirmed that they were and that the treatments are medically necessary**." CR.278 at ¶26 (emphasis added). The four remaining reports were open only because of the trial court's injunction. *Id.* And as long as the first investigation is completed, there is no danger a parent will be investigated based on another report the child is taking PBHT. CR.278 at ¶27 ("When an investigation is closed, DFPS will not investigate new reports involving the same allegation that has already been investigated.").

DFPS's Director of Investigations, Maria Talbert, reinforced this evidence. Talbert described the step by step process through which a report of child abuse gets sent to investigations. RR.219:24–220:17, 221:19–222:1, 235:1–18. She affirmatively

stated that none of those steps changed in the context of PBHT investigations. RR.233:2–5. Talbert explained that DFPS does not have medical professional on staff to determine whether treatment is medically necessary; instead it "count[s] on . . . the doctors and the therapists and all the people that are surrounding that youth" for that information. RR.221:16–18, 222:13–15. Once DFPS gets that information, investigators "don't debate or argue or change what a medical professional is telling [them]." RR.222:16–17. Talbert's uncontradicted testimony was that DFPS "ha[sn't] implemented anything new or different" in dealing with PBHT reports; it deals with them just as it does other reports of potential medical injury to a child. RR.264:19–20.

The only evidence in the record is that DFPS classifies, conducts, and rules upon PBHT investigations just like any other investigation initiated by a report of a potential abuse. Appellees introduced not a jot of evidence to the contrary. Nor did they address the undisputed evidence that DFPS has closed every single one of these non-enjoined investigations, some of which because the child's physician told DFPS that PBHT were medically necessary and DFPS was able to confirm that.

Nor can Appellees complain that DFPS "created a policy" to classify PBHT reports as priority P2. They are classified that way because all reports of potential, but not imminent, medical injury are classified P2. CR.276 at ¶16. And DFPS

classifes these reports as P2 consistent with its express statutory authority to "**assign priorities** and prescribe investigative procedures for investigations based on the severity and immediacy of the alleged harm to the child." Tex. Fam. Code § 261.301(d) (emphasis added). Appellees have never explained how DFPS's "assign[ing] [a] priorit[y]" in PBHT investigations is outside this express statutory discretion to do so. *Id.*

DFPS assesses, prioritizes and investigates reports of children being given PBHT consistent with its policies and its discretion to do so under long-standing statutes. Appellees' claims are unlikely to succeed.

III. The Trial Court's Injunction Upended, Rather than Preserved, the Status Quo.

The status quo is "the last, actual, peaceable, non-contested status which preceded the pending controversy." *Clint Indep. Sch. Dist. v. Marquez*, 487 S.W.3d 538, 556 (Tex. 2016). Here, the status quo at the time of the trial court's injunction was that DFPS was permitted—indeed, obligated—to investigate allegations of child abuse and neglect. The trial court's order prevents DFPS from doing so as to the individual Appellees as well as *all* PFLAG members. Ordering DFPS to cease ongoing investigations is far from maintaining the status quo. The Supreme Court has already said as much:

> DFPS bears the responsibility of investigating reports of child abuse or neglect, which necessarily includes "assess[ing] whether a report it receives is actually 'a report of child abuse or neglect.'" **A proper judicial remedy cannot go so far as to curb that discretion beyond legislative and constitutional limits.** That is, the remedy for an allegedly improper limitation on DFPS's investigatory discretion cannot be the placement of a different but equally improper limitation on DFPS's investigatory discretion; either amounts to a change in the status quo that the court is seeking to preserve.

In re Abbott, 645 S.W.3d at 286 (Lehrman, J, concurring) (emphasis added) (citations omitted); *accord id.* at 276 (unanimous op.), 287 (Blacklock, J., concurring in part and dissenting in part). In other words, the Supreme Court's binding precedent is that DFPS, not a court, has the discretion to determine what to do with the reports it receives. *See also id.* at 281 ("when deciding whether and how to exercise that authority, DFPS . . . naturally must assess whether a report it receives is actually 'a report of child abuse or neglect.'"). Preventing it from doing so when it comes to Appellees and PFLAG members flies in the face of that precedent.

At bottom, Appellees' assertions regarding the status quo are premised on a misunderstanding of what the Governor and the Commissioner have done. They characterize the Governor's letter as "redefining child abuse," CR.63 at ¶242, but it does no such thing. Both the Governor's letter and DFPS's press statement refer directly to the Attorney General's opinion. That opinion interprets existing law, including the definition of child abuse in the Family Code. *See* CR.251 ("Section

261.001 defines abuse through a broad and nonexclusive list of acts and omissions."). It does not purport to replace the statutory definition with a new one, as Appellees erroneously assert.

IV. The Trial Court's Temporary Injunction Does Not Prevent Irreparable Harm, but Rather, Could Cause it.

The trial court's error in granting the Roes and Voes a temporary injunction is best encapsulated in its direct question to Appellees' counsel at the close of the hearing: "if I grant an injunction, doesn't that potentially harm your clients rather than help them? And that—I can't order it be closed. I order them almost to stay permanently in purgatory." RR.280:13–16. Having identified this key obstacle in Appellees' inability to prove a threat of irreparable harm, though, the trial court disregarded it. Its doing so, and the resulting decision to issue a temporary injunction, was an abuse of discretion.

As the trial court's question demonstrated, Appellees were able to allege only a potential harm to themselves that was speculative when alleged and entirely contrary to the evidence when the injunction hearing closed. And the injunction only perpetuates the risk of harm to the State.

A. Appellees' Harm is Speculative.

Appellees have not shown an irreparable harm that would entitle them to a temporary injunction. They speculate as to harm that could befall them if the

investigations do not resolve in a favorable way. But their allegations did not support a conclusion that such a resolution was imminent; at that point, they had merely spoken, or refused to speak, to an investigator. And the evidence demonstrates that there is no such danger; it demonstrates solely that DFPS is conducting investigations in the ordinary manner.

The past eight months show why no harm is imminent. A "statewide injunction" as to these DFPS investigations was in effect for approximately two of those months, meaning that investigations have continued during the other six. Yet, Appellees cannot point to a single investigation that went beyond ensuring the wellbeing of the child and confirming the child either was not on PBHT or was receiving them as part of medically necessary treatment. *See* CR.273. Indeed, two of the Appellees, Briggle and Roe, whose cases DFPS *did* manage to fully investigate *had their cases closed*. RR.273:7–10; 1SCR.10.

Appellees' affidavits even more clearly indicate they are incapable of demonstrating imminent and irreparable harm. Appellees explain their harm solely as "living in constant fear about what will happen to them." CR.49 at ¶¶187, 204, 208. But "fear and apprehension of injury are not sufficient" to demonstrate irreparable harm. *Frequent Flyer Depot, Inc. v. Am. Airlines, Inc.*, 281 S.W.3d 215, 227 (Tex. App.—Fort Worth 2009, pet. denied). And in any event, a temporary

injunction cannot alleviate that fear—only a permanent injunction could do that—so issuing a temporary injunction would be improper. *See, e.g.*, *Am. Postal Workers Union, AFL-CIO v. U.S. Postal Serv.*, 766 F.2d 715, 722 (2d Cir. 1985); *Ohio v. Yellen*, 539 F. Supp. 3d 802, 821 (S.D. Ohio 2021); *cf. Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 155 (Tex. 2012) (court lacks jurisdiction to issue an injunction that would not remedy the plaintiff's alleged harm).

B. The State's Harm is Proven.

This Court has previously recognized that the State suffers irreparable harm when it is prevented from being able to enforce its laws. *Tex. Ass'n of Bus. v. City of Austin*, 565 S.W.3d 425, 441 (Tex. App.—Austin 2018, pet. denied) (quoting *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018)) ("The 'inability [of a state] to enforce its duly enacted [laws] clearly inflicts irreparable harm on the State."). As explained above, DFPS is enforcing the laws the Legislature requires it to—laws preventing child abuse. *See* Argument § I.D.2. The trial court's injunction, specifically as to PFLAG, blocks DFPS from fulfilling its statutorily mandated duty to investigate alleged violations of those laws, thereby preventing the State from enforcing them. The injunctions directly impede "Texas's concrete interest, as a sovereign state, in maintaining compliance with its laws," causing it irreparable harm. *Texas v. EEOC*, 933 F.3d 433, 447 (5th Cir. 2019). Worse, the injunctions block DFPS from

investigating any member of PFLAG, violating the Supreme Court's holding that temporary injunctive relief be narrowly tailored to benefit actual parties, not non-parties. *In re Abbott*, 645 S.W.3d at 280.

C. The Delay in Granting an Injunction to PFLAG and the Briggles Demonstrates the Lack of Harm or a Need to Preserve the Claimed Status Quo.

The trial court granted an injunction only to the Roes and Voes and let the remainder of the TRO in the case expire. CR.546–50. It did not grant PFLAG or the Briggles temporary injunctive relief until September 16—two and half months later. 2SCR.3–8. This should be telling. Had harm been imminent and irreparable, the trial court would not, particularly while granting relief to two other Appellees, have sat on those Appellees' request for two months. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Indeed, the trial court's order granting a temporary injunction did not come after additional evidence of a threat to the Briggles or a PFLAG member; it came only after Appellees filed "advisories" with the same unsubstantiated claims they began this suit with—and rallied media attention. *See* María Paul, *Mom says trans eighth-grader was questioned by Texas officials at school*, Washington Post (Sept. 9, 2022) (https://wapo.st/3M6tXeD); *see also* Tanvi Varma, *Court filing shows that transgender eighth-grader was pulled out of class by DFPS*, KVUE (Sept. 9, 2022) (https://bit.ly/3fKpOAA); *but see* Tex. Fam. Code § 261.302(b)(1)

(investigation into child abuse—specifically the interview and examination of the child—may "be conducted at any reasonable time and place, including the child's home or the child's school.").

PFLAG and the Briggles, in other words, had no need for, and did not demonstrate an entitlement to, preservation of the (claimed) status quo. The trial court's refusal to immediately rule on PFLAG and Briggle's motion for temporary injunction necessarily indicates that such an order was not necessary to maintain the status quo; and is particularly important given that the temporary injunction given to PFLAG is the most wide-reaching.

Similarly, the trial court's delay indicates that neither PFLAG nor the Briggles proved irreparable harm. *Intercont'l Terminals Co., LLC v. Vopak N. Am., Inc.*, 354 S.W.3d 887, 894 (Tex. App.—Houston [1st Dist.] 2011, no pet.) ("in many situations, harm that is imminent in October and December will no longer be imminent the following April—the threat having either been realized or passed."). Had PFLAG or the Briggles been facing imminent harm during the temporary-injunction hearing, it certainly would have manifested in the months that followed—it would have been imminent, after all—yet they furnished no evidence that it had.

Moreover, in the time between the first and second temporary injunction orders, Appellees introduced no new information that DFPS had changed the way in which

it conducted investigations into reports of minors taking PBHT. Nor, with six months having passed before any sort of statewide injunction was reinstated, have Appellees pointed to a single instance in which their feared scenario—placement of a parent on the child abuse registry or removal of a child from a home solely due to a report of a child's use of PBHT—actually materialized. The trial court's indifference to this lack of evidence when granting injunctions was an abuse of discretion.

Prayer

The Court should reverse the temporary injunctions.

Date: November 14, 2022.

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Certificate of Service

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Assistant Attorney General

Nos. 03-22-00420-CV & 03-22-00587-CV

In the Court of Appeals for the Third Judicial District Austin, Texas

GREG ABBOTT IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS; JAIME MASTERS IN HER OFFICIAL CAPACITY OF COMMISSIONER OF THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; AND THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,

Appellants,

v.

PFLAG, INC.; MIRABEL VOE, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF ANTONIO VOE, A MINOR; WANDA ROE, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF TOMMY ROE, A MINOR; ADAM BRIGGLE AND AMBER BRIGGLE, INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF M.B., A MINOR,

Appellees.

On Appeal from the
201st Judicial District Court, Travis County

APPENDIX

TAB

TAB 1: Order Granting Roe and Voe's Request for Temporary Injunction

CAUSE NO. D-1-GN-22-002569

PFLAG, INC.; MIRABEL VOE, individually and as parent and next friend of ANTONIO VOE, a minor; WANDA ROE, individually and as parent and next friend of TOMMY ROE, a minor; ADAM BRIGGLE and AMBER BRIGGLE, individually and as parents and next friends of M.B., a minor, Plaintiffs, v. GREG ABBOTT, sued in his official capacity as Governor of the State of Texas; JAIME MASTERS, sued in her official capacity as Commissioner of the Texas Department of Family and Protective Services; and the TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES Defendants.	§ § § § § § § § § § § § § § § § § § § §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 459th JUDICIAL DISTRICT

ORDER GRANTING PLAINTIFFS VOES' AND ROES' APPLICATIONS FOR TEMPORARY INJUCTION AGAINST JAMIE MASTERS, IN HER OFFICIAL CAPACITY AS THE COMISSIONER OF THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, AND THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

On July 6, 2022, the Court considered the application by Plaintiffs PFLAG, Inc. ("PFLAG"); Mirabel Voe, individually and as parent and next friend of Antonio Voe, a minor; Wanda Roe, individually and as parent and next friend of Tommy Roe; and, Adam Briggle and Amber Briggle, individually and as parents and next friends of M.B., a minor, (collectively, "Plaintiffs") for a Temporary Injunction (the "Application"), as found in Plaintiffs' Original Petition, Application for Temporary Restraining Order, Temporary and Permanent Injunction, and Request for

Declaratory Relief ("Petition") filed against Defendants Greg Abbott, in his official capacity as Governor of the State of Texas; Jaime Masters, in her official capacity as Commissioner of the Texas Department of Family and Protective Services ("Commissioner Masters"); and the Texas Department of Family and Protective Services ("DFPS") (collectively, "Defendants").

Based on the facts set forth in Plaintiffs' Petition, the declarations attached thereto, the testimony, the evidence, and the argument of counsel presented during the July 6, 2022, hearing on Plaintiffs' Application, this Court finds sufficient cause to enter a Temporary Injunction against Commissioner Masters and DFPS on behalf of MIRABEL VOE, individually and as parent and next friend of ANTONIO VOE, a minor and WANDA ROE, individually and as parent and next friend of TOMMY ROE, a minor. The applications for Temporary Injunction on behalf of PFLAG, Inc. and ADAM BRIGGLE and AMBER BRIGGLE, individually and as parents and next friends of M.B., a minor, remain under advisement by the Court and no ruling is issued in this Order.

Plaintiffs VOE and ROE state a valid cause of action against Commissioner Masters and DFPS and have a probable right to the declaratory and permanent injunctive relief they seek. For the reasons detailed in Plaintiffs' Application and accompanying evidence, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits. Commissioner Masters and DFPS implemented a new rule expanding the definition of "child abuse" to presumptively treat the provision of gender-affirming medical care, including puberty blockers and hormone therapy, as necessitating an investigation ("DPFS Rule"). The DFPS Rule operationalized Governor Abbott's February 22, 2022, letter to Commissioner Masters ("Governor Abbott's Directive") and Attorney General Paxton's Opinion No. KP-0401 ("Attorney General Paxton's Opinion"), which DFPS announced in its statement on February 22, 2022. The DFPS Rule was adopted without following

the necessary procedures under the APA, is contrary to DFPS's enabling statute, is beyond the authority provided to the Commissioner and DFPS, and is otherwise contrary to law, as alleged in Plaintiffs' Petition.

The Court further finds that an allegation about the provision of gender-affirming medical care, such as puberty blockers and hormone therapy, without more, was not investigated as child abuse by DFPS until after February 22, 2022. The DFPS Rule changed the *status quo* for transgender children and their families. The DFPS Rule was given the effect of a new law or new agency rule, despite no new legislation, regulation, or even valid agency policy.

It clearly appears to the Court that unless Commissioner Masters and DFPS are immediately enjoined from enforcing the DFPS Rule operationalizing Governor Abbott's Directive and Attorney General Paxton's Opinion, against the VOE and ROE Plaintiffs, who will suffer probable, imminent, and irreparable injury in the interim. Such injury, which cannot be remedied by an award of damages or other adequate remedy at law, includes, but is not limited to: being subjected to an unlawful and unwarranted child abuse investigation; intrusion and interference with parental decision-making; the deprivation or disruption of medically necessary care for the parents' adolescent children; the chilling of the exercise of the right of Texas parents to make medical decisions for their children relying upon the advice and recommendation of their health care providers acting consistent with prevailing medical guidelines; intrusion into the relationship between patients and their health care providers; gross invasions of privacy in the home and school, and the resulting trauma felt by parents, siblings, and other household members; outing an adolescent as transgender; adverse effects on grades and participation in school activities; fear and anxiety associated with the threat of having a child removed from the home; increased incidence of depression and risk of self-harm or suicide; having to uproot their lives and

their families to seek medically necessary care in another state; being placed on the child abuse registry and the consequences that result therefrom; and criminal prosecution and the threat thereof.

The Temporary Injunction being entered by the Court today maintains the status quo prior to February 22, 2022, and should remain in effect until final trial. The PFLAG and BRIGGLE Plaintiffs' Applications for Temporary Relief remain pending before this Court, and the Court will rule as soon as possible after it has had adequate time to consider legal and factual consideration of the record before it.

IT IS THEREFORE ORDERED that, until all issues in this lawsuit are finally and fully determined, Defendants Commissioner Masters and DFPS *are immediately enjoined and restrained from* implementing or enforcing the DFPS Rule, and from implementing Governor Abbott's Directive and the Attorney General's Opinion in the following manners:

(1) investigating MIRABEL VOE or WANDA ROE, individually or as next friends of ANTONIO VOE or TOMMY ROE, for possible child abuse or neglect ***solely*** based on allegations that they have a minor child or are a minor child who is gender transitioning or alleged to be receiving or being prescribed medical treatment for gender dysphoria, and

(2) taking any actions, including investigatory or adverse actions, against Plaintiffs VOE and ROE and their minor children, with open investigations solely based on allegations that they have a child who is transgender, gender nonconforming, gender transitioning, or receiving or being prescribed medical treatment for gender dysphoria, except that DFPS shall have the ability to administratively close or issue a "ruled out" disposition in any of these open investigations based on the information DFPS has to date – if this action requires no additional contact with members of the VOE or ROE families.

IT IS FURTHER ORDERED that a trial on the merits of this case is preferentially set before the Honorable Amy Clark Meachum, Judge of the 201st Judicial District Court of Travis County, Texas, on December 5, 2022, at 9 a.m. in the courtroom of the 201st Judicial District of Travis County, Texas, or in the 201st District Court Virtual/Zoom courtroom under the Texas Supreme Court Emergency Orders related to COVID-19. The Clerk of the Court is hereby directed to issue a show cause notice to Defendants to appear at the trial.

The Clerk of the Court shall forthwith issue a temporary injunction in conformity with the laws and terms of this Order.

Plaintiffs have previously executed with the Clerk a bond in conformity with the law in the amount of $100 dollars, and that bond amount will remain adequate and effective for this Temporary Injunction.

IT IS FURTHER ORDERED that this Order shall not expire until judgment in this case is entered or this Case is otherwise dismissed by the Court.

Signed on July 8, 2022, at 4:55 p.m. in Travis County, Texas.

JUDGE AMY CLARK MEACHUM

DISTRICT COURT OF TRAVIS COUNTY TEXAS

TAB 2: Order Granting Briggle and PFLAG's Request for Temporary Injunction

CAUSE NO. D-1-GN-22-002569

PFLAG, INC.; MIRABEL VOE, individually and as parent and next friend of ANTONIO VOE, a minor; WANDA ROE, individually and as parent and next friend of TOMMY ROE, a minor; ADAM BRIGGLE and AMBER BRIGGLE, individually and as parents and next friends of M.B., a minor, Plaintiffs, v. GREG ABBOTT, sued in his official capacity as Governor of the State of Texas; JAIME MASTERS, sued in her official capacity as Commissioner of the Texas Department of Family and Protective Services; and the TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES Defendants.	§	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 459th JUDICIAL DISTRICT

ORDER GRANTING PFLAG, INC.'S AND THE BRIGGLE PLAINTIFFS' APPLICATION FOR TEMPORARY INJUCTION

On July 6, 2022, the Court considered the application by Plaintiffs PFLAG, Inc. ("PFLAG"); Mirabel Voe, individually and as parent and next friend of Antonio Voe, a minor; Wanda Roe, individually and as parent and next friend of Tommy Roe; and, Adam Briggle and Amber Briggle, individually and as parents and next friends of M.B., a minor, (collectively, "Plaintiffs") for a Temporary Injunction (the "Application"), as found in Plaintiffs' Original Petition, Application for Temporary Restraining Order, Temporary and Permanent Injunction, and Request for Declaratory Relief ("Petition") filed against Defendants Greg Abbott, in his official capacity as Governor of the State of Texas; Jaime Masters, in her official capacity as

Commissioner of the Texas Department of Family and Protective Services ("Commissioner Masters"); and the Texas Department of Family and Protective Services ("DFPS") (collectively, "Defendants").

Based on the facts set forth in Plaintiffs' Petition, the declarations attached thereto, the testimony, the evidence, and the argument of counsel presented during the July 6, 2022 hearing on Plaintiffs' Application, this Court previously found sufficient cause to enter a Temporary Injunction against Commissioner Masters and DFPS on behalf of the Voe and Roe Plaintiffs.

During the last two months, the Court has considered the associational standing of PFLAG, as well as the ripeness of the Briggles' claims. Having now considered the applicable law, as well as the testimony, the evidence, and the arguments and briefing of counsel, this Court finds that PFLAG has standing, and the Briggle Plaintiffs claims' are ripe, in order to pursue this matter to final trial. The Court further finds sufficient cause to enter a Temporary Injunction against Commissioner Masters and DFPS on behalf of PFLAG and the Briggle Plaintiffs.

All Plaintiffs state a valid cause of action against Commissioner Masters and DFPS and have a probable right to the declaratory and permanent injunctive relief they seek. For the reasons detailed in Plaintiffs' Application and accompanying evidence, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits. Commissioner Masters and DFPS implemented a new rule expanding the definition of "child abuse" to presumptively treat the provision of gender-affirming medical care, including puberty blockers and hormone therapy, as necessitating an investigation ("DPFS Rule"). The DFPS Rule operationalized Governor Abbott's February 22, 2022, letter to Commissioner Masters ("Governor Abbott's Directive") and Attorney General Paxton's Opinion No. KP-0401 ("Attorney General Paxton's Opinion"), which DFPS announced in its statement on February 22, 2022. The DFPS Rule was adopted without following

the necessary procedures under the APA, is contrary to DFPS's enabling statute, is beyond the authority provided to the Commissioner and DFPS, and is otherwise contrary to law, as alleged in Plaintiffs' Petition.

The Court finds this new rule was improperly promulgated by Defendants and interferes with or impairs – or threatens to interfere with or impair – the legal rights and privileges of PFLAG members and their families, as well as the legal rights and privileges of the Briggle Plaintiffs, as well as the other Plaintiffs in this case. *See* Tex. Gov't Code sec. 2001.038(a).

The Court further finds that an allegation about the provision of gender-affirming medical care, such as puberty blockers and hormone therapy, without more, was not investigated as child abuse by DFPS until after February 22, 2022. The DFPS Rule changed the *status quo* for transgender children and their families. The DFPS Rule was given the effect of a new law or new agency rule, despite no new legislation, regulation, or even valid agency policy.

It clearly appears to the Court that unless Commissioner Masters and DFPS are immediately enjoined from enforcing the DFPS Rule operationalizing Governor Abbott's Directive and Attorney General Paxton's Opinion, members of Plaintiff PFLAG, including the Voe, Roe, and Briggle families (collectively, "Plaintiff Families"), will suffer probable, imminent, and irreparable injury in the interim. Such injury, which cannot be remedied by an award of damages or other adequate remedy at law, includes, but is not limited to: being subjected to an unlawful and unwarranted child abuse investigation; intrusion and interference with parental decision-making; the deprivation or disruption of medically necessary care for the parents' adolescent children; the chilling of the exercise of the right of Texas parents to make medical decisions for their children relying upon the advice and recommendation of their health care providers acting consistent with prevailing medical guidelines; intrusion into the relationship

between patients and their health care providers; gross invasions of privacy in the home and school, and the resulting trauma felt by parents, siblings, and other household members; outing an adolescent as transgender; adverse effects on grades and participation in school activities; fear and anxiety associated with the threat of having a child removed from the home; increased incidence of depression and risk of self-harm or suicide; having to uproot their lives and their families to seek medically necessary care in another state; being placed on the child abuse registry and the consequences that result therefrom; and criminal prosecution and the threat thereof.

The Temporary Injunction being entered by the Court today maintains the status quo prior to February 22, 2022, and should remain in effect while this Court, and potentially the Court of Appeals, and the Supreme Court of Texas, examine the parties' merits and jurisdictional arguments.

IT IS THEREFORE ORDERED that, until all issues in this lawsuit are finally and fully determined, Defendants Commissioner Masters and DFPS are immediately enjoined and restrained from implementing or enforcing the DFPS Rule, and from implementing Governor Abbott's Directive and the Attorney General's Opinion, with regard to members of Plaintiff PFLAG, including but not limited to Plaintiff Families, and that such restraint encompasses but is not limited to:

(1) investigating members of PFLAG, including but not limited to Plaintiff Families, for possible child abuse or neglect ***solely*** based on allegations that they have a minor child who is gender transitioning or alleged to be receiving or being prescribed medical treatment for gender dysphoria, and

(2) taking any actions, including investigatory or adverse actions, against Plaintiff Families and other members of PFLAG with open investigations solely based on allegations that they have

a child who is transgender, gender nonconforming, gender transitioning, or receiving or being prescribed medical treatment for gender dysphoria, except that DFPS shall have the ability to administratively close or issue a "ruled out" disposition in any of these open investigations based on the information DFPS has to date.

IT IS FURTHER ORDERED that in furtherance of the above, Defendants Commissioner Masters, DFPS and its employees, agents, contractors, and attorneys, as well as any individuals or entities in active concert with them, directly or indirectly under their control, or participating with them, who receive actual notice of the Order by personal service or otherwise, and who also receive actual notice that the person(s) reported for suspected child abuse or neglect solely based on allegations that the person(s) have a minor child who is gender transitioning, or receiving or being prescribed gender-affirming medical treatment, including puberty blockers and/or hormone therapy, is a member of Plaintiff PFLAG, shall immediately cease any intake, investigation, or assessment, including ceasing any further contact, communications, or other action related to processing such allegations. As specified above, DFPS shall have the ability to administratively close or issue a "ruled out" disposition in any of these open investigations based on the information DFPS has to date.

IT IS FURTHER ORDERED that a trial on the merits of this case is preferentially set before the Honorable Amy Clark Meachum, Judge of the 201st Judicial District Court of Travis County, Texas on June 12, 2023, at 9:00 a.m. o'clock in the courtroom of the 201st Judicial District of Travis County, Texas. The Clerk of the Court is hereby directed to issue a show cause notice to Defendants to appear at the trial.

The Clerk of the Court shall forthwith issue a temporary injunction in conformity with the laws and terms of this Order.

Plaintiffs have previously executed with the Clerk a bond in conformity with the law in the amount of $100 dollars, and that bond amount will remain adequate and effective for this Temporary Injunction.

IT IS FURTHER ORDERED that this Order shall not expire until judgment in this case is entered or this Case is otherwise dismissed by the Court.

Signed on September 16th, 2022, at 3:00 p.m. in Travis County, Texas.

JUDGE AMY CLARK MEACHUM

DISTRICT COURT OF TRAVIS COUNTY TEXAS

TAB 3: Tex. Fam. Code § 261.001

Vernon's Texas Statutes and Codes Annotated
Family Code (Refs & Annos)
Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship (Refs & Annos)
Subtitle E. Protection of the Child
Chapter 261. Investigation of Report of Child Abuse or Neglect (Refs & Annos)
Subchapter A. General Provisions

V.T.C.A., Family Code § 261.001

§ 261.001. Definitions

Effective: September 1, 2021
Currentness

In this chapter:

(1) "Abuse" includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section

20A.02(a)(7) or (8), Penal Code, solicitation of prostitution under Section 43.021 , Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code;

(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or

(M) forcing or coercing a child to enter into a marriage.

(2) “Department” means the Department of Family and Protective Services.

(3) “Exploitation” means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.

(4) “Neglect” means an act or failure to act by a person responsible for a child's care, custody, or welfare evidencing the person's blatant disregard for the consequences of the act or failure to act that results in harm to the child or that creates an immediate danger to the child's physical health or safety and:

(A) includes:

(i) the leaving of a child in a situation where the child would be exposed to an immediate danger of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(ii) the following acts or omissions by a person:

(a) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or an immediate danger of harm to the child;

(b) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting an immediate danger of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(c) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

(d) placing a child in or failing to remove the child from a situation in which the child would be exposed to an immediate danger of sexual conduct harmful to the child; or

(e) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child;

(iii) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or

(iv) a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) does not include:

(i) the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:

(a) the child has a severe emotional disturbance;

(b) the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and

(c) the person has exhausted all reasonable means available to the person to obtain the mental health services described by Sub-subparagraph (b); or

<Text of (4)(B)(ii), as added by Acts 2021, 87th Leg., ch. 8 (H.B. 567), § 5>

(ii) allowing the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture .

<Text of (4)(B)(ii), as added by Acts 2021, 87th Leg., ch. 29 (H.B. 2536), § 2>

(ii) a decision by a person responsible for a child's care, custody, or welfare to:

(a) obtain an opinion from more than one medical provider relating to the child's medical care;

(b) transfer the child's medical care to a new medical provider; or

(c) transfer the child to another health care facility .

(5) "Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:

(A) a parent, guardian, managing or possessory conservator, or foster parent of the child;

(B) a member of the child's family or household as defined by Chapter 71;

(C) a person with whom the child's parent cohabits;

(D) school personnel or a volunteer at the child's school;

(E) personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides; or

(F) an employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility, including a family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Chapter 42, Human Resources Code.

(6) "Report" means a report that alleged or suspected abuse or neglect of a child has occurred or may occur.

(7) Repealed by Acts 2017, 85th Leg., ch. 316 (H.B. 5), § 36(1).

(8) Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.203(4).

(9) “Severe emotional disturbance” means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities.

Credits

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, § 86, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, § 10, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, § 63, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 19.01(26), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 59, § 1, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 268, § 1.11, eff. Sept. 1, 2005; Acts 2007, 80th Leg., ch. 593, § 3.32, eff. Sept. 1, 2007; Acts 2011, 82nd Leg., ch. 1 (S.B. 24), § 4.03, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., ch. 1142 (S.B. 44), § 1, eff. Sept. 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 1.120, 1.203(4), eff. April 2, 2015; Acts 2015, 84th Leg., ch. 432 (S.B. 1889), § 1, eff. Sept. 1, 2015; Acts 2015, 84th Leg., ch. 1273 (S.B. 825), § 4, eff. Sept. 1, 2015; Acts 2017, 85th Leg., ch. 316 (H.B. 5), § 36(1), eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 319 (S.B. 11), § 7, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 1136 (H.B. 249), § 2, eff. Sept. 1, 2017; Acts 2021, 87th Leg., ch. 8 (H.B. 567), § 5, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 29 (H.B. 2536), § 2, eff. May 15, 2021; Acts 2021, 87th Leg., ch. 221 (H.B. 375), § 2.18, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 807 (H.B. 1540), § 39, eff. Sept. 1, 2021.

Notes of Decisions (6)

O’CONNOR’S NOTES

Source: Former Fam. Code §34.012.

O’CONNOR’S CROSS REFERENCES

See also 37 Tex. Admin. Code §§349.100, 350.100.

O’CONNOR’S ANNOTATIONS

In re Berryman, 629 S.W.3d 453, 461 (Tex.App.--Tyler 2020, orig. proceeding). “[W]hile we recognize that the definitions of abuse and neglect may encompass conduct in addition to that statutorily defined, we will not extend those definitions so broadly as to encourage governmental overreach. So long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children. Due process does not permit a State to infringe on a parent’s fundamental right to make child rearing decisions simply because a state judge believes a better decision could be made. The State may *legitimately interfere* with family autonomy to protect children from *genuine* abuse and neglect by parents who are unfit to discharge the high duty of broad parental authority over minor children. The State’s responsibility to protect children from abusive parents does not authorize the State to oversee the internal affairs of every family. The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition. Absent a sufficient supporting affidavit, an order in aid of investigation of child abuse or neglect does not authorize a legitimate interference with family autonomy for purposes of protecting children from genuine abuse or neglect. To conclude otherwise would subject a parent’s fundamental right to the care, custody, and control of her children to potential arbitrary governmental interference for any conduct or decision with which the government may disagree or of which it may disapprove.” (Internal quotes omitted.)

V. T. C. A., Family Code § 261.001, TX FAMILY § 261.001
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

End of Document

TAB 4: Tex. Fam. Code § 261.301

V.T.C.A., Family Code § 261.301

§ 261.301. Investigation of Report

Effective: September 1, 2019
Currentness

(a) With assistance from the appropriate state or local law enforcement agency as provided by this section, the department shall make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare. The investigation shall be conducted without regard to any pending suit affecting the parent-child relationship.

(b) A state agency shall investigate a report that alleges abuse, neglect, or exploitation occurred in a facility operated, licensed, certified, or registered by that agency as provided by Subchapter E. [1] In conducting an investigation for a facility operated, licensed, certified, registered, or listed by the department, the department shall perform the investigation as provided by:

(1) Subchapter E; and

(2) the Human Resources Code.

(c) The department is not required to investigate a report that alleges child abuse, neglect, or exploitation by a person other than a person responsible for a child's care, custody, or welfare. The appropriate state or local law enforcement agency shall investigate that report if the agency determines an investigation should be conducted.

(d) The executive commissioner shall by rule assign priorities and prescribe investigative procedures for investigations based on the severity and immediacy of the alleged harm to the child. The primary purpose of the investigation shall be the protection of the child. The rules must require the department, subject to the availability of funds, to:

(1) immediately respond to a report of abuse and neglect that involves circumstances in which the death of the child or substantial bodily harm to the child would result unless the department immediately intervenes;

(2) respond within 24 hours to a report of abuse and neglect that is assigned the highest priority, other than a report described by Subdivision (1); and

(3) respond within 72 hours to a report of abuse and neglect that is assigned the second highest priority.

(e) As necessary to provide for the protection of the child, the department shall determine:

(1) the nature, extent, and cause of the abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of the other children in the home;

(4) an evaluation of the parents or persons responsible for the care of the child;

(5) the adequacy of the home environment;

(6) the relationship of the child to the persons responsible for the care, custody, or welfare of the child; and

(7) all other pertinent data.

(f) An investigation of a report to the department that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or sexual abuse of a child that could result in the death of or serious harm to the child shall be conducted jointly by a peace officer, as defined by Article 2.12, Code of Criminal Procedure, from the appropriate local law enforcement agency and the department or the agency responsible for conducting an investigation under Subchapter E.

(g) The inability or unwillingness of a local law enforcement agency to conduct a joint investigation under this section does not constitute grounds to prevent or prohibit the department from performing its duties under this subtitle. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under this section.

(h) The department and the appropriate local law enforcement agency shall conduct an investigation, other than an investigation under Subchapter E, as provided by this section and Article 2.27, Code of Criminal Procedure, if the investigation is of a report that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense that poses an immediate risk of physical or sexual abuse of a child that could result in the death of or serious harm to the child. Immediately on receipt of a report described by this subsection, the department shall notify the appropriate local law enforcement agency of the report.

(i) If at any time during an investigation of a report of child abuse or neglect to which the department has assigned the highest priority the department is unable to locate the child who is the subject of the report of abuse or neglect or the child's family, the department shall notify the Department of Public Safety that the location of the child and the child's family is unknown. If the Department of Public Safety locates the child and the child's family, the Department of Public Safety shall notify the department of the location of the child and the child's family.

(j) In geographic areas with demonstrated need, the department shall designate employees to serve specifically as investigators and responders for after-hours reports of child abuse or neglect.

(k) In an investigation of a report of abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare, the department shall determine whether the person is an active duty member of the United States armed forces or the spouse of a member on active duty. If the department determines the person is an active duty member of the United States armed forces or the spouse of a member on active duty, the department shall notify the United States Department of Defense Family Advocacy Program at the closest active duty military installation of the investigation.

Credits

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, § 94, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 943, § 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, § 70, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1137, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1150, § 4, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, § 23, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 867, § 1, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 268, § 1.16(a), eff. Sept. 1, 2005; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.129, eff. April 2, 2015; Acts 2015, 84th Leg., ch. 1056 (H.B. 2053), § 1, eff. Sept. 1, 2015; Acts 2017, 85th Leg., ch. 319 (S.B. 11), § 9, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 356 (H.B. 2124), § 1, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 822 (H.B. 1549), § 2, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 1136 (H.B. 249), § 4, eff. Sept. 1, 2017; Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 21.001(13), eff. Sept. 1, 2019.

Notes of Decisions (13)

O'CONNOR'S NOTES

Source: Former Fam. Code §34.05(a), (b).

O'CONNOR'S ANNOTATIONS

In re Abbott, __S.W.3d__, 2022 WL 1510326 (Tex.2022) (No. 22-0229; 5-13-22). "[N]either the Governor nor the Attorney General has statutory authority to directly control DFPS's investigatory decisions. They have every right to express their views on DFPS's decisions and to seek, within the law, to influence those decisions--but DFPS alone bears legal responsibility for its decisions. [¶] DFPS's preliminary authority to *investigate* allegations does not entail the ultimate authority to *interfere* with parents' decisions about their children, decisions which enjoy some measure of constitutional protection whether the government agrees with them or not. Before it can impose consequences on a family beyond an investigation, DFPS generally must seek court orders authorizing it to intervene. In other words, DFPS does not need permission from courts to *investigate*, but it needs permission from courts to *take action* on the basis of an investigation."

State v. Aguilar, 535 S.W.3d 600, 605-06 (Tex.App.--San Antonio 2017, no pet.). "The procedural safeguards of ***Miranda*** and [CCP] Art. 38.22 apply only to custodial interrogations by law enforcement officers and their agents. Although CPS workers are state agents, their state employment alone does not render them law enforcement agents for purpose of 'defining a custodial interrogation.' … At times, both law enforcement and CPS operate on 'separate, parallel paths.' [¶] [T]heir paths converge when there is an allegation [under Fam. Code §261.301(f)]. In such cases, the Family Code mandates a joint investigation by law enforcement officials and CPS or other agencies charged with child protection. … There is nothing, however, in the provisions relevant to these joint investigations that creates or even suggests a per se agency relationship between law enforcement and CPS investigators. Moreover, the Texas Court of Criminal Appeals has recognized CPS's duty to investigate and report suspected child abuse does not automatically 'convert a CPS worker into a law enforcement agent[.]' In other words, the law does not presume an agency relationship based merely on a joint investigation. [¶] That is not to say a CPS investigator is never acting

as law enforcement for purposes of ***Miranda*** and the procedural requirements of Art. 38.22. Rather, that determination is based on the individual facts of each case, and the person alleging an agency relationship--that a CPS investigator is acting as law enforcement--has the burden to prove it. If the defendant proves a particular person, including a CPS worker, is in fact working for or on behalf of law enforcement by interrogating a person in custody, the CPS worker 'is bound by all constitutional and statutory confession rules, including ***Miranda*** and Art. 38.22.'"

TDPRS v. Schutz, 101 S.W.3d 512, 521-22 (Tex.App.--Houston [1st Dist.] 2002, no pet.). Family Code §261.309(e) "does not confer a right on [foster parents] to resort to filing suit in district court without submitting to a formal administrative hearing. [¶] Further, at least with respect to allegations of abuse or neglect that occurred in a foster home, [Fam. Code §261.301(b)] governs…. In conducting an investigation for such a facility, the department shall perform the investigation as provided by [Fam. Code] Subch. E (not Subch. D, the subchapter on which [foster parents] rely) and the Human Resources Code. [T]he definition of 'child-care facility' includes a 'foster home.' In other words, when the alleged abuse occurred in a foster home, the department conducts the investigation under [Fam.] Code §§261.401-261.409 *and* [Hum. Res. Code] ch. 42. Because the Family Code provision that deals with investigations of abuse or neglect in a foster home refers back to the Human Resources Code (and therefore incorporates the exhaustion-of-remedies requirement), [foster parents] were required to submit to an administrative hearing regardless of whether the Human Resources Code or the Family Code applies."

Footnotes

1 V.T.C.A., Family Code § 261.401 et seq.

V. T. C. A., Family Code § 261.301, TX FAMILY § 261.301
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

End of Document

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