

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

IN THE COURT OF APPEALS RECEIVED IN
FOR THE THIRD DISTRICT OF TEXAS AT AUSTIN 3rd COURT OF APPEALS
AUSTIN, TEXAS

4/10/2023 5:17:00 PM
JAIME MASTERS, in her Official Capacity as Commissioner of the Texas
Department of Family and Protective Services; and the TEXAS DEPARTMENT
OF FAMILY AND PROTECTIVE SERVICES
Clerk

Appellants,

v.

PFLAG, INC., MIRABEL VOE, individually and as parent and next friend of
ANTONIO VOE, a minor; WANDA ROE, individual 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 of Travis County, Texas

Cause No. D-1-GN-22-002569, Hon. Amy Clark Meachum

**BRIEF OF TRANSGENDER EDUCATION NETWORK OF TEXAS
AND 15 OTHERS AS *AMICI CURIAE* IN SUPPORT OF REAL PARTIES IN
INTEREST *PFLAG, INC., ET AL.***

David Brown *
**TRANSGENDER LEGAL DEFENSE &
EDUCATION FUND**
520 8th Avenue, Suite 2204
New York, NY 10018
T: (646) 862-9396
DBrown@transgenderlegal.org

J. Richard Hammett
TX State Bar No. 24001054
BAKER MCKENZIE LLP
800 Capitol Street, Suite 2100
Houston, TX 77002
T: (713) 427-5016
JRichard.Hammett@bakermckenzie.com

M'Alyssa B. Mecnas *
BAKER MCKENZIE LLP
10250 Constellation Blvd., Suite 1850
Los Angeles, CA 90067
T: (310) 616-5370
Malyssa.Mecnas@bakermckenzie.com

* Motion for admission *pro hac vice*
pending or forthcoming.

IDENTITY OF PARTIES, AMICI, AND COUNSEL

The parties and other *Amici* have accurately identified the parties, other *Amici*, and counsel.

Amici Curiae:

V.P., as parent and next friend of A.P., a transgender child
Katie L., as parent and next friend of N, a transgender child
Camille Rey, as parent and next friend of L.R., a transgender child
P and G, as parents and next friend of X, a transgender child
Erika and Aaron Richie, as parents and next friends of C.R., a transgender child
R.B. and C.B., as parents and next friend of S.B., a transgender child
Lisa Stanton and Jeffrey Stanton, as parents and next friend of M.S., a transgender child
A.A., as parent and next friend of E.A.
A. and M., as parents and next friend of a transgender child
Melody Gomez, as parent and next friend of gender diverse children, M.G. and J.G.
K.K., as parent and next friend of a transgender child
T.S., as parent and next friend of a transgender child
Edward “Ed” Diaz, as parent and next friend of a transgender child
Major Eileen Cassidy, as parent and next friend of Ryan X
Transgender Education Network of Texas
Equality Texas

Counsel for Amici Curiae:

David Brown *
TRANSGENDER LEGAL DEFENSE & EDUCATION FUND
520 8th Avenue, Suite 2204
New York, NY 10018
T: (646) 862-9396
dbrown@transgenderlegal.org

J. Richard Hammett
BAKER MCKENZIE LLP
800 Capitol Street, Suite 2100

Houston, TX 77002
T: (713) 427-5000
JRichard.Hammett@bakermckenzie.com

M'Alyssa B. Mecnas *
BAKER MCKENZIE LLP
10250 Constellation Blvd., Suite 1850
Los Angeles, CA 90067
T: (310) 616-5370
Malyssa.Mecnas@bakermckenzie.com

* Motion for admission *pro hac vice* pending or forthcoming.

TABLE OF CONTENTS

IDENTITY OF PARTIES, AMICI, AND COUNSEL	i
TABLE OF CONTENTS.....	iii
INDEX OF AUTHORITIES.....	iv
STATEMENT OF INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	4
ARGUMENT	7
I. The Irreparable Harm Standard	7
II. The Rule Inflicts Irreparable Harm on Texas Families with Transgender Children	10
A. Overview by <i>Amici</i> Organizations Serving Families	11
B. The Rule is Harming the Health of <i>Amici</i> Families’ Children.....	19
C. The Rule is Depriving Texas Children of their Previously Ordinary, Happy Childhoods; and their Parents of the Right to Provide Them.....	26
D. The Rule Has Forced Some Families to Flee the State, and Unless the Injunction is Affirmed Others Will Need to Follow	38
CONCLUSION AND PRAYER	43
CERTIFICATE OF COMPLIANCE.....	44

INDEX OF AUTHORITIES

	Page(s)
Federal Cases	
<i>De Leon v. Perry</i> , 975 F. Supp. 2d 632 (W.D. Tex. 2014), <i>aff'd sub nom. De Leon v. Abbott</i> , 791 F.3d 619 (5th Cir. 2015).....	9
<i>Parham v. JR.</i> , 442 U.S. 584 (1979).....	8
State Cases	
<i>In re Abbott</i> , 645 S.W.3d 276 (Tex. 2022)	5, 40
<i>Al-Wahban v. Hamdan</i> , 2019 Tex. App. LEXIS 4849 (Tex. App.—Waco 2019, no pet.).....	39
<i>Butnaru v. Ford Motor Co.</i> , 84 S.W.3d 198 (Tex. 2002).....	7, 8
<i>In re C.J.C.</i> , 603 S.W.3d 804 (Tex. 2020)	8, 27
<i>Abbott v. Doe</i> , No. 03-22-00126-cv (Tex. Ct. App. Aug. 25, 2022).....	13
<i>Fuentes v. Union De Pasteurizadores De Juarez Sociedad Anonima De Capital Variable</i> , 527 S.W.3d 492 (Tex. App.—El Paso 2017, no pet.)	28
<i>Gunn v. Cavanaugh</i> , 391 S.W.2d 723 (Tex. 1965)	9
<i>Hayter v. Fern Lake Fishing Club</i> , 318 S.W.2d 912 (Tex.Civ.App.—Beaumont 1958, no writ).....	9

<i>Holick v. Smith</i> , 685 S.W.2d 18 (Tex. 1985).....	8
<i>Operation Rescue-Natl. v. Planned Parenthood of Houston and S.E. Texas, Inc.</i> , 937 S.W.2d 60 (Tex. App.—Houston [14th Dist.] 1996), <i>aff'd as modified</i> , 975 S.W.2d 546 (Tex. 1998)	8
<i>Positive Feed, Inc. v. Wendt</i> , 01-96-00614-CV, 1998 WL 43321 (Tex. App.—Hous. [1st Dist.] Feb. 5, 1998) (not designated for publication)	9, 38
<i>Tex. HHS Comm’n v. Advocates for Patient Access, Inc.</i> , 399 S.W.3d 615 (Tex. App.—Austin 2013).....	9, 20
<i>U. Interscholastic League v. Hatten</i> , 03-03-00691-CV, 2004 WL 792328 (Tex. App.—Austin Apr. 15, 2004) (unpublished).....	27
<i>Waites v. Sondock</i> , 561 S.W.2d 772 (Tex. 1977)	9
<i>Walling v. Metcalfe</i> , 863 S.W.2d 56 (Tex. 1993).....	8
Rules	
Tex. R. App. P. Rule 11	3
Other Authorities	
Herman et al., <i>How Many Adults and Youth Identify as Transgender in the United States?</i> , Williams Institute (June 2022); Available at https://www.documentcloud.org/documents/22057788-williams-inst-trans-stats-2022	11
<i>Outlawing Trans Youth: State Legislatures and the Battle Over Gender-Affirming Healthcare for Minors</i> , 134 HARV. L. REV. 2163 (April 2021)	19
Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents,” PEDIATRICS Vol. 142, No. 4 (October 2018)	20

STATEMENT OF INTEREST OF AMICUS CURIAE

Amici include fourteen Texan families raising transgender children, who know firsthand the vital importance of accessing gender-affirming healthcare and the life-threatening risks of living with untreated gender dysphoria as a young person. *Amici* families have demonstrated their love, support, and acceptance of their children by providing them with medically-necessary, doctor-recommended, gender-affirming healthcare. This ensures that their children are healthy, and are able to live out a happy, normal childhood. *Amici* families are members of Plaintiff PFLAG, Inc., and have joined the organization for reasons including obtaining encouragement and support from the organization and its other member families in raising transgender children; obtaining access to social, psychological, and medical supports; and undertaking advocacy together. For merely doing what any parent would do, *Amici* families are now faced daily with the threat of a “child abuse” investigation by the Texas Department of Family and Protective Services (“DFPS”), and the stress, anguish, and stigma this imposes. In addition, the looming threat of investigation and enforcement, in many cases, has caused *Amici*’s family doctors to delay or deny their children treatment. Some families have coped by moving out of state, at least

until they can count on the protection of the courts. These harms are immediate and irreparable.¹

Amici also include two nonprofit organizations that serve Texas families with transgender children, including many PFLAG member families. Transgender Education Network of Texas (TENT) is dedicated to furthering gender-diverse equality in Texas through education and networking in both public and private forums. TENT works to halt discrimination through social, legislative, and corporate education, through a racial justice lens. Most of its staff are transgender, nonbinary,² or have transgender or nonbinary children. Equality Texas engages, educates, and undertakes policy advocacy to secure full equality for LGBTQ+ Texans, including healthcare access. More than half of its staff is transgender or nonbinary. *Amici* families are only a small sample of the hundreds who *Amici* organizations serve.

Amici join Appellees in requesting the Court to affirm the District Court’s injunction. For the sake of their health, security, and liberty, the injunction as applied to Plaintiffs must be maintained.

No party’s counsel authored this brief in whole or in part, and no party’s counsel made a monetary contribution intended to fund the preparation or

¹ To protect *Amici* families from the severe consequences of DFPS enforcement, this brief uses pseudonyms, to the extent they have been requested, to maintain anonymity.

² “Nonbinary” means having neither a male nor female sense of gender.

submission of this brief. No person other than *Amici* or its counsel made a monetary contribution to this brief's preparation or submission. *See* Tex. R. App. P. Rule 11.

SUMMARY OF ARGUMENT

Amici are Texan families who are raising transgender children and who are members of PFLAG, as well as two nonprofit organizations who serve such families. They simply want what any parent wants for their children: a happy, healthy, normal childhood. As *Amici* establish, providing gender-affirming care to transgender youth, in consultation with healthcare professionals, is a family's thoroughly considered expression of love, support, and acceptance, and is also the standard of care for treating gender dysphoria in adolescents. Gender-affirming healthcare promotes the welfare, health, and happiness of transgender children, their families, and their communities.

Yet *Amici* who provide this care for their children now face serious and drastic risks. These risks flow directly from DFPS's actions in adopting a policy of investigating families consistent with an *ultra vires* and legally invalid edict by the Governor. On February 22, 2022, Governor Greg Abbott issued a letter (the "Governor's Directive" or "Directive") to DFPS that purports to adopt a definition of "child abuse" as including all "gender-transitioning procedures" being provided to minors. The Directive states to DFPS: "I hereby direct your agency to conduct a prompt and thorough investigation of any reported instances" of the provision of such healthcare. The Directive further states that "all licensed professionals who have direct contact with children" are subject to criminal penalties "for failure to

report” the provision of such healthcare; and calls for other, unnamed “state agencies to investigate licensed facilities where such procedures may occur.” In purporting to redefine “child abuse” and directing DFPS to implement his definition, Governor Abbott usurped the authority of the Legislature—which had just that term rejected bills that would have redefined the statutory definition of “child abuse”³—and of DFPS itself.

Although the Texas Supreme Court subsequently held the Governor had no authority to direct DFPS to investigate gender-affirming healthcare as child abuse, *In re Abbott*, 645 S.W.3d 276, 281 (Tex. 2022) (“neither the Governor nor the Attorney General has statutory authority to directly control DFPS’s investigatory decision.”), nor to redefine the term “child abuse” in Texas law, *id.*, DFPS nevertheless has proceeded to implement the Governor’s Directive. DFPS issued a “press statement [that] suggests that [it] may have considered itself bound by the Governor’s letter,” *id.* (together with DFPS’ subsequent implementation, the “DFPS Rule” or “Rule”), and—despite the Supreme Court of Texas’s clear pronouncement that the Directive has no legal authority—continues to conduct investigations pursuant to its Rule. Appellants’ Brief at 9-10.

The Governor’s Directive set anti-transgender hostility ablaze in the State of Texas, and DFPS’s implementation of its Rule continues to fan the flames, with

³ See Senate Bill 1646, House Bills 68 and 1399.

severe consequences for *Amici*. *Amici* organizations have reported a statewide wave of anti-transgender violence directed at them and the families they serve; several *Amici* families report experiences of bullying, threats, and abuse that they are powerless to stop because seeking help might only result in a DFPS investigation.

The Rule grossly stigmatizes and penalizes the loving provision of healthcare by parents with the label of “child abuse” and the threat of investigation. *Amici* families report that this has deprived them of their ability to provide their children with a normal, happy childhood and to ensure their children’s health through medical decision-making in consultation with their children and their children’s doctors. This is an invasion with constitutional implications for parents’ rights. Moreover, *Amici* families relate that the stress and anxiety of living every day with the Rule’s stigma, and knowing that DFPS could open an investigation merely for providing their children healthcare, harms their reputations and their career prospects, imposes barriers to their children’s schooling and participation in extra-curricular and church activities, and in some cases has required parents to seek healthcare themselves.

The Rule also disregards the considered judgment of every major medical association, and parents and doctors statewide, that the cited treatments are the standard of care for treating gender dysphoria in adolescents, and can be lifesaving. The threat of DFPS investigation has in several cases led to *Amici*’s family doctors

delaying or outright refusing to provide healthcare. This in turns threatens children with potentially irreversible health consequences.

Some *Amici* families, unable to tolerate the Rule’s harms any further, have been unable to continue living in Texas, and have opted to move out of state, at least until they can obtain the protection of injunctive relief. More families have said they are considering this option.

Such harms—to families’ safety, to their children’s health and wellbeing, to parents’ constitutionally-protected rights, and even to families’ ability to remain in their Texas homes—are being immediately and irreparably inflicted on PFLAG’s member families, including (but by no means limited to) those families who tell their stories here. *Amici* join Appellees in requesting the Court to affirm the District Court’s injunctions. *Amici* share their unique lived experiences with this Court to show how Appellants are not preventing harm to children and families in Texas—but rather are *causing* harm, and will continue to do so until enjoined.

ARGUMENT

I. The Irreparable Harm Standard

The District Court properly issued a temporary injunction in this case because the Appellees pled and proved (1) a cause of action; (2) a probable right to the relief sought; and (3) a “probable, imminent, and irreparable injury” during the pendency of the litigation. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). A

court that finds all three temporary injunction factors met properly awards the injunction, and a reviewing court may not reverse the trial court's temporary injunction order absent an abuse of discretion. *Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993).

Amici lend their voices on the issue of irreparable harm. “An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru*, 84 S.W.3d at 204. Texas courts have long recognized that “[t]he natural right existing between parents and their children is of constitutional dimensions,” and that “[t]his natural parental right has been characterized as ‘essential,’ ‘a basic civil right of man,’ and ‘far more precious than property rights.’” *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985) (citations omitted). In particular, the Due Process Clause protects the right of parents to make medical treatment decisions on behalf of their children. *See Parham v. JR.*, 442 U.S. 584, 602 (1979).

“[I]nfringe[ment] on the fundamental right of parents to make child rearing decisions” is “irremediable.” *In re C.J.C.*, 603 S.W.3d 804, 811 (Tex. 2020); *see generally Operation Rescue-Natl. v. Planned Parenthood of Houston and S.E. Texas, Inc.*, 937 S.W.2d 60, 77 (Tex. App.—Houston [14th Dist.] 1996), *aff'd as modified*, 975 S.W.2d 546 (Tex. 1998) (“Under Texas law, a violation of a constitutionally guaranteed right inflicts irreparable injury warranting injunctive relief.”); *see also*

De Leon v. Perry, 975 F. Supp. 2d 632, 664 (W.D. Tex. 2014), *aff'd sub nom. De Leon v. Abbott*, 791 F.3d 619 (5th Cir. 2015) (reviewing cases) (“no amount of money can compensate the harm for the denial of [a litigant’s] constitutional rights”).

Additionally, children’s “injury resulting from the [parent’s] present inability to care for the child” is irreparable. *See Waites v. Sondock*, 561 S.W.2d 772, 775 (Tex. 1977). This is because “[a] child cannot be likened to a chattel that may be stored in a warehouse for preservation and safe-keeping. He is one of the most fragile and easily damaged of all living creatures. His requirements must be met with dispatch if he is to survive or escape serious damage.” *Id.* at n.3 (quoting *Gunn v. Cavanaugh*, 391 S.W.2d 723, 726-27 (Tex. 1965)). Thus, this Court has specifically held that harms to children’s health and development from depriving them of medical care are irreparable. *Tex. HHS Comm’n v. Advocates for Patient Access, Inc.*, 399 S.W.3d 615, 630-31 (Tex. App.—Austin 2013).

Many *Amici* families, to avoid injuries of the type described above, have been forced to leave the state. This loss of ability to live in their home is also irreparable harm. *See Positive Feed, Inc. v. Wendt*, 01-96-00614-CV, 1998 WL 43321, at *10 (Tex. App.—Hous. [1st Dist.] Feb. 5, 1998) (not designated for publication) (citing *Hayter v. Fern Lake Fishing Club*, 318 S.W.2d 912, 914 (Tex.Civ.App.—Beaumont 1958, no writ)).

As detailed in this brief, the District Court correctly held that the Rule imposes irreparable injury on Plaintiffs, including PFLAG’s member families. As *Amici’s* experiences show, the Rule is presently causing irreparable—and drastic—harms to PFLAG member families raising transgender children in Texas—or who have fled the state—and only an affirmance of the District Court’s injunctions can prevent them.

II. The Rule Inflicts Irreparable Harm on Texas PFLAG Member Families with Transgender Children

As a result of living under the constant fear of DFPS investigation, parents have watched their previously happy and joyful children withdraw from favorite extra-curricular, church, and social activities, and become anxious and guarded. As a result of the chill the Rule has inflicted on their children’s doctors, families have seen their children sicken from a loss of access to healthcare. Families have also seen an increase in bullying and other forms of violence, which they are powerless to stop, because bullies can simply threaten to report them to DFPS, and seeking aid from their children’s school or from law enforcement could invite the same result. Many families have plans to flee the state, or have fled, but dream of returning. Other families have turned down job offers or opportunities to grow their family businesses because they might have to leave at a moment’s notice.

Unless the injunctions are affirmed, PFLAG member families with transgender children will continually suffer these irreparable harms. Injunctive relief

is necessary to allow PFLAG member families, including those who are *Amici* here, to care for their children’s health, feel safe in their homes and schools, and return to the ordinary joys and cares of parenthood and family life in Texas.

The remainder of this brief details *Amici*’s experiences with these irreparable harms. The first section surveys how the Rule has affected all Texas families with transgender children, from the perspective of organizations serving them statewide. The subsequent three sections detail experiences of *Amici* families in three areas: losing access to healthcare, living with the fear of investigation, and fleeing the state. Each of these sections opens with one or two detailed family narratives, and is followed by additional *Amici* family experiences.

A. Overview by *Amici* Organizations Serving Families

Amici organizations serve hundreds of families with transgender children from all parts of the state, including many who are PFLAG members. They report that these families’ stories of suffering under the Rule are both unique and sadly typical—having been repeated thousands of times⁴ in families with transgender children, in every corner of the state. TENT and Equality Texas report that, as a consequence of the Rule, families with transgender children throughout Texas have

⁴ The most recent estimate for the number of transgender youth aged 13-17 in Texas is 29,300, based on data from the Census, the Department of Justice, and the Centers for Disease Control. Herman et al., *How Many Adults and Youth Identify as Transgender in the United States?*, Williams Institute (June 2022) at 11. Available at <https://www.documentcloud.org/documents/22057788-williams-inst-trans-stats-2022>.

faced the loss of healthcare for their children, the stigma of being labeled child abusers, a wave of violence, and unceasing fear that the State may come at any time to try to investigate them or even tear their families apart.

Loss of Healthcare

TENT has seen how the Rule has led to the collapse of large parts of the healthcare system serving transgender young people in Texas, including many families who are members of PFLAG. Andrea Segovia, TENT's Senior Policy and Field Advisor, reports that this is because the Governor's Rule has broken down trust between patient, doctor, and government: "A lot of times, parents ask 'should we go to this doctors' appointment?' People are afraid of their own doctors. We tell them, 'Only you are the parents, we can't make a choice for you, let's talk it through.'" In this atmosphere of fear, Ms. Segovia says, "we're a listening ear; people call us because they have no one else to call." In the month after the Governor acted, 120 families from across the state reached out to TENT for help and guidance. Almost half of these contacts were from concerned parents and other caregivers whose children had mentioned suicide. TENT has had to divert much of its energy toward counselling families and setting up a professionals' network that, where possible, will refer families to alternative healthcare providers. In total, since the Directive and Rule were issued, TENT has had to respond to over 60 requests for assistance from families with barriers to healthcare access. Ms. Segovia says, "We try to help

people make connections and find resources. And they come back to us when that fails.” Even though TENT is a policy organization, not a social services provider, about a quarter of TENT’s staff is now devoted to this work, because, in the words of one parent, “Who’s gonna understand or have insight if not you?”

The effect on families is devastating when they are told that the healthcare they have obtained for their children, under the clinical judgment of their doctors, is now defined under the Rule as “child abuse.” The effect is especially profound on young peoples’ access to puberty-blocking medications.⁵ TENT has received multiple parent reports of doctors deciding to not follow their medical judgment as to when young people at the onset of puberty should begin medication, in the hopes that delaying for some time will somehow reduce their legal risk. Some doctors have also refused to prescribe puberty blockers altogether, and will only write hormone prescriptions. TENT is working with twenty families in the Houston area, and seven in San Antonio, who have been unable to obtain access to puberty blockers. In addition, TENT has also tried to help families whose pharmacies refuse to fill

⁵ Puberty blocking medications, as distinct from hormone medications, are administered in order to delay the onset of puberty, with its associated physical changes “that can significantly increase gender dysphoria and psychological distress.” Br. of Amici Curiae Am. Academy of Pediatrics et al. in Support of Appellees at 15, *Abbott v. Doe*, No. 03-22-00126-cv, (Tex. Ct. App. Aug. 25, 2022). The effects of these medications are fully reversible—a patient who ceases to take them simply starts puberty—and thus they “provide patients with time to understand their gender identity while preserving the widest spectrum of potential treatments and outcomes.” *Id.* “Later in adolescence—and if the patient, their parents or guardians, and medical team all agree it is medically indicated—hormone therapy may be used to initiate puberty consistent with the patient’s gender identity.” *Id.* at 16.

prescriptions for puberty blockers and hormone medications for young people, including seven in the Dallas area. TENT has also received requests for help from families with children who are not transgender, who report that healthcare providers' fear of the consequence of a DFPS investigation, "criminal penalties," or other enforcement by unnamed state agencies is so pervasive that it has had the unintended effect of denying families access to hormone blockers needed for reasons unrelated to gender dysphoria.

TENT staff have spent significant time as a go-between because families are afraid to talk to health professionals, lest they be reported to DFPS. TENT staff negotiated with one facility so that an at-risk youth would not be left to sleep in a hallway at mental health facility, unadmitted to a ward, because the youth is transgender and the facility expressed fear that admitting them would be inviting penalties from the State. In another case, TENT stepped in after a mental health provider in Austin abruptly withdrew care of a suicidal transgender youth with a history of suicide attempts, citing fear of State enforcement. The child's parents spent several nights alternately sleeping on the bathroom floor and in the child's bedroom to monitor the child and ensure they did not attempt suicide. TENT was able to find the child a therapist. TENT assisted another parent who reported that their child's mental health required inpatient care, but the parent was worried that the hospital would be compelled to withhold the child's gender-affirming

medications and that, while the child was hospitalized, the parent would be arrested. TENT was able to identify an appropriate facility and work with it to develop a plan to care for the child.

Like TENT, Equality Texas has also registered a notable increase in discrimination against transgender youth and their families seeking healthcare since the Directive and Rule issued. One transgender youth sought emergency psychiatric treatment at a hospital, and hospital staff reported the youth's mother to DFPS, which later sent an agent to the family who told the mother that she was an "alleged perpetrator" of abuse. Parents also reported to Equality Texas that their children were turned away from healthcare practices in San Antonio, Houston, and Dallas, while pharmacies in Garland refused to fill the prescriptions their doctors wrote for their children, because the medications are needed to treat gender dysphoria.

A Wave of Violence

The Directive and Rule have also unleashed a wave of violence directed at transgender people. By falsely equating the healthcare needs of transgender people with child abuse, the Directive and Rule associate transgender people with a widely-reviled crime. The impact on Equality Texas and the families it works with was immediate. Emails arrived threatening the staff's physical safety, hate mail was pushed through the office's front door mail slot, and people came to the office to yell, swear, and curse. After the Uvalde school shooting, a false rumor immediately

began to circulate that the shooter was a transgender person, and Equality Texas received a report of that a transgender teen in El Paso was assaulted by people claiming to be retaliating for that terrible crime.

TENT has likewise received an influx of violent threats over e-mail, social media, and mail, including death threats to individual staff members. One letter included pictures of TENT's Executive Director out in public and stated that next time he would have a bullet in his head. One staff member received an e-mail threatening to "chop off your body parts and see how you like it." TENT has had to undertake additional protection measures for the safety of its staff and their families.

Teachers, parents and students throughout the state have also reported to Equality Texas that schools have become increasingly hostile environments for transgender students. Some schools have been unwilling to permit students to say that they are LGBTQ+, use pronouns that accurately reflect their gender identity, or even ensure their basic safety. Some schools have removed symbols of support for LGBTQ+ students. And tragically, this has led to increased reports of transgender people experiencing discrimination and committing suicide or attempting to do so—especially young people who are bullied in school.

Families are Overwhelmed with Fear and Anxiety

Equality Texas has needed to create an entire new program to respond to requests for information and assistance from families with transgender children,

including those who are members of PFLAG. As stated by Ricardo Martinez, Equality Texas's Chief Executive Officer: "We are on the front lines of having to navigate peoples' despair. When parents are in panic, they turn to us for answers, for a shoulder to cry on, to discuss the impact on themselves and their families." The organization has been overwhelmed with requests for help from families of transgender kids, their teachers, and other community members, and has had to hire a constituent services manager to address emergencies, connect families who have transgender children with support and services they may need (regardless of where they are in Texas), track data and analyze trends, build relationships, and engage in rapid community response efforts. Previously, Equality Texas focused solely on policy advocacy, leadership development, and public education, but it has found it necessary to redirect its resources toward addressing families' immediate needs.

Last June, Equality Texas attended 42 Pride events throughout the state, from El Paso to the Rio Grande Valley to Texarkana to the Panhandle. At one, a mother reported her child had asked her point-blank if she was going to die. At another, a parent reported their child becoming withdrawn and anxious – a reversal of their typical happy-go-lucky behavior. At all 42 Pride events, children and parents reported that life had become fearful, unsafe, and in many cases little more than a struggle to survive and to obtain the healthcare necessary to do so.

Some Families Have Fled the State and More Will Follow Unless the District Court's Injunction is Affirmed

The fear of DFPS investigation and its potential consequences, caused many Texan families, including PFLAG members, with transgender children to flee Texas or to retreat into the shadows. About twenty percent of the families that TENT regularly worked with prior to last year have left the state, and TENT staff expect more to follow if they are unable to obtain injunctive relief. Likewise, Equality Texas relies on volunteers from the community it serves to participate in the democratic process—to testify at legislative hearings, attend local government meetings, and so forth—and about a tenth of those families have left the state since the Directive and the Rule were issued. No family who works with *Amici* organizations has been able to speak at public DFPS meetings, because of concerns that they by DFPS will target them for investigation. Equality Texas has had to recruit volunteers to relate families' experiences, since they are unable to safely do so themselves.

The staff at *Amici* organizations dream of a day when transgender children can live lives of safety and joy, where their greatest potential is fulfilled, and where they are not bullied but rather receive love and support from the entire community, in the same way that non-transgender children do. Each day that the Rule deprives PFLAG member families of the ability to provide their children stability, safety, and healthcare, of and imposes on them the stigma of abusers, is a day that further traumatizes children and reduces the odds that they will survive and thrive into

adulthood. *Amici* organizations know that blocking the Rule will go a long way toward reversing the increase in violence, discrimination, and health problems that it has caused among transgender children and their families, and allow them to return to the normal joys and experiences of childhood. But they fully expect these problems will continue, and worsen, if the injunctions are not affirmed. Ms. Segovia of TENT concludes:

Texas' transgender young people are creative, and resilient, and I know the Governor can't make them disappear. But of the hard times we've faced, this is by far the hardest. Parents don't know how to protect their children, and we don't always have an answer, beyond that it's proven that supporting your kid is the best way to ensure they survive. Everybody should have an opportunity to thrive, and here we are talking just about survival. Our lives have to be carved around the hate the Governor's Directive and DFPS's Rule have created for people and how far he has used his power to enforce it. We'll never lose hope or give in, but I've never seen things like this before, and only the courts can step in and stop it.

B. The Rule is Harming the Health of *Amici* Families' Children

The Rule is harming the health of *Amici* families' children through its chilling effect on their doctors, who in many cases have delayed or altogether denied the provision of healthcare in order to avoid the mandatory reporting requirements, "criminal penalties," the investigations by unnamed state agencies, the threatened loss of licensure, and the stigmatizing "child abuse" label cited by the Rule. As made clear by plaintiffs and other *Amici* filing briefs in this case, **"every major U.S. medical association recognizes that gender-affirming healthcare is medically**

necessary treatment for dysphoria.” *Outlawing Trans Youth: State Legislatures and the Battle Over Gender-Affirming Healthcare for Minors*, 134 HARV. L. REV. 2163, 2165 (2021) (emphasis added).⁶ Depriving children of healthcare access, causing them to suffer “regression and deterioration in their medical condition” is obviously irreparable harm. *Tex. HHS Comm’n*, 399 S.W.3d 630; *see also supra* at Section I.

Texas families, including the individual Plaintiffs and *Amici* including the PFLAG member families who tell their stories in this section, have seen first-hand how gender-affirming healthcare has helped their children grow into healthy adolescents, thrive inside and outside school, and experience happy childhoods. Due to the chilling effect of the Rule, some doctors have now ceased to provide this medically-necessary care. As a result of losing healthcare, *Amici* families’ children have experienced a variety of debilitating symptoms, including anxiety, depression, and thoughts of self-harm, and have struggled in school and in relationships with friends and family.

⁶ Gender dysphoria “is a specific diagnosis given to those who experience impairment in peer and/or family relationships, school performance, or other aspects of their life as a consequence of the incongruence between their assigned sex and their gender identity.” *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, PEDIATRICS Vol. 142, No. 4, at 3 (October 2018) (“American Academy of Pediatrics Policy Statement”). “Gender-affirming care,” used to treat a diagnosis of gender dysphoria, includes therapy and counseling, and may include hormone treatments that depend on the individual’s age and stage of physical development. 134 HARV. L. REV. at 2166.

Eileen Cassidy is the mother of two children, the younger of whom—Ryan X,⁷ aged 10—is transgender and nonbinary, and uses they/them pronouns. She is also a career Army officer and has attained the rank of Major, serving as a Medical Service Corps officer stationed at Fort Sam Houston in San Antonio.⁸ The family, who are PFLAG members, enjoys reading together and visiting theme parks, and both children practice taekwondo. Ryan is also into beginner computer coding for kids and is in the Gifted and Talented program at school. From a very young age, Ryan expressed that they are not a boy. At three years old, Ryan asked: “when am I going to be a girl?” Ryan’s persistence in not being a boy continued for four years, including constantly objecting to haircuts and requesting to wear dresses outside of their home. By the age of seven, Ryan started showing more serious signs of distress and described having something “very wrong inside.” Maj. Cassidy took them to see the social worker embedded at their school to help them understand if this distress was being caused by internal doubts over their gender identity. The social worker saw Ryan for several sessions and began to introduce the concepts of gender and pronouns using stuffed animals, including one that did not have a gender and used they/them pronouns. Immediately, Ryan said “that’s me.” Ryan has consistently

⁷ Ryan’s last name is different from Maj. Cassidy’s.

⁸ Everything Maj. Cassidy states in this brief is in her individual capacity. She is not speaking on behalf of the U.S. Army, nor any part of it.

lived as nonbinary since that day, and they have shown no signs of distress or the previous mental health issues prior to this social transition.

Eileen Cassidy is now struggling to ensure Ryan will receive proper medical care. On that day in 2020, Ryan was diagnosed with gender dysphoria. In the following months, a pediatric endocrinologist at Brooke Army Medical Center (“BAMC”) on Fort Sam Houston recommended that Ryan receive implantable puberty suppressants at the onset of puberty in a few years to allow Ryan to mature further before deciding how to go through the changes of puberty in a way that would not make their gender dysphoria worse. This doctor explained that BAMC may be unable to provide this care due to concerns over the Rule and how individual medical providers may be impacted. Due to a custody agreement with Maj. Cassidy’s ex-husband (Ryan’s father), this family is restricted to living in the area surrounding San Antonio and Austin and cannot move out of state. Maj. Cassidy expects that, due to the Rule, obtaining medically necessary healthcare for Ryan when puberty starts soon will be logistically difficult; and she also knows she could be investigated for “child abuse” merely for ensuring her child’s access to this medically-necessary care.

Beyond the challenge of obtaining proper medical care, Maj. Cassidy is also concerned about protecting Ryan from people who do not understand them or their identity. She knows that the Rule has made this task more difficult, because

government action equating healthcare for transgender people with child abuse emboldens individuals to insult, degrade, and harm transgender people, including children like Ryan. The Rule also encourages members of the public to surveil families like hers, and criticize them, or report them to the authorities as child abusers for simply caring for their children. Because of this threat, Maj. Cassidy says she is “always on guard.” For example, she does not allow Ryan to go to sleepovers with other children because of fear that other parents may tell Ryan there is something wrong with them or even report their family to DFPS. She is also careful around Ryan’s use of pronouns in public.

Through her careful vigilance, Maj. Cassidy has found and created a close-knit community that supports Ryan—including their school, members of the community on base at Fort Sam Houston, other military officers, and family members. Though she cannot leave Texas, Maj. Cassidy remains steadfastly committed to keeping her child safe and ensuring they have access to proper healthcare. She is determined to overcome these significant obstacles, to parent Ryan in a supportive way, and to give Ryan the opportunity to have a happy and healthy childhood.

The story of the P family, who are PFLAG members, is also distressingly typical of the experiences families face when the Rule serves to deprive their children of healthcare. Both V.P. and her fourteen-year-old transgender daughter

A.P. were born and raised in Texas. A.P. has been a happy and active teenager and member of her church youth group in central Texas. She enjoys collecting Lego figurines, especially from Marvel, and playing Minecraft. Three years ago, A.P. started expressing her gender identity, presenting herself more femininely, and using female pronouns. At the time, the family lived in a community that was not accepting of transgender people, and A.P. began to be bullied, and twice attempted suicide. As a result, the family moved to the more accepting community where they live today.

As a pre-teen, A.P. told V.P. that she “would not make it” through male puberty. When A.P. was thirteen, V.P. began obtaining treatment for A.P.’s gender dysphoria from physicians and a psychologist: A.P.’s doctors started her on a puberty blocker, so that she could decide when she is older, in consultation with her family and her physician, whether to begin hormones that would allow her a female puberty. When the Governor issued his Directive and DFPS adopted it as the Rule, A.P. was scheduled for a doctor’s appointment to discuss whether to begin taking those medications. The clinic where A.P.’s doctor works issued a press release stating that it was no longer prescribing gender-affirming healthcare. V.P. immediately contacted A.P.’s doctors to ask what this would mean for A.P. None of them could say, as the doctors’ employers could not guarantee they would be able to continue to write prescriptions for gender affirming hormones or puberty blockers. When V.P. explained this to her daughter, A.P. hit a critical low. She started having

gastrointestinal problems caused by anxiety, and started missing school. She didn't feel safe returning to school, and was hospitalized for six days, paralyzed with anxiety that she could lose access to medical care, or that DFPS could come any time to break up her family. She was not able to finish out her eighth-grade school year in person. She began her ninth-grade year in a public school, but she has since had to leave and is currently being homeschooled because of anxiety triggered by the anniversary of the Directive. V.P. feels like the Governor and DFPS have stepped into the shoes of A.P.'s sixth-grade bullies and refuse to back down. She feels like, without the benefit of an injunction, there is nowhere in Texas where she can ensure her daughter is safe and well.

The experience of Katie L. and her son N is similar. The family are PFLAG members. Before coming out as transgender, N suffered from depression, anxiety, and untreated gender dysphoria. N is now treated by a therapist, a psychiatrist, and an endocrinologist. He began receiving testosterone in early 2021 as a freshman in high school. This medication helped him emerge into the confident and outspoken young person he is now. Katie L. explains the medication is a critical piece of treating N's gender dysphoria and keeping him healthy and hopeful for the future. But, just a year later, as a result of the Rule, N's doctors told Katie L. that N would not be able to get refills on his testosterone for an unknown period of time. This news was extremely stressful for the L family. N needs this medication to survive

and Katie L. is sure that this medication saved her son. Before starting testosterone, he was experiencing suicidal ideation that was spiraling and could have led to action that would have ended his life. As a result, Katie L. was forced to leave the state, although she seeks to return if she is able to obtain the protection of an injunction, as discussed further below.

Finally, Erika and Aaron Richie have raised three third-generation Texan children, including their middle child, C.R., who is a nonbinary sixteen-year-old. The Richies are long-time PFLAG members. When the Governor's Directive came down, and DFPS adopted it in the Rule, C.R.'s doctors were supportive, telling the family that they will do what they can to maneuver around obstacles to accessing gender-affirming care. They were able to prescribe C.R. a sufficient supply of testosterone, but the Richies live in fear that they will not be able to do so again. The Richies resolved "to do whatever it takes" to protect C.R.'s wellbeing. They have had to talk to about contingency plans for leaving the state, despite their deep roots in Texas, and discussed safety plans for attending Pride events.

C. The Rule is Depriving Texas Children of their Previously Ordinary, Happy Childhoods; and their Parents of the Right to Provide Them

Beyond creating barriers to children's access to medical care, the Rule deprives Texas parents of the ability to provide their kids of ordinary, happy childhood and family life. Put more simply, the Rule traumatizes children. As reported by the *Amici* families who tell their stories in this section, their previously

happy children have suffered from nightmares and anxiety attacks, have developed nervous tics, and have become afraid of going to church or to playgrounds or to extra-curricular activities, all due to the Rule’s threat of investigation and its consequences. And their parents are unable to prevent these harms, because they know that seeking help from school or other authorities could lead to the very consequences causing their fear. Depriving children of the ability to enjoy the simple joys of childhood, and parents of the ability to raise their children freely, is irreparable harm. *See, e.g., In re C.J.C.*, 603 S.W.3d at 811; *see also supra* Section I.

Additionally, absent an injunction, DFPS is required to investigate any family—including any PFLAG member family—reported for purportedly providing gender-affirming medical care for their children, stigmatizing parents with the label of “child abuse” and causing incalculable stress and anxiety from the looming threat of investigations and all they might portend—ultimately including removal of children and felony prosecution. This kind of looming State threat into parents’ ability to raise their children, and the integrity of families, constitutes irreparable harm, as this Court has repeatedly held. *See U. Interscholastic League v. Hatten*, 03-03-00691-CV, 2004 WL 792328, at *2-*4 (Tex. App.—Austin Apr. 15, 2004) (unpublished) (affirming temporary injunction where injuries to parents included the “stigmatizing effect” of the defendant state agency’s actions on Plaintiffs’

reputations, and their loss of “ability to make decisions about child rearing, education, and family relationships without government intrusion.”). *See also, e.g., Fuentes v. Union De Pasteurizadores De Juarez Sociedad Anonima De Capital Variable*, 527 S.W.3d 492 (Tex. App.—El Paso 2017, no pet.) (“the threat of civil and criminal action against [the party seeking the temporary injunction] constitutes irreparable harm”); *supra* at Section I.

The stories of three families—A.A. and her child E.A.; the B family; and A and M and their children—are emblematic of the distress and anguish that the Rule is causing transgender children and their parents through imposing an ever-present fear of investigation and its potential consequences, and the stigmatizing label of “child abuse.”

A.A. is parent to a 12-year-old transgender girl, E.A., who has known she is a girl since she was three. The A family are PFLAG members. A.A. shared her child “didn’t sleep through the night from age 4 until she got her first [puberty] blocker. . . . It gave her that much peace of mind, knowing that her body is not turning on her.” The family has been active in their daughter’s care, ensuring she has proper access to medical care and therapy, and very active in their community and A.A.’s school. A.A. “cried for days” after the Governor’s Directive was released, and recalls her daughter “came through the door sobbing” that day. Both of E.A.’s siblings have been “having regular nightmares that their siblings get taken away” or that their

parents will disappear. A.A. has had to speak with her children, as well as her children's caretakers and babysitters, about what could happen in case of a DFPS investigation, and has had to provide caretakers with contact information for an attorney. A.A. has also requested letters from friends that state that they are good parents, but found that "just having to ask for that [was] demoralizing and dehumanizing." A.A., E.A., and their family "desperately want to stay" in Texas, where they have built their lives and their home. At the same time, they fear for E.A.'s safety and loss of privacy under the Governor's Directive, and they know of trans women who have been murdered in the area where they live, causing them to "feel like [they] are living in a state of terror right now."

A.A.'s family is now organizing their finances to be prepared if they need to leave Texas due to the DFPS Rule. If A.A. and her husband were to be investigated for child abuse under the Rule, she is very concerned about the trauma to her children of such an investigation, "for the kids to have to go through that, it would be so traumatizing as to require significant care to recover from that." A.A. expressed the hope "that, at a minimum, our government stops attacking our family and a marginalized community," and for "every trans kid to know that they are loved."

The B family has suffered similarly. R.B. and C.B. have two children, including S.B., a 9-year-old transgender girl. The family, who are PFLAG members, bonds and finds joy through their shared love of sports. Both children play soccer,

basketball, softball, and tennis. Every Sunday, the kids watch their parents play in an LGBTQ+ softball league. S.B. is also an avid reader, going to the library every couple of days to replenish her supply of unread books. S.B. loves school and feels affirmed by her peers and teachers, as well as the family's circle of supportive neighbors and her parents' co-workers.

R.B. and C.B. knew that their daughter S.B. was transgender by age four. When they first moved to Texas, they visited an endocrinologist to learn about gender-affirming care. After consulting with the endocrinologist and S.B.'s pediatrician, R.B. and C.B. decided that S.B. should be given the option to start taking puberty-blocking medications at the beginning of puberty.

When the Directive and the Rule were issued, R.B. and C.B. were terrified because they have been so public about their support for S.B. To protect their family, they had their name removed from their house and their social media profiles taken off the internet. They came up with a safety plan for marching in their local Pride parade this year in case danger arose. They prepared laminated business cards for both children to keep in their backpacks, stating their child's name and that they do not consent to speaking to DFPS, and directing DFPS agents to call the children's lawyer. It is "heartbreaking" to R.B. that her elementary-age children need to bring these cards onto the playground with them in their pockets, expecting to be questioned at any moment.

The whole family has suffered from anxiety because of the Rule. S.B. has developed anxious tics; before she speaks, she gets nervous, and clears her throat multiple times. Her parents started the process of getting S.B. a psychiatrist, but S.B. was first placed on a waiting list with a 10-week wait, as there are few mental healthcare professionals still willing to treat transgender children, with many families traveling considerable distance to see a provider. R.B. and C.B. are trying to hide the worst of their stress from the children, but R.B. cannot sleep and has rapidly lost weight and suffered hair loss. S.B.'s younger brother has noticed the family's insecurity, and had a traumatic nightmare that S.B. was in a boat that kept getting bigger and bigger, and he could not get to S.B. Then the boat started sinking.

A. and M. are parents of two children, the younger of whom, aged nine, is transgender and nonbinary, and uses they/them pronouns. The family, who are PFLAG members, are very active in their church and community, both of which have lovingly welcomed the whole family. Since the release of the Governor's Directive and DFPS's adoption of the Rule, A. and M. have had to instruct their youngest child that they cannot talk about being transgender; and their eldest that she must not mention to teachers or other students that she has a transgender sibling. "That was very confusing because we have never once told our family to hide who they are," said M. Their youngest child "was terrified" and "cried hard during this conversation." The child has since expressed fear of being investigated by DFPS and

put up for adoption, sharing the heartbreaking worry that “nobody would adopt me because I am trans.” They have also expressed fear about sharing their transgender identity with new people at school, because they do not know who might want to hurt them.

Despite their precautions, since February 2022, “the amount of vitriol has increased substantially” toward A. and M.’s family, according to M. Both parents have faced threats and harassment. After M. stated online that he has a transgender child, he received about 20-30 online threats saying things like, “I can’t wait to report you.” A. has received text messages from strangers who found her phone number online, threatening to report her. M. has lost income opportunities at work when he disclosed having a transgender child to potential business contacts.

The Directive and Rule have also impacted A. and M.’s family’s ability to participate in religious and social activities. The family normally celebrates Pride month, but last year they chose not to attend many Pride events out of fear for their safety. The family’s church was forced to make the painful decision to remove Pride notices after another nearby church’s Pride event for children was infiltrated with people who took photos of the children and their families and threatened on Facebook to post identifying information in order to expose them to further harassment (this is known as “doxing”) and to report the families to DFPS. Their

church had to rethink a security plan to protect their congregation, and even put instruction cards in the pews on how to react to an active shooter.

Most other *Amici* families report similar fears. T.S. is the mother of two children, including a middle-school aged transgender daughter. Her family is a PFLAG member family. Along with her daughter and her daughters' doctors, T.S. has created a health plan including puberty blockers and hormone therapy to ensure T.S.'s daughter will go through puberty that aligns with her gender. T.S.'s child has pleaded, "Please don't let me grow hair on my face like Daddy." T.S. also fears DFPS will come to her children's school, making each day's fate unknown. T.S. spoke to her children about what would happen if DFPS does so. She told them their rights, and exactly what to do if this happens. Having this conversation with both children, especially her youngest, instilled a lot of fear around being taken away from family. T.S. has also suffered herself because of the Directive and Rule. She is looking for work, but she has not taken a position, knowing that she might have to quit and move out of Texas. She and her family also have discussed the possibility of splitting up the family so that T.S.'s transgender child can remain safe and seek care out-of-state, while her husband stays in Texas to avoid disruption to his career and to their other child's life and education. T.S. has shared that her anxiety has become unmanageable and she is currently seeking care from her doctor for it.

Similarly, Ed Diaz, whose family are PFLAG members, is the parent of an 11-year-old transgender girl, who has blossomed as an adolescent after socially transitioning. “She’s now so much more confident in herself, so I have zero doubt that we’re doing the right thing as a family,” says Mr. Diaz. Mr. Diaz says his daughter knows that “not having access to best practice medical care would be devastating.” He explains:

This is not a choice for her, it is who she is. The assertion that loving parents who are doing their best to support their child could be charged with child abuse is surreal. It just pulls the rug out from under you.

Mr. Diaz has had to have a conversation with his daughter about leaving the state, and she was “very sad to think about leaving her friends and her home.” Having to move would also be financially devastating. Mr. Diaz has owned his business for 20 years—starting over in a different state would be a massive hardship, emotionally and financially costly.

Melody Gomez is a parent to three children who have each begun to flourish after receiving gender-affirming care: S.N., age 23; M.G., age 16; and J.G., age 9. They are PFLAG members. Everyone in their family is a fervent advocate for transgender people on a local level and sometimes national level. Though their home and family are safe spaces, it has always been difficult for them to live full lives outside of those spaces. J.G. came out at 4, told school administrators upon entering kindergarten, and has been defending themselves ever since. To this day, going to

school knowing they will have to defend themselves to both students and adults alike has caused them daily anxiety, which the Rule has made worse.

Recently, when J.G. introduced themselves with their pronouns to a parent at the school where Melody worked, the parent responded, “that’s not a real thing, honey, you’re a boy.” Melody was furious at the parent but felt she could not defend her child out of fear that the parent would retaliate. The same parent recently won a position on the school board, exacerbating Melody’s fear that the school district will wield the Rule against LGBTQ+ children and their families by refusing to let administrators support them. As an example of this, since the Rule came out, LGBTQ+ students have reported to Melody that their high school principal has called them “fags,” “dirty pigs,” and “whores.” When those students went to school administrators to complain, they said their “hands were tied,” and this is “just who [the principal] is, and we have to accept her too.” Melody also complained, and was told that she should not “rock the boat,” to “stop upsetting everyone,” and to “stop talking or we will all lose our jobs!”

Melody left her job with the school district two months after the above incidents. Instead, she has become an independent contractor so she can advocate without the fear of vocational repercussions, though she still fears for her family’s safety. Other district employees have also because of added stress from the Rule and the fearful environment it has created.

As a result of the Rule, a number of *Amici* families have also had to cut back on their participation in the democratic process and the exercise of their right to free speech. P and G are parents of two children, including X, a nine-year-old transgender girl. Their family is a PFLAG member family. Over the prior two years, P had gone to the Capitol several times to speak at hearings and join in protests, in a successful effort to block bills that would prevent her child from having access to healthcare. After the Directive and Rule were issued, a friend with whom she advocated in Austin had DFPS show up at that family's door. P now fears that the same will happen to her. The burden of being a target has been insurmountably heavy at times. P's doctors had to increase her antidepressant and thyroid medication doses in direct response to this stress of worrying that her family will be next. P and G fear DFPS knocking on their door and starting an investigation, which could even lead to DFPS taking their children. If P or G had to leave Texas in order to protect X and provide her with appropriate healthcare, the other parent would have to remain in Texas with their oldest child per their custody agreement, splitting their family apart. Yet they also wish to shield X from the fear they experience, so that she can live a carefree life, like any other eight-year-old girl. So they have provided X with a letter to keep with her, stating to DFPS officials that X refuses to speak with them, and they cannot take her picture, and instead they must contact her parents or her attorney; but they have only given her age-appropriate instructions about what to do with the letter,

explaining it is meant to protect her from any strangers who want to ask her questions about her or her family, because some of these strangers do not understand transgender people. They also now vet anyone they speak to and continue their policy advocacy only on the condition of anonymity.

Similarly, Lisa and Jeff Stanton have a 12-year-old transgender daughter, M.S., who is passionate about speaking up for her community and has even won awards for her bravery and activism for LGBTQ+ rights. The family are PFLAG members.⁹ They are anxious that the Directive and Rule put them at risk of being reported to DFPS at any moment for speaking publicly about their support for the trans community and celebrating their daughter. They decided to pause participation in advocacy and public events for a few months in response to that risk. Their caution is based on experience: the Stantons were once in the past anonymously reported to DFPS for “transgendering” (*sic*) M.S., and at the time DFPS appropriately found the report “priority none” and did not open an investigation. However, the Stantons now fear that under its Rule, DFPS no longer has the discretion to designate another baseless complaint as “priority none” and would be required to open an investigation. Lisa just wants her daughter to be a kid and “a summer where the least interesting thing about her is being transgender.” Lisa took a fully remote job and Jeff is actively

⁹ The Stantons have also provided a more detailed version of the present narrative in a declaration submitted to the district court below. *See* 1CR893-103 (Decl. of Lisa Stanton, June 8, 2022).

looking for employment out-of-state so that the family can leave Texas to obtain medically necessary care for their daughter. They describe navigating medical care, including their quarterly appointments to monitor their daughter for the start of puberty, as living on a rollercoaster, with every new whisper of an update being another cause for anxiety. M.S. is now in weekly talk therapy as a result of increased anxiety, and she started taking anti-anxiety medication. As brave and outspoken as M.S. is, she is now torn between wanting to stay in her community of family, friends, and supporters and wanting to flee Texas.

D. The Rule Has Forced Some Families to Flee the State, and Unless the Injunction is Affirmed Others Will Need to Follow

Many families are unable to tolerate the Rule's ongoing threat of family separation and risks to their children's health. Some, including the *Amici* whose voices are heard in this section, have left Texas to avoid the possibility of investigation and its consequences, or the loss of healthcare and resulting illness. These families long to return, if the serious threats to their safety and wellbeing can be blocked by an injunction of the Rule. Other families are preparing to leave if the Rule is not enjoined.

The loss of the ability to live in one's home is irreparable harm. *Wendt*, 1998 WL 43321, at *10.

So, too, is the immeasurable financial loss suffered by some of the *Amici*, whose family businesses have had to turn away opportunities so that the family is

able to depart at a moment's notice. *See Al-Wahban v. Hamdan*, 2019 Tex. App. LEXIS 4849, at *8 (Tex. App.—Waco 2019, no pet.) (holding appellees' "evidence constitute[d] more than a fear, apprehension, or speculation of a claimed injury" where appellee established that appellee's purported damages, which were premised on his status as a shareholder of appellants' business, would be affected if appellants shut down the business; as such, a temporary injunction that "merely seeks to maintain the status quo" was appropriate).

Katie L., whose story was introduced *supra* section B, is the mother of a transgender fifteen-year-old son, N. The family, including Katie L., her husband, N, and N's five-year-old brother, have always lived in Houston, within 10 minutes of N's father A. The blended family enjoys a wonderful co-parenting relationship, and N lives and moves through the two households seamlessly. N is also exceptionally close to his paternal grandmother, with whom he shares a deep connection. She is "his person" after years of "*Abuela* sleepovers," spent watching movies, gardening, and riding bikes.

N first came out as transgender at school to peers and adults, using his chosen name there for several months before coming out to his parents. Katie L. is grateful that he was given the opportunity to navigate his coming out on his own time, with acceptance from school administrators, rather than being immediately required to come out to her before he was ready. When he did come out to her, Katie L. felt

relief to have a shared vocabulary to understand N. Together, Katie L. and N would later travel to Austin, where Katie L. testified before the Texas state legislature about the effects of proposed legislation on transgender youth, and the benefits of helping transgender young people to affirm their gender identity and to live as their true selves. Katie L. proudly remembers the confidence N displayed that day as he gathered with other transgender kids and allies to protest the harmful legislation.

As a result of the Rule, Katie L. fears for her son's future and safety. She has had to start taking antidepressants, for the first time in her life. She has become anxious that friends and family might feel obliged to report her family for loving and supporting her son. Also as a result of the Rule, N stopped participating in karate, his favorite activity, because he didn't want to bring a spotlight on his dojo. The entire family is careful about how they interact with people they don't know.

Katie L. also started looking for housing out of state the day the Governor issued his Directive, to ensure that N would stay safe and continue to have access to the lifesaving healthcare he needs. Leaving Texas, the only home N has ever known, and his large, loving extended family, was not a rash decision. The injunctions issued by the trial court and this Court in *In re Abbott* persuaded Katie L. and N it was safe enough to stay and see the end of the school year through. When the Supreme Court lifted this Court's injunction as to the non-plaintiffs in that case, *see In re Abbott*, 645 S.W.3d at 283, they knew they had to leave. A and *Abuela* drove a U-Haul truck

over the state line to the closest “safe state” for families of transgender kids they could find.

The harm from each day Katie L. and her children are kept out of Texas is mostly immeasurable: a father missing his son’s last years of high school, a little brother being separated from his big brother, Katie L. unable to assist with the care of her parents or disabled brother in Houston, and N’s first love story interrupted. But it is also financial: \$10,000 for the move, the cost of airline tickets to keep a family connected, and increased household and medical costs.

Despite the irreversible damage that has been done, Katie L. would come home again if she could, because she wants her family whole. While it is her duty to keep her son safe and to make sure he has access to health care, she eagerly awaits the day she can obtain injunctive relief so her family can return to Texas.

The experiences of many other *Amici* families are similar. K.K., who was also born and raised in Texas, is a mother of two, including a transgender daughter; they are PFLAG members. After the Governor issued the Directive and DFPS adopted the Rule, K.K.’s daughter asked her if she was going to die. K.K. shared this was the moment she knew they had to leave Texas. Her daughter is now eleven, and the family expects she will need to begin puberty blockers sometime soon. Fearing that their daughter will not be able to receive that care in Texas, or that they will be investigated by DFPS if they do give her care when appropriate, the family has now

left the state. K.K. was adamant about staying in Texas and fighting for transgender youth across the state—that is, “until they try to take the kids away . . . and then that happened too.” K.K. and her husband had planned on living in Texas for their whole lives. They both have extended family in Texas. But K.K. now does not even feel safe visiting these family members, because she fears DFPS will take K.K. away. She would, at least, feel comfortable visiting Texas, if she could benefit from injunctive relief. This would allow K.K. and her children to maintain contact and relationships with the extended family still in Texas.

Camille Rey, a sixth generation Texan, has family, who are PFLAG members, has roots in Texas that are older than the state itself. A school in San Antonio, where she is from, is named after her great-uncle. Early last year, after anti-transgender bills were introduced in the Texas Legislature and started to gain publicity, her transgender son L.R., who was then seven, began suffering from painful stomachaches, headaches, and nausea. L.R.’s school called Ms. Rey and told her that L.R.’s personality had completely changed—the kid who once made his peers laugh and finished all his schoolwork was now withdrawn and distracted. He finally admitted to pretending to be happy at home so that she would not worry.

The growing anti-transgender climate within the State’s government made Ms. Rey feel that she could not guarantee her son’s continued health and wellbeing in Texas, and late last year she made the difficult decision to relocate out of state. The

move took a tremendous emotional toll on her family, and nearly doubled their mortgage, but it proved worth it because the Rule confirmed Ms. Rey's worst fears. She is now unwilling to risk even bringing L.R. to Texas to visit with her family. She worries her child would be deprived of the healthcare that has allowed him to love himself again, or that DFPS could even try to take him into custody. Ms. Rey awaits the day when she can safely bring her family back to Texas to visit family and remain connected to their roots. She hopes that, if she could assure the integrity of her family and her son's continued safety and access to healthcare, she could even move back to Texas. She dreams that once again her children could be raised within their extended family and the community that has nurtured and been nurtured by her and her family for so many generations.

CONCLUSION AND PRAYER

Amici provide but a few of examples of the kinds of irreparable harms PFLAG members in Texas are suffering—to their health, to their childhoods, to their ability to parent, and even to their ability to reside in their home state—all due to the loss of healthcare and the regime of fear that the Rule has imposed. *Amici* respectfully request that this Court take into account the irreparable harm faced by PFLAG member families, and affirm the District Court's temporary injunctions.

/s/ David Brown

David Brown *
TRANSGENDER LEGAL DEFENSE &
EDUCATION FUND
520 8th Avenue, Suite 2204
New York, NY 10018
T: (646) 862-9396
dbrown@transgenderlegal.org

/s/ J. Richard Hammett

J. Richard Hammett
BAKER MCKENZIE LLP
800 Capitol Street, Suite 2100
Houston, TX 77002
T: (713) 427-5000
JRichard.Hammett@bakermckenzie.com

/s/ M'Alyssa B. Mecenas

M'Alyssa B. Mecenas *
BAKER MCKENZIE LLP
10250 Constellation Blvd., Suite 1850
Los Angeles, CA 90067
T: (310) 616-5370
Malyssa.Mecenas@bakermckenzie.com

* Motion for admission *pro hac vice*
pending or forthcoming.

CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I certify that this brief contains 10,329 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/ J. Richard Hammett

J. Richard Hammett

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 10, 2023, a true and correct copy of the foregoing document was served via Eservice on the following counsel of record:

Brian Klosterboer
State Bar No. 24107833
Chloe N. Kempf
State Bar Number 24127325
Savannah Kumar
State Bar No. 24120098
Adriana Piñon
State Bar No. 24089768
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF TEXAS
5225 Katy Fwy.
Suite 350
Houston, Texas 77007
T: (713) 942-8146
bklosterboer@aclutx.org
ckempf@aclutx.org
skumar@aclutx.org
apinon@aclutx.org

Paul D. Castillo
State Bar No. 24049461
Shelly L. Skeen
State Bar No. 24010511
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
3500 Oak Lawn Ave.
Suite 500
Dallas, Texas 75219
T: (214) 219-8585
pcastillo@lambdalegal.org
sskeen@lambdalegal.org

Derek R. McDonald
State Bar No. 00786101
Maddy R. Dwertman
State Bar No. 24092371
John Ormiston
State Bar No. 24121040
BAKER BOTTS L.L.P.
98 San Jacinto Blvd.
Suite 1500
Austin, Texas 78701
T: (512) 322-2500
derek.mcdonald@bakerbotts.com
maddy.dwertman@bakerbotts.com
john.ormiston@bakerbotts.com

Karen L. Loewy*
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
1776 K Street, N.W., 8th Floor
Washington, DC 20006
T: (202) 804-6245
kloewy@lambdalegal.org

Omar Gonzalez-Pagan*
M. Currey Cook*
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, New York 10005
T: (212) 809-8585
ogonzalezpagan@lambdalegal.org
ccook@lambdalegal.org

Susan Cannon Kennedy
State Bar No. 24051663
BAKER BOTTS L.L.P.
2001 Ross Avenue, Ste. 900
Dallas, Texas 75201
T: (214) 953-6500
susan.kennedy@bakerbotts.com

Elizabeth Gill*
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
39 Drumm Street
San Francisco, California 94111
(T): (415) 621-2493
egill@aclunc.org

Courtney Corbello
Johnathan Stone
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711
courtney.corbello@oag.texas.gov
johnathan.stone@oag.texas.gov

Brandt Thomas Roessler
Texas State Bar No. 24127923
Nischay K. Bhan
Texas State Bar No. 24105468
Nicholas F. Palmieri*
BAKER BOTTS L.L.P.
30 Rockefeller Plaza
New York, New York 10112-4498
Phone: (212) 408-2500
brandt.roessler@bakerbotts.com
nischay.bhan@bakerbotts.com
nick.palmieri@bakerbotts.com

Chase Strangio*
Anjana Samant*
Hina Naveed*
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004
T: (917) 345-1742
cstrangio@aclu.org
asamant@aclu.org
hnaveed@aclu.org

/s/ J. Richard Hammett

J. Richard Hammett

Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Karen Wagner on behalf of J. Hammett

Bar No. 24001054

karen.wagner@bakermckenzie.com

Envelope ID: 74496225

Filing Code Description: Brief Not Requesting Oral Argument

Filing Description: Brief of Transgender Education Network of Texas and 15 Others as Amici Curiae in Support of Real Parties in Interest PFLAG, Inc., et al.

Status as of 4/11/2023 9:24 AM CST

Associated Case Party: Greg Abbott

Name	BarNumber	Email	TimestampSubmitted	Status
Courtney Corbello		courtney.corbello@oag.texas.gov	4/10/2023 5:17:00 PM	SENT
Johnathan Stone		johnathan.stone@oag.texas.gov	4/10/2023 5:17:00 PM	SENT
Thomas Ray		thomas.ray@oag.texas.gov	4/10/2023 5:17:00 PM	SENT
LaShanda Green		lashanda.green@oag.texas.gov	4/10/2023 5:17:00 PM	SENT
Ryan Kercher		ryan.kercher@oag.texas.gov	4/10/2023 5:17:00 PM	SENT

Associated Case Party: PFLAG, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Derek McDonald		derek.mcdonald@bakerbotts.com	4/10/2023 5:17:00 PM	SENT
Madeleine Dwertman	24092371	maddy.dwertman@bakerbotts.com	4/10/2023 5:17:00 PM	SENT
David Goode	24106014	david.goode@usdoj.gov	4/10/2023 5:17:00 PM	SENT
Nischay Bhan	24105468	Nischay.bhan@bakerbotts.com	4/10/2023 5:17:00 PM	SENT
John Ormiston	24121040	john.ormiston@bakerbotts.com	4/10/2023 5:17:00 PM	SENT
Nicholas Guillory	24122392	nicholasaguillory@gmail.com	4/10/2023 5:17:00 PM	SENT
Brandt Roessler	24127923	brandt.roessler@bakerbotts.com	4/10/2023 5:17:00 PM	SENT
Karen Loewy		kloewy@lambdalegal.org	4/10/2023 5:17:00 PM	SENT
Savannah Kumar		skumar@aclutx.org	4/10/2023 5:17:00 PM	SENT
Carolina Caicedo		ccaicedo@aclu.org	4/10/2023 5:17:00 PM	SENT
Maia Zelkind		mzelkind@lambdalegal.org	4/10/2023 5:17:00 PM	SENT
Nick Palmieri		nick.palmieri@bakerbotts.com	4/10/2023 5:17:00 PM	SENT

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Karen Wagner on behalf of J. Hammett

Bar No. 24001054

karen.wagner@bakermckenzie.com

Envelope ID: 74496225

Filing Code Description: Brief Not Requesting Oral Argument

Filing Description: Brief of Transgender Education Network of Texas and 15 Others as Amici Curiae in Support of Real Parties in Interest PFLAG, Inc., et al.

Status as of 4/11/2023 9:24 AM CST

Associated Case Party: PFLAG, Inc.

Susan Kennedy		susan.kennedy@bakerbotts.com	4/10/2023 5:17:00 PM	SENT
Elizabeth Gill		egill@aclunc.org	4/10/2023 5:17:00 PM	SENT
Adriana Piñon		apinon@aclutx.org	4/10/2023 5:17:00 PM	SENT
Chase Strangio		cstrangio@aclu.org	4/10/2023 5:17:00 PM	SENT
James Esseks		jesseks@aclu.org	4/10/2023 5:17:00 PM	SENT
Anjana Samant		asamant@aclu.org	4/10/2023 5:17:00 PM	SENT
Andre Segura	24107112	asegura@aclutx.org	4/10/2023 5:17:00 PM	SENT
Brian Klosterboer	24107833	bklosterboer@aclutx.org	4/10/2023 5:17:00 PM	SENT
Michele Clanton-Lockhart		mclanton@lambdalegal.org	4/10/2023 5:17:00 PM	SENT
Paul Castillo		pcastillo@lambdalegal.org	4/10/2023 5:17:00 PM	SENT
Kath Xu		kxu@aclu.org	4/10/2023 5:17:00 PM	ERROR
Omar Gonzalez-Pagan		ogonzalez-pagan@lambdalegal.org	4/10/2023 5:17:00 PM	SENT
Currey Cook		ccook@lambdalegal.org	4/10/2023 5:17:00 PM	SENT
Camilla Taylor		ctaylor@lambdalegal.org	4/10/2023 5:17:00 PM	SENT
Maddy Dwertman		maddy.dwertman@bakerbotts.com	4/10/2023 5:17:00 PM	SENT
Guilly Guillory		nguillory@lambdalegal.org	4/10/2023 5:17:00 PM	ERROR
Elizabeth Gill		egill@aclunc.org	4/10/2023 5:17:00 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Karlene Dunn Poll	24027297	Karlene@slatelaw.com	4/10/2023 5:17:00 PM	SENT

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Karen Wagner on behalf of J. Hammett

Bar No. 24001054

karen.wagner@bakermckenzie.com

Envelope ID: 74496225

Filing Code Description: Brief Not Requesting Oral Argument

Filing Description: Brief of Transgender Education Network of Texas and 15 Others as Amici Curiae in Support of Real Parties in Interest PFLAG, Inc., et al.

Status as of 4/11/2023 9:24 AM CST

Case Contacts

Johnathan Stone	24071779	Johnathan.Stone@oag.texas.gov	4/10/2023 5:17:00 PM	SENT
Meredith Parekh	24075953	mparekh@drtx.org	4/10/2023 5:17:00 PM	SENT
LASHANDA GREEN		lashanda.green@oag.texas.gov	4/10/2023 5:17:00 PM	SENT
Thomas Ray		thomas.ray@oag.texas.gov	4/10/2023 5:17:00 PM	SENT
Alan York		ayork@reedsmith.com	4/10/2023 5:17:00 PM	SENT
Maddy Dwertman		Maddy.dwertman@bakerbotts.com	4/10/2023 5:17:00 PM	SENT
Shelly Skeen		sskeen@lambdalegal.org	4/10/2023 5:17:00 PM	SENT
Nicholas Guillory		nguillory@lambdalegal.org	4/10/2023 5:17:00 PM	ERROR
Omar Gonzalez-Pagan		Ogonzalez-pagan@lambdalegal.org	4/10/2023 5:17:00 PM	SENT
M. curry Cook		ccook@lambdalegal.org	4/10/2023 5:17:00 PM	SENT
Camilla Taylor		ctaylor@lambdalegal.org	4/10/2023 5:17:00 PM	SENT
Thomas Ray		thomas.ray@oag.texas.gov	4/10/2023 5:17:00 PM	SENT
Omar JAlaniz		oalaniz@reedsmith.com	4/10/2023 5:17:00 PM	SENT
Courtney Corbello		courtney.corbello@oag.texas.gov	4/10/2023 5:17:00 PM	SENT
Christopher Clay		cclay@aclutx.org	4/10/2023 5:17:00 PM	SENT
Christine Choi		cchoi@aclu.org	4/10/2023 5:17:00 PM	SENT
Clohe Kempf		ckempf@aclutx.org	4/10/2023 5:17:00 PM	SENT
Hina Naveed		hnaveed@aclu.org	4/10/2023 5:17:00 PM	SENT
Karen Wright		kwright@reedsmith.com	4/10/2023 5:17:00 PM	SENT

Associated Case Party: Transgender Education Network of Texas

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Karen Wagner on behalf of J. Hammett

Bar No. 24001054

karen.wagner@bakermckenzie.com

Envelope ID: 74496225

Filing Code Description: Brief Not Requesting Oral Argument

Filing Description: Brief of Transgender Education Network of Texas and 15 Others as Amici Curiae in Support of Real Parties in Interest PFLAG, Inc., et al.

Status as of 4/11/2023 9:24 AM CST

Associated Case Party: Transgender Education Network of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
David Brown		dbrown@transgenderlegal.org	4/10/2023 5:17:00 PM	SENT
M'Alyssa Mecnas		Malyssa.Mecnas@bakermckenzie.com	4/10/2023 5:17:00 PM	SENT