



On February 9, 2024, the OAG served PFLAG with a Civil Investigative Demand (“CID”) (attached hereto as **Exhibit A**) and a Notice of Demand for Sworn Written Statement (“Demand for Sworn Statement”) (attached hereto as **Exhibit B**) (collectively, the “Demands”), both dated February 5, 2024. The Demands instruct PFLAG to provide information purportedly related to the OAG’s “investigation of actual or possible violations” of Section 17.46 of the Texas Deceptive Trade Practices-Consumer Protection Act (“DTPA”) for issues related to alleged “misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.” PFLAG’s response to the Demands is currently due March 4, 2024 (*see* February 20, 2024 email from Mr. Shatto, attached hereto as **Exhibit C**)

The goal of the OAG in serving these Demands is neither to enforce Texas law, nor to protect Texas consumers under the DTPA. These Demands are a clear and unmistakable overreach by the OAG in retaliation for PFLAG successfully standing up for its members, who include Texas transgender youth and their families, against the OAG’s, the Attorney General’s, and the State of Texas’s relentless campaign to persecute Texas trans youth and their loving parents. While that retaliation is itself a reason to set aside the Demands, PFLAG is entitled to a temporary restraining order and temporary and permanent injunctive relief because the Demands violate PFLAG and its members’ rights to freedom of petition, speech and assembly and to be free from unjustified searches and seizures, are contrary to the OAG’s authority under the DTPA, and impermissibly seek to evade the protections afforded to PFLAG as a civil litigant.

In 2022, PFLAG successfully obtained temporary injunctive relief shielding its member families from the Texas Department of Family Protective Services’ (“DFPS”) operationalization of Governor Greg Abbott’s directive to investigate families of transgender youth who receive gender-affirming medical care for the treatment of gender dysphoria—a directive based on the

Attorney General’s non-binding opinion claiming that necessary, evidence-based gender-affirming medical treatment for transgender youth is per se “child abuse” under Texas law. *See PFLAG, Inc. v. Abbott*, Cause No. D-1-GN-22-002569 (in the 459th District Court of Travis County, Texas). *See PFLAG, Inc. v. Abbott*, Cause No. D-1-GN-22-002569 (in the 459th District Court of Travis County, Texas). And in 2023, PFLAG successfully obtained a temporary injunction at the district court enjoining enforcement of Senate Bill 14 (“SB14” or the “Ban”), which seeks to prohibit the provision and state funding of gender-affirming medical care for the treatment of gender dysphoria of transgender adolescents. *See Loe v. Texas*, Cause No. D-1-GN-23-003616 (in the 201st District Court of Travis County, Texas).

Through the OAG’s own actions, discovery has been stayed in both *Loe v. Texas* and *PFLAG v. Abbott*, since the OAG appealed both decisions, invoked the automatic stay provision of Texas Civil Practice and Remedies Code § 51.014(b) in *Loe v. Texas*, and agreed to stay all discovery through a Rule 11 agreement in *PFLAG v. Abbott*. But through these Demands, the OAG seeks to circumvent the normal discovery process along with its attendant protections, and in so doing, seeks to chill the ability of PFLAG and its members to exercise their free speech and associational rights and avail themselves of the courts when their constitutional rights are threatened. The Demands, which are explicitly premised on PFLAG’s testimony in *Loe v. Texas* and relate to the subject matter of *PFLAG v. Abbott*, violate the law and the constitutional rights of PFLAG and its members.

To preserve the *status quo*, avoid the draconian penalties for not responding to the Demands, and forestall irreparable harm to PFLAG’s capacity to continue its charitable mission, which it has pursued for over half a century, and prevent the violation of PFLAG’s and its

members' constitutional rights, PFLAG seeks immediate injunctive relief preventing further enforcement of the Demands. Ultimately, this court should set aside the Demands in their entirety.

## II. PARTIES

1. Plaintiff **PFLAG, Inc.** is a non-profit membership organization incorporated in California. It is the first and largest organization for lesbian, gay, bisexual, transgender, and queer (“LGBTQ+”) people, their parents and families, and allies. PFLAG connects a network of over 350 local chapters through the United States, 18 of which are in Texas. Individuals who identify as LGBTQ+ and their parents, families, and allies become members of PFLAG, the national organization, by joining directly or through one of the local chapters. Of approximately 325,000 members and supporters nationwide, PFLAG has a roster of nearly 1,500 members in Texas, including many families of transgender youth who need to access the medical treatment for gender dysphoria prohibited by SB14. PFLAG’s mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them. Encouraging and supporting parents and families of transgender and gender expansive people in affirming their children and helping them access the supports and care they need is central to PFLAG’s mission. PFLAG asserts its claims in this lawsuit on behalf of itself and its members.

2. Defendant **Office of the Attorney General of the State of Texas** (“OAG”) is an agency of the State of Texas. Defendant OAG may be served with process by serving the Attorney General, Warren Kenneth Paxton, Jr., at the Office of the Attorney General, 300 West 15th Street, Austin, Texas 78701.

3. Defendant **Warren Kenneth Paxton, Jr.** is the Attorney General of the State of Texas and is sued in his official capacity. At all relevant times, Paxton was acting in his official capacity and under the color of state law, including for purposes of § 1983. The DTPA, Tex. Bus.

& Com. Code Ann. § 17.41, *et seq.*, grants Paxton various powers in his capacity as Attorney General through the consumer protection division of his office. Defendant Paxton may be served at the Office of the Attorney General, 300 West 15th Street, Austin, Texas 78701.

### **III. DISCOVERY CONTROL PLAN AND RULE 47 STATEMENT**

4. PFLAG intends for discovery to be conducted in this case under Level 3 of the Texas Rule of Civil Procedure 190.

5. In accordance with Texas Rule of Civil Procedure 47(c), Plaintiff states that it seeks only non-monetary relief, excluding costs and attorney's fees. Accordingly, this lawsuit is not governed by the expedited actions process set forth in Texas Rule of Civil Procedure 169.

### **IV. JURISDICTION AND VENUE**

6. This Court has jurisdiction over this matter pursuant to Sections 24.007 and 24.008 of the Texas Government Code, and Article V, § 8 of the Texas Constitution. This court also has jurisdiction pursuant to the Texas Uniform Declaratory Judgments Act, Texas Civil Practice and Remedies Code § 37.001, *et seq.* ("UDJA").

7. This action is brought pursuant to Texas Rules of Civil Procedure 680 to 693, Tex. Civ. Prac. & Rem. Code Chapter 65, and the common law of Texas to obtain injunctive relief against Defendants.

8. This Court has jurisdiction over the parties because Defendants reside or have their principal place of business in Texas.

9. Venue is proper in Travis County because Defendants have their principal office in Travis County, Tex. Civ. Prac. & Rem. Code § 15.002(a)(3), and because all or a substantial part of the events giving rise to the claims occurred in Travis County, *id.* § 15.002(a)(1).

10. Further, pursuant to Section 17.61(g) of the Texas Business and Commerce Code, venue is proper in Travis County district court because PFLAG seeks to file “a petition to extend the return date for, or to modify or set aside the demand” and states “good cause.” Tex. Bus. & Com. Code § 17.61(g).

## V. FACTUAL BACKGROUND

### A. **PFLAG is national membership organization that includes thousands of people in Texas.**

11. Founded in 1973, PFLAG is the first and largest organization dedicated to supporting, educating, and advocating for LGBTQ+ people and their families.

12. For over fifty years, PFLAG has served as a resource for LGBTQ+ people, families, and allies in their pursuit of justice and affirmation.

13. PFLAG envisions an equitable and inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved. Its mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them.

14. Since its earliest days, PFLAG has been the connector for LGBTQ+ people with community, parents with resources, and allies with tools, while bolstering the LGBTQ+ movement with strength, power, and love.

15. PFLAG’s founder, Jeanne Manford, marched with her son Morty in the 1972 Christopher Street Liberation Day March in New York City and created the very first support group for parents and families of LGBTQ+ people in 1973. The first meeting of what is now known as PFLAG took place on March 11, 1973, at the Metropolitan-Duane Methodist Church in Greenwich Village (now the Church of the Village) in New York City. Approximately 20 people attended.

16. By 1980, PFLAG began to distribute information about LGBTQ+ people and issues impacting the LGBTQ+ community nationwide, including in educational institutions and communities of faith. When the nationally syndicated “Dear Abby” mentioned PFLAG in one of her advice columns, PFLAG received more than 7,000 letters requesting information.

17. By 1981, PFLAG National was established. And in 1982, PFLAG National was incorporated in California and granted non-profit, tax-exempt status.

18. In 1998, PFLAG explicitly added transgender people into its mission, one of the first national non-transgender-specific organizations to do so.

19. Supporting LGBTQ+ young people by supporting and strengthening their families has been a core part of PFLAG’s work ever since. Today, the gold standard advocated by PFLAG parents and families is to accept, support, and affirm LGBTQ+ people’s sexual orientation, gender identity, and gender expression, given the many harms associated with familial or parental rejection.

20. Now, in 2024, PFLAG is a national membership organization that has over 350 chapters across the country and more than 325,000 members and supporters nationwide. PFLAG has local chapters in 47 states, the District of Columbia, and the U.S. Virgin Islands. Its members and supporters include multiple generations of families in major urban centers, small cities and towns, and rural areas across America.

21. Individuals can become PFLAG members by joining the national organization directly or by joining their local chapter, which sends a portion of the member’s dues to PFLAG National, also making them national members. In addition to its formal members, PFLAG serves thousands of community members through its programs, events, and services every year.

22. The professional staff of PFLAG National carry out the work of PFLAG by supporting the development and work of the PFLAG chapters and promoting PFLAG's members' interests in the national arena, including through policy advocacy, coalitions with organizations that share PFLAG's interests, developing trainings and educational materials, and engaging with the media. Supporting the PFLAG chapters is PFLAG National's largest program and its national staff works closely with chapter leaders and members across the country, providing them with infrastructure, publications, online learning tools, advocacy support, media training, and countless other services and supports.

23. PFLAG has 18 chapters across the State of Texas with nearly 1,500 members. Those members include families with transgender youth who need the gender-affirming medical care SB14 prohibits. PFLAG's chapters in Texas include PFLAG Amarillo, PFLAG Austin, PFLAG Beaumont, PFLAG Boerne, PFLAG Brenham, PFLAG Dallas, PFLAG El Paso, PFLAG Fort Worth, PFLAG Georgetown, PFLAG Houston, PFLAG Huntsville, PFLAG Lubbock, PFLAG Mesquite, PFLAG Midland/Odessa, PFLAG Montgomery, PFLAG San Antonio, PFLAG San Marcos, and PFLAG Tyler/East Texas.

24. Because promoting the wellbeing of LGBTQ+ youth through encouraging and supporting love and affirmation by their families is a core part of PFLAG's mission and because PFLAG has an extensive network of chapters and nearly 1,500 members who live in Texas, PFLAG has been actively involved in supporting and providing resources to its members and constituents in light of the increasingly hostile climate for transgender youth and their families in the State of Texas over the last few years. This includes PFLAG joining litigation on behalf of its members to protect them from Governor Abbott's directive deeming all affirming health care for transgender adolescents, regardless of medical necessity, to be "child abuse" and DFPS's



subsequent adoption and implementation of that directive to investigate parents alleged to be helping their children access such care, as well as the enactment of SB14 barring the provision of necessary, evidence-based gender-affirming medical treatment for transgender youth in Texas.

**B. PFLAG sues the State of Texas and Texas officials to protect its members.**

**1) *PFLAG v. Abbott – PFLAG sues on behalf of its members to enjoin the Governor’s directive on gender-affirming medical care and DFPS’s implementation of it.***

25. On February 21, 2022, Attorney General Paxton released Opinion No. KP-0401 (“Paxton Opinion”) dated February 18, 2022, which purported to address “Whether certain medical procedures performed on children constitute child abuse.”<sup>1</sup>

26. The Paxton Opinion concluded that necessary, evidence-based gender-affirming medical treatment for transgender youth is per se “child abuse” under Texas law. The Paxton Opinion specified that it “does not address or apply to medically necessary procedures,”<sup>2</sup> though it did not take into account the medical consensus that certain procedures described in the Paxton Opinion—including puberty blockers and hormone therapy—are medically necessary when prescribed to treat gender dysphoria.

27. In response to the Paxton Opinion, Governor Abbott sent a letter to DFPS Commissioner Jaime Masters dated February 22, 2022 (the “Governor’s Directive”) directing the agency “to conduct a prompt and thorough investigation of any reported instances” of “sex-change procedures,” without any regard to medical necessity.<sup>3</sup> The Governor’s Directive claimed that “a

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<sup>1</sup> Ken Paxton et al., Re: Whether Certain Medical Procedures Performed on Children Constitute Child Abuse (RQ0426-KP), Opinion No. KP-0401, at 1 (Feb. 18, 2022), <https://texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2022/kp-0401.pdf>.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> Letter from Greg Abbott to Hon. Jaime Masters, Comm’r, Tex. Dep’t of Fam. & Protective Servs. (Feb. 22, 2022), <https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf>.

number of so-called ‘sex change’ procedures constitute child abuse under existing Texas law.”<sup>4</sup> In addition to directing DFPS to investigate reports of procedures referenced in the Paxton Opinion, under threat of criminal prosecution, the Governor’s Directive instructed “all licensed professionals who have direct contact with children” and “members of the general public” to report instances of minors who have undergone the medical procedures outlined in his letter and the Paxton Opinion.<sup>5</sup>

28. Following the issuance of the Paxton Opinion and the Governor’s Directive, on February 22, 2022, DFPS announced that it would “follow Texas law as explained in (the) Attorney General opinion” and comply with the Governor’s Directive to “investigate[]” any reports of the procedures outlined in the new directives (“DFPS Rule”), again, without any regard to medical necessity.<sup>6</sup>

29. Commissioner Masters claimed that, prior to the issuance of the Paxton Opinion and Governor’s Directive, the agency had “no pending investigations of child abuse involving the procedures described in that opinion.”<sup>7</sup>

30. Before February 22, 2022, Child Protective Services (“CPS”) investigations teams had discretion to screen out or deprioritize reports that did not meet the statutory definition of abuse and neglect, nor pose any harm to a child. According to long-established DFPS policy, CPS

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> 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://www.star-telegram.com/news/local/crossroads-lab/article258692193.html>.

<sup>7</sup> *Id.*

only “accepts reports for investigation” where “DFPS appears to be the responsible department under the law” and “the child’s apparent need for protection warrants an investigation.”<sup>8</sup>

31. On February 24, 2022, DFPS convened a meeting where investigators and supervisors with CPS were told that, for the first time, they would be required to investigate cases involving medical care for transgender youth as “child abuse” in accordance with Paxton’s Opinion and the Governor’s Directive.

32. On March 1, 2022, a family under active CPS investigation and a licensed psychologist sued the Governor, Commissioner, and DFPS in Travis County District Court. *See Doe v. Abbott*, Cause No. D-1-GN-22-000977 (in the 353rd District Court of Travis County, Texas). That action resulted in a temporary injunction from the District Court and a temporary order on appeal from the Court of Appeals blocking statewide DFPS investigations based on DFPS’s new rule implementing Paxton’s Opinion and the Governor’s Directive. Instead of dismissing or closing out these cases following those rulings, DFPS put them on pause, effectively freezing them in place.

33. On May 13, 2022, the Texas Supreme Court upheld the Court of Appeals’ temporary order but narrowed its scope of relief to apply only to the specific plaintiffs in *Doe v. Abbott* based on a technical reading of the scope of relief that may be granted under Texas Rule of Appellate Procedure 29.3. *See In re Abbott*, 645 S.W.3d 276, 284 (Tex. 2022). The Defendants’ appeal of the temporary injunction remains pending at the Court of Appeals. As such, at that time, only the investigation against the Doe family was enjoined.

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<sup>8</sup> Tex. Dep’t of Fam. & Protective Servs., Child Protective Services Handbook, § 2141, available at [https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS\\_pg\\_2140.asp](https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_2140.asp) (last visited Feb. 27, 2024).

34. On May 19, 2022, DFPS released a statement to the media that “DFPS treats all reports of abuse, neglect, and exploitation seriously and will continue to investigate each to the full extent of the law.”<sup>9</sup> Although this statement was vaguely worded, it was reported in the media that investigations were actually continuing following internal discussions among DFPS, the Governor, and the Attorney General’s offices.<sup>10</sup>

35. Seeking to prevent harm to its members in Texas, on June 8, 2022, PFLAG, alongside three Texas families who are PFLAG members then subject to CPS investigation under the Directive, filed suit in the 459th District Court of Travis County against the Governor, in his official capacity, the DFPS Commissioner, in her official capacity, and DFPS to temporarily and permanently enjoin enforcement and implementation of the Governor’s Directive and DFPS Rule. *See PFLAG, Inc. v. Abbott*, Cause No. D-1-GN-22-002569 (in the 459th District Court of Travis County, Texas).

36. The district court held an evidentiary hearing on July 6, 2022.

37. On September 16, 2022, the district court issued a temporary injunction enjoining and restraining the DFPS Commissioner and DFPS from, *inter alia*, “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.” *See Order Granting PFLAG, Inc.’s and the Briggie Plaintiffs’ Application for Temporary Injunction, PFLAG, Inc. v. Abbott*, Cause No. D-1-GN-22-002569 (in the 459th District Court of Travis County, Texas, issued Sept. 16, 2022).

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<sup>9</sup> Madeleine Carlisle, ‘I’m Just Waiting for Someone to Knock on the Door.’ *Parents of Trans Kids in Texas Fear Family Protective Services Will Target Them*, Time, May 19, 2022, <https://time.com/6178947/trans-kids-texasfamilies-fear-child-abuse-investigations/>.

<sup>10</sup> *Id.*

In so doing, the district court specifically held that PFLAG had associational standing on behalf of its members.

38. On September 16, 2022, the defendants filed a notice of accelerated interlocutory appeal pursuant to Tex. Civ. Prac. & Rem. Code § 51.014(a)(4), before the Third Court of Appeals.

39. On September 26, 2022, the Court of Appeals ordered reinstatement of the district court's September 16, 2022 temporary injunction order, pursuant to Texas Rule of Appellate Procedure 29.3.

40. The temporary injunctive relief afforded to members of PFLAG granted in *PFLAG v. Abbott* remains in place to this day, while the appeals remain pending before the Court of Appeals.

41. On May 1, 2023, the parties filed with the district court in *PFLAG v. Abbott* a Rule 11 agreement among all plaintiffs, including PFLAG, all defendants, and their respective counsel of record, including the OAG. See Rule 11 Agreement and Informal Stay of Trial Court Proceedings in *PFLAG, Inc., et al. v. Abbott, et al.*, D-1-GN-22-0002569, in the 459th District Court, Travis County (filed on May 3, 2023). The Rule 11 Agreement in the *PFLAG v. Abbott* litigation memorializes the agreement by the parties and their counsel that “they will not ... serve any additional discovery requests, make demands for responses to outstanding discovery requests, serve any deposition notices (on each other, other parties to the suit or nonparties), serve any discovery on nonparties, or otherwise proceed with the development of the case in the trial court, and all counsel agree they will not take any such actions on behalf of the Parties to this agreement or any other party to the suit.”

2) *Loe v. Texas – PFLAG sues on behalf of its members to enjoin SB14.*

42. On May 19, 2023, the Texas State Legislature passed SB14, which Governor Abbott signed into law on June 2, 2023.

43. SB14 prohibits physicians and other healthcare providers from providing, prescribing, administering, or dispensing medical procedures and treatments “[f]or the purpose of transitioning a child’s biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child’s perception of the child’s sex if that perception is inconsistent with the child’s biological sex.” SB14 § 2 (Tex. Health & Safety Code §§ 161.702, 161.706).

44. Notably, under SB14, the provision of these same medical treatments is permitted for any other medical diagnosis, including but not limited to precocious puberty or “a medically verifiable genetic disorder of sex development,” which are specifically identified as exceptions under the Ban. SB14 § 2 (Tex. Health & Safety Code § 161.703).

45. SB14 further bars coverage for and reimbursement of Prohibited Care under a patient’s Medicaid or Children’s Health Insurance Program (“CHIP”) plan and strips state funding of any kind from any medical provider, medical institution, “entity, organization, or individual that provides or facilitates” such care to transgender youth. SB14 § 2 (Tex. Health & Safety Code §§ 161.704, 161.705); *id.* § 3 (Tex. Hum. Res. Code § 32.024).

46. SB14’s passage had a profound impact on PFLAG families, who began seeking support and resources from their PFLAG chapters, were concerned about how they would ensure access to the necessary and potentially lifesaving medical care their adolescents need, and were pursuing community and mental health support for the fear, distress, and anxiety they and their children were experiencing at the prospect of being denied medically necessary care. Some

families were feeling the effects of SB14 immediately following its passage, as their appointments for scheduled care were being cancelled or they were losing access to medical providers who were leaving Texas.

47. Once again, seeking to prevent harm to its members in Texas, on July 12, 2023, PFLAG, alongside five Texas families, three medical providers, and GLMA, an association of LGBTQ+ and allied health professionals, filed suit in the 459th District Court of Travis County against the State of Texas, the OAG, the Attorney General, in his official capacity, the Texas Medical Board, and the Texas Health and Human Services Commission, to temporarily and permanently enjoin SB14 from taking effect and to prevent immediate and irreparable harm to PFLAG's members. *See Loe v. Texas*, Cause No. D-1-GN-23-003616 (in the 201st District Court of Travis County, Texas).

48. Following a two-day evidentiary hearing on August 15 and 16, 2023, the Travis County District Court issued a temporary injunction order on August 25, 2023, enjoining and restraining defendants from taking any action to implement or enforce SB14. *See Temporary Injunction Order, Loe v. Texas*, Cause No. D-1-GN-23-003616 (in the 201st District Court of Travis County, Texas, issued Aug. 25, 2023). In so doing, the district court specifically held, *inter alia*, that SB14 “interferes with Texas families’ private decisions and strips Texas parents, including ... PFLAG parent members, of the right to seek, direct, and provide medical care for their children,” “threatens the health and wellbeing of adolescents with gender dysphoria,” and “denies ... PFLAG parent members ... the ability to obtain necessary and in some circumstances, lifesaving medical treatment for the[ir] children.” *Id.* at 3. The district court also denied the defendants’ plea to the jurisdiction. *See Order on Defendants’ Plea to the Jurisdiction, Loe v. Texas*,

Cause No. D-1-GN-23-003616 (in the 201st District Court of Travis County, Texas, issued Aug. 25, 2023).

49. That same day, the defendants filed a notice of accelerated interlocutory appeal pursuant to Tex. Civ. Prac. & Rem. Code §§ 51.014(a)(4), (a)(8) before the Texas Supreme Court. See Defendant’s Notice of Accelerated Interlocutory Appeal, *Loe v. Texas*, Cause No. D-1-GN-23-003616 (in the 201st District Court of Travis County, Texas, filed Aug. 25, 2023).

50. In their notice of accelerated interlocutory appeal, the defendants specifically noted that, “[p]ursuant to Tex. Civ. Prac. & Rem. Code § 51.014(b), all further proceedings in this court are stayed pending resolution of Defendants’ appeal.” *Id.* at 1. This, of course, includes all discovery in the case.

51. The Texas Supreme Court held oral argument in the case on January 30, 2024.

**C. The Texas OAG serves the Demands on PFLAG.**

52. Notwithstanding the stays of proceedings in both *PFLAG v. Abbott* and *Loe v. Texas*, on February 9, 2024, PFLAG received the Demands, both dated February 5, 2024, from the OAG.

53. The Demands attached here as Exhibits A and B were sent directly to PFLAG without copying or alerting counsel for PFLAG in the *PFLAG v. Abbott* or *Loe v. Texas* litigation matters, notwithstanding that the OAG is counsel for defendants in both cases and a defendant in *Loe v. Texas*.<sup>11</sup>

54. The Demands instruct PFLAG to provide information or statements in relation to the OAG’s purported “investigation of actual or possible violations of DTPA section 17.46 for

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<sup>11</sup> *Cf.* Texas Rule of Professional Conduct 4.02(a).



issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.” *See Exs. A, B.*

55. The Demands seek information about the testimony of Mr. Bond in *Loe v. Texas* and related to his testimony on behalf of PFLAG in *PFLAG v. Abbott*.

56. Five of the eight requests in the CID and seven of the nine requests in the Demand for Sworn Statement relate specifically to Mr. Bond’s affidavit in *Loe v. Texas*, submitted in support of the plaintiffs’ petition for a temporary injunction in that case. The OAG attached Mr. Bond’s affidavit to the Demands.

57. The CID requires production of documents from March 8, 2023—the date on which SB14 was introduced in the Texas legislature—through the date of production.

58. The Demands seek a broad range of information that would reveal the identities of PFLAG members in Texas. For example, the Demands seek documents, communications, and statements pertaining to Mr. Bond’s basis for his statements in the *Loe v. Texas* affidavit that “PFLAG families with transgender and nonbinary adolescents shared their contingency plans” and that “PFLAG has members in Texas whose children are being or will be monitored for the appropriate time to begin puberty blockers, are currently or soon will be on puberty blockers, and are currently or soon will be on hormone therapy, all as part of a medically prescribed course of care for gender dysphoria.”

59. For context, Mr. Bond made those statements as part of describing how PFLAG members with transgender adolescents have been relentlessly targeted in Texas. After describing the relief PFLAG obtained in the form of an injunction against DFPS investigations in September 2022, Mr. Bond continued:

This brief sigh of relief we felt from the DFPS Rule being enjoined ended when SB 14 was signed into law on June 2, 2023. PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposite regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming medical care or leave the state as a result of SB14. Requests for mental health care providers have skyrocketed, as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents' existing mental health issues connected to their gender dysphoria. Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date. And chapter leaders have heard concerns about the impacts on transgender and non-binary youth in the foster care system, who receive

health care coverage through Medicaid and will lose coverage for their medical care for gender dysphoria is SB14 goes into effect.

Ex. B1 to the Demands, at 4-5.

60. Responses to the Demands, particularly without any redactions as requested in the Demands, would reveal the identities of PFLAG’s members whose rights PFLAG has sought to vindicate in *PFLAG v. Abbott* and *Loe v. Texas* and who are currently protected under the Court of Appeals’ 29.3 Order in *PFLAG v. Abbott*.

61. The Demands also seek documents and communications between “any PFLAG representative regarding, relating to, or referencing” a list of medical providers set forth in Exhibit B2 to the Demands, some of whom provide or have provided gender-affirming care to transgender adolescents, including medical providers outside of Texas.

62. The Demands require PFLAG to provide information, documents, communications, and statements in response on or before Monday, February 26, 2024.

63. On February 21, 2024, the OAG granted a one-week extension for PFLAG to provide information, documents, communications, and statements in response to the Demands up to and including Monday, March 4, 2024. *See Ex. C.*

**D. The Demands are part of a pattern by the OAG to use its powers to target transgender youth, their families, and medical providers.**

64. The Demands sent by the OAG to PFLAG were issued within a particular context that encompasses not just the *PFLAG v. Abbott* and *Loe v. Texas* litigation matters but also the issuance of similar Civil Investigative Demands and Requests to Examine<sup>12</sup> to entities that provide

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<sup>12</sup> The Attorney General may issue a written request called a “Request to Examine” to investigate the organization, conduct, and management of a filing entity or foreign filing entity pursuant to Texas Business and Organizations Code Section 12.151, *et seq.*

gender-affirming medical care, consistent with well-established, evidence-based clinical practice guidelines, including entities outside of Texas.

65. From the OAG’s multiple demands, it appears that the OAG is seeking to determine which Texas families are seeking to access gender-affirming care for their transgender adolescents. If the OAG is able to obtain data from these multiple sources, it is likely that the aggregated information about transgender youth and their families would be sufficient to identify them particularly.

66. For example, the OAG issued a CID and demand for sworn written statement, both dated November 17, 2023, to Seattle Children’s Hospital seeking information relating to medical care for gender dysphoria provided to any transgender adolescent that resides or has resided in Texas by Seattle Children’s Hospital, even when that care was provided in the State of Washington. On December 7, 2023, Seattle Children’s Hospital filed a petition to set aside the CID or, in the alternative, to extend the time to respond, pursuant to section 17.61(g) of the DTPA. *See Seattle Child.’s Hosp. v. Off. of the Att’y Gen.*, Cause No. D-1-GN-23-008855 (in the 98th District Court of Travis County, Texas).

67. Notwithstanding that section 17.61 of the DTPA explicitly authorizes the filing of “a petition to extend the return date for, or to modify or set aside the demand, stating good cause,” “[a]t any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter,” (Tex. Bus. & Com. Code § 17.61(g)), and that such a petition is pending before the district court, the OAG nonetheless filed motion for leave to file a counterclaim in the nature of quo warranto to revoke Seattle Children’s Hospital’s “rights and privileges as a foreign corporation registered to transact business in Texas.” Defendant Off. of the Att’y Gen.’s Mot. for Leave to File Proposed Counterclaim in the Nature of Quo Warranto, Ex. 1

at 7, *Seattle Child. 's Hosp. v. Off. of the Att'y Gen.*, Cause No. D-1-GN-23-008855 (in the 98th District Court of Travis County, Texas, filed Feb. 8, 2024).

68. Similarly, on November 17, 2023, the OAG issued analogous demands to QueerMed, a medical practice based in Atlanta, though the demands were received on December 7, 2023.<sup>13</sup> While QueerMed stopped providing services to transgender youth from Texas after SB14 was signed into law, the OAG's demands seek patient information dating back to January 1, 2022, before SB14 went into effect.

69. Both Seattle Children's Hospital and QueerMed are listed in Exhibit B2 to the Demands as entities that the OAG is seeking to connect to PFLAG members.

70. Defendants' targeting of transgender youth, their families, and medical providers began long before SB14 took effect on September 1, 2023. For example, prior to SB14 becoming law, the OAG sought to "investigate" medical providers in Texas solely because they were providing gender-affirming medical care as treatment for gender dysphoria, consistent with well-established clinical practice guidelines and standards of care.<sup>14</sup> Likewise, more than a year before the enactment of SB14 and following the issuance of the Paxton Opinion, the OAG began

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<sup>13</sup> See Maham Javaid and Molly Hennessy-Fiske, *Texas AG Seeks Transgender Records in Georgia as Part of his Wider Probe*, The Washington Post, Jan. 29, 2024, <https://www.washingtonpost.com/nation/2024/01/29/texas-ag-transgender-records-georgia/>; Lil Kalish, *Texas Attorney General Expands Pursuit Of Medical Records For Trans Youth*, HuffPost, Jan. 29, 2024, [https://www.huffpost.com/entry/texas-ag-trans-youth-medical-records\\_n\\_65b81785e4b01c5c3a37c713](https://www.huffpost.com/entry/texas-ag-trans-youth-medical-records_n_65b81785e4b01c5c3a37c713); Madaleine Rubin, *Texas Attorney General Requests Transgender Youth's Patient Records from Georgia Clinic*, The Texas Tribune, Jan. 26, 2024, <https://www.texastribune.org/2024/01/26/texas-attorney-general-trans-documents-georgia-ken-paxton/>.

<sup>14</sup> See, e.g., Press Release, Tex. Att'y Gen. Off., Paxton Announces Investigation into Dell Children's Medical Center for the Potentially Illegal Performance of Gender Transitioning Procedures (May 5, 2023), <https://www.texasattorneygeneral.gov/news/releases/paxton-announces-investigation-dell-childrens-medical-center-potentially-illegal-performance-gender>; Press Release, Tex. Att'y Gen. Off., Paxton Announces Second Investigation into Texas Hospital for Potentially Unlawfully Performing "Gender Transitioning" Procedures (May 19, 2023), <https://www.texasattorneygeneral.gov/news/releases/paxton-announces-second-investigation-texas-hospital-potentially-unlawfully-performing-gender>.

“investigating” manufacturers of puberty-delaying medications used to treat, among other things, gender dysphoria.<sup>15</sup>

71. These requests are also indicative of a pattern by the OAG of seeking identifying information about any person who is transgender in Texas, illustrating that the OAG’s demands are motivated not by a desire to protect consumers under the DTPA but rather to target transgender Texans and their families. For example, in 2022 after the Texas Supreme Court’s decision in *In re Abbott*, the OAG asked the Texas Department of Public Safety to compile a list of individuals who had changed their gender on their Texas driver’s licenses and other department records during the past two years.<sup>16</sup>

## **VI. REQUEST FOR TEMPORARY RESTRAINING ORDER**

72. The allegations in paragraphs 1 through 71 above are incorporated as if fully set forth herein.

73. Pursuant to Texas Civil Practice and Remedies Code Section 65.0011 *et seq.*, PFLAG is entitled to a temporary restraining order against Defendant Paxton and the OAG, its officers, agents, servants, employees, and attorneys, and upon those persons in active concern or participation with them, prohibiting them from abusing the Deceptive Trade Practices Act and serving Civil Investigative Demands against PFLAG broadly seeking information and documents to which the OAG is not entitled, including but not limited to communications with its members

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<sup>15</sup> See Press Release, Tex. Att’y Gen. Off., AG Paxton Investigates Potential Violations of State Law by Puberty-Blocking Drug Manufacturers (March 24, 2022), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-investigates-potential-violations-state-law-puberty-blocking-drug-manufacturers>.

<sup>16</sup> See Molly Hennessy-Fiske, *Texas Attorney General’s Office Sought State Data on Transgender Texans*, The Washington Post, Dec. 14, 2022, [https://www.washingtonpost.com/nation/2022/12/14/texas-transgender-data-paxton/?itid=lk\\_inline\\_manual\\_10](https://www.washingtonpost.com/nation/2022/12/14/texas-transgender-data-paxton/?itid=lk_inline_manual_10).

about accessing the necessary and potentially lifesaving medical care their transgender adolescents need.

74. “The purpose of a TRO is to preserve the status quo,” which the Texas Supreme Court has defined as “the last, actual, peaceable, non-contested status which preceded the pending controversy.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

75. PFLAG will suffer irreparable harm, including harm to the First and Fourth Amendment rights of it and its members, if it is required to respond to the OAG’s Demands by March 4, 2024. Without a temporary restraining order, PFLAG will either have to comply with the Demands, thereby acceding to the OAG’s unconstitutional requests for PFLAG’s private communications and the identities of its members who are transgender youth and their families, or face the statutory and legal consequences of failing to respond to the Demands, which include the non-speculative possibility that the OAG attempts to revoke PFLAG’s chapters’ registrations or otherwise restrain PFLAG’s continued ability to operate in Texas.

76. PFLAG is likely to prevail on the merits of this case and receive the requested relief.

77. PFLAG has no adequate remedy at law for the OAG’s actions. Further, money damages would be insufficient to redress PFLAG’s injuries.

78. The threatened injuries to PFLAG and its members far outweigh any possible damages to OAG. PFLAG’s members are being threatened with governmental intimidation in an attempt to restrict their personal freedoms and chill the exercise of their rights. There is no state interest that can outweigh the harms caused by OAG to PFLAG’s members’ constitutional rights under the First and Fourth Amendments of the U.S. Constitution, and Article I of the Texas Constitution.

79. Accordingly, to preserve the status quo, PFLAG requests that this Court enter a temporary restraining order against the OAG pursuant to Texas Rule of Civil Procedure 680 *et seq.* and Texas Civil Practice and Remedies Code Section 65.011 *et seq.* PFLAG further requests that the OAG be cited to appear and has contacted the OAG through legal counsel before filing this application for a temporary restraining order.

80. PFLAG is willing to post a bond for any temporary injunctive relief if the Court orders it to do so, but requests that such bond be minimal because the Defendants are acting in a governmental capacity, have no pecuniary interest in this suit, and no monetary damages can be shown. Tex. R. Civ. P. 684.

## **VII. REQUEST TO SET ASIDE CIVIL INVESTIGATIVE DEMANDS**

The Demands must be set aside because they exceed the authority granted to the OAG under the DTPA, seek to evade the protections afforded to PFLAG as a plaintiff in *PFLAG v. Abbott* and *Loe v. Texas*, and violate the constitutional rights of both PFLAG and its members. PFLAG does not provide “Gender Transitioning and Reassignment Treatments and Procedures.” As a private membership organization, PFLAG and its members have constitutional rights to speech and assembly that protect them from intrusion in the form of demands to turn over private correspondence and membership information for the OAG’s inspection. That PFLAG and its members associate to advance ideas and air grievances about gender-affirming healthcare does not bring their conduct within the DTPA. And to the extent that any of the information sought by the Demands is discoverable in *PFLAG v. Abbott* or *Loe v. Texas*—which PFLAG does not in general or in particular concede via this Petition—discovery in those cases is stayed and governed by not only the protections afforded to all civil litigants under the Texas Rules of Civil Procedure, but also the agreements among counsel and the court regarding confidentiality and pseudonymity.



**A. The OAG Cannot Use the Demands to Evade the Rules of Civil Litigation Applicable to the DTPA Generally or the *PFLAG v. Abbott* and *Loe v. Texas* Cases Specifically.**

**1) *The Demands are Not Authorized Investigations Under the Consumer Protection Act***

The Demands do not demonstrate how they are appropriately issued under the DTPA. The DTPA Subchapter E, the “Consumer Protection Act,” aims to protect consumers from false, misleading, or deceptive acts or practices, Tex. Bus. & Com. Code §17.44. The DTPA defines a “Consumer” as an individual, partnership, corporation, this state, or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services, and those goods or services form the basis of the complaint. *See* Tex. Bus. & Com. Code §17.45(4).

Under the DTPA, the OAG has authority to investigate certain potential violations of the Consumer Protection Act. Specifically, a CID must, “identify the statute and section of the DTPA under which the alleged violation is being investigated,” as well as “the general subject matter of the investigation.” Tex. Bus. & Com. Code § 17.61(b)(1). A CID may require disclosure of “documentary material which would be discoverable under the Texas Rules of Civil Procedure.” Tex. Bus. & Com. Code § 17.61(c). The Texas Rules of Civil Procedure place many limits on the discoverability of information, chief among them, that information must be relevant to be discoverable. Tex. R. Civ. P. 192.3(a).

The Demands do not draw a sufficient connection between the kind of false, misleading, or deceptive acts or practices the DTPA is charged with prohibiting and the information and documents sought from PFLAG. Nor do the Demands describe the relevant investigation with sufficient specificity to establish that the purported investigation is within the authority of the OAG or even to allow PFLAG to fairly assess the relevance of the information sought. The Demands merely state that they are “relevant to the subject matter of an investigation regarding possible

violations of DTPA Section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures” or “relevant to the subject matter of an investigation of actual or possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.” *See* Exs. A, B. But PFLAG does not provide “Gender Transitioning and Reassignment Treatments and Procedures.” It does not sell goods or services related to medical care. *See Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644 (Tex. 1996). (“Consistent with [the Legislature’s] intent, we hold that the defendant's deceptive conduct must occur in connection with a consumer transaction, as we explain below. ... While our words have varied, the concept has been consistent: the defendant's deceptive trade act or practice is not actionable under the DTPA unless it was committed in connection with the plaintiff's transaction in goods or services.”) The Demands provide no further information and do not provide the notice required under the DTPA. *See* Tex. Bus. & Com. Code § 17.61(b)(1).

The OAG cannot use the DTPA to discover information with no relevance to the kinds of abuses the Consumer Protection Act guards against: the DTPA is not a general mandate for the OAG to request information, but rather is limited by the purpose of the statute itself and other limitations. *See, e.g.*, Tex. Bus. & Com. Code § 17.61(c); *see also* Tex. Bus. & Com. Code § 17.46(c)(1), (c)(2) (on the use of interpretations given by the Federal Trade Commission and courts in other jurisdictions in construing this subchapter); *Consumer Fin. Prot. Bureau v. Source for Pub. Data, L.P.*, 903 F.3d 456, 459-60 (5th Cir. 2018) (“Because the CID issued to Public Data fails to identify the conduct under investigation or the provision of law at issue, we cannot review it under our ‘reasonable relevance’ standard. And if a court cannot exercise meaningful judicial review, a CID recipient has no opportunity to challenge an agency's investigatory authority. For

instance, we cannot evaluate whether the CFPB requests information that is reasonably relevant to the CFPB's inquiry because we do not know what the inquiry actually is. Likewise, we cannot assess whether the CFPB's demand is 'unreasonably broad or burdensome.' Presumably, it would be reasonable for the CFPB to demand more information from a target of an investigation than a third party, but this Notification of Purpose does not indicate whether Public Data or one of its clients is the target of the investigation. As the D.C. Circuit observed, '[b]ecause the validity of a CID is measured by the purposes stated in the notification of purpose, the adequacy of the notification of purpose is an important statutory requirement.'" (internal citation omitted).

**2) *The OAG Cannot Use the Demands to Seek Discovery in a Stayed Civil Matter.***

The State opted to appeal the temporary injunction entered in *Loe v. Texas*, which stayed discovery in that matter, and voluntarily entered into a Rule 11 Agreement in *PFLAG v. Abbott*, which stayed discovery while its appeal of the temporary injunction in that case remains pending. Yet, the OAG, who was counsel on both cases and a party in *Loe v. Texas*, now seeks to conduct one-sided discovery from a plaintiff without affording that plaintiff the corresponding right to seek discovery. And, critically, as further discussed below, the OAG's attempted end-run around the discovery process threatens to deprive PFLAG of the ordinary protections that it would receive as a party in civil litigation.

Discovery in one matter cannot be used to circumvent the limits of discovery in another matter. See *Wilk v. Am. Med. Ass'n*, 635 F.2d 1295, 1300 (7th Cir. 1980); *In re Kaddatz*, No. 02-23-00336-CV, 2023 WL 7210337 (Tex. App.—Fort Worth Nov. 2, 2023, no pet.). The OAG will have an opportunity to seek and review documents from PFLAG in the *Loe v. Texas* and *PFLAG v. Abbott* litigation matters, in circumstances in which all parties will have equal ability to demand and review discovery as well as protect the confidentiality of certain information exchanged. The

OAG cannot abuse his authority under the DTPA to issue Demands directly related to litigation in order to hasten the discovery process that the OAG itself has suspended.

**3) *The OAG Cannot Use the Demands to Circumvent the Protections Afforded to Civil Litigants by the Rules of Civil Procedure.***

All parties in civil litigation are entitled to the protections afforded by the civil discovery process. This includes PFLAG as a plaintiff in the *Loe v. Texas* and *PFLAG v. Abbott* matters. But the OAG now attempts to use the Demands to access PFLAG information and documents while stripping PFLAG of the protections to litigants afforded by the Texas Rules of Civil Procedure.

In the normal course of discovery, requests for production are sent through counsel and filtered through negotiations regarding the scope of discovery, challenges to relevance and privilege status, the time to respond, and counsel's ability to object. *See* Tex. R. Civ. P. 190-215 (providing scope of and protections for civil discovery). Yet through the Demands, the OAG has sought information and documents directly from PFLAG instead of through PFLAG's counsel, with whom the OAG has corresponded on all other matters related to *Loe v. Texas* and *PFLAG v. Abbott*; and the OAG attempts to burden PFLAG with the rules, timeframe, and penalties of the DTPA, rather than those of the normal civil discovery process.

Additionally, the parties in *Loe v. Texas* and *PFLAG v. Abbott* negotiated various protective orders to protect the identities of individual plaintiffs who are PFLAG members, and to govern any discovery produced, but materials produced in response to the Demands would not be subject to those protective orders or any other protective order. The Demands specifically bar PFLAG from redacting any materials it may produce, further stripping it of the discovery protections it would otherwise have.

The OAG cannot use the Demands to deprive PFLAG of its rights as a civil litigant. In litigation, Defendants' discovery requests would be subject to a longer timeframe to respond,

rather than the twenty days set forth by the Demands. Further, in the event PFLAG failed to respond to a discovery request, it would face appropriate, case-specific measures to address its conduct, rather than the criminal penalties contemplated by the DTPA. *See, e.g.*, Exs. A and B (providing for misdemeanor convictions, fines, and confinement in the event of a failure to comply).

Coupled with the decision to send the Demands directly to PFLAG instead of PFLAG's counsel of record, the avenue chosen by the OAG to gain access to PFLAG materials suggests an attempt to intimidate PFLAG into forfeiting the rights and protections that the normal civil discovery process would otherwise provide. PFLAG is entitled to those protections, and the OAG cannot circumvent them through the Demands.

**B. The Demands are Contrary to the OAG's Authority Under the DTPA.**

The Demands by the OAG were purportedly issued pursuant to its authority under the DTPA. Through the Demands, the OAG seeks to exploit the DTPA by arrogating to itself the unrestricted power to inquire into the affairs and membership of private organizations. But the DTPA does not apply to PFLAG, which is not engaged in the sale or leasing of goods or services, let alone those related to gender-affirming medical care to treat gender dysphoria.

**1) *PFLAG does not provide goods or services or engage in trade or commerce under the DTPA.***

PFLAG is a nonprofit membership organization that seeks to support, educate, and advocate for LGBTQ+ people and their families, including families with transgender adolescents. The resources that PFLAG provides to its members are not, by any reasonable standard, goods or services or engagement in trade or commerce.

The DTPA prohibits and subjects to action by the consumer protection division “[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce.” Tex. Bus. &

Com. Code § 17.46(a). It defines “trade” and “commerce” as “the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.” *Id.* at § 17.45(6). And it defines “goods” as “tangible chattels or real property *purchased or leased* for use,” *id.* at § 17.45(1) (emphasis added), and “services” as “work, labor, or service *purchased or leased* for use, including services furnished in connection with the sale or repair of goods.” *Id.* at § 17.45(2) (emphasis added). Finally, under the DTPA, a “consumer” is “an individual, partnership, corporation, this state, or a subdivision or agency of this state *who seeks or acquires by purchase or lease*, any goods or services.” *Id.* at § 17.45(4) (emphasis added).

Here, as a nonprofit membership organization, the resources that PFLAG provides to its members are not goods or services for purchase or leasing, nor does PFLAG advertise or offer otherwise. The DTPA therefore does not provide any authority for the OAG to issue these Demands.

As the Texas Supreme Court has emphasized, the OAG and courts must enforce a statute “as written” and “refrain from rewriting text that lawmakers chose.” *Jaster v. Comet II Const., Inc.*, 438 S.W.3d 556, 562 (Tex. 2014) (quoting *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009)). Not only does the DTPA define the terms “goods,” “services,” “trade,” and “commerce” such that PFLAG and the resources it provides to its members fall outside the scope of the DTPA, but “the common, ordinary usage of these terms” does not provide support for the OAG’s issuance of the Demands under the DTPA.

2) ***The Demands are otherwise contrary to the OAG's authority under the DTPA.***

Aside from the fact that PFLAG is a nonprofit organization that does not sell or lease any goods or services, the services that PFLAG provides to its members are beyond the scope of the DTPA. The OAG is therefore using the DTPA in a manner that goes far beyond what the Legislature intended and cannot be squared with the plain and ordinary meaning of its terms.

The DTPA is a consumer protection law, and its typical historic applications make clear that it is not intended to regulate organizations like PFLAG that engage in advocacy and support for their members. PFLAG not a provider of medical care, and even if it advocates for its members to be able to access evidence-based medical care, there is no reasonable construction of the DTPA that could apply to organizations like PFLAG that support the right of their members to make private medical decisions according to medical best practices with their healthcare providers. As noted above, a court's primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue. Here, the DTPA does not regulate matters of medical judgment or opinion, let alone the kind of advocacy and support that PFLAG engages in. Indeed, the DTPA specifically exempts from its scope "the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill." Tex. Bus. & Com. Code § 17.49(c).

The OAG cannot reasonably argue that the DTPA regulates the provision of medical care, or a nonprofit organization's support and advocacy for people who need medical care, which is also protected by the First Amendment, as further described below. The Texas Supreme Court explained 30 years ago that the DTPA does not authorize claims based "on a breach of the accepted

standard of medical care.” *Sorokolit v. Rhodes*, 889 S.W.2d 239, 242 (Tex. 1994).<sup>17</sup> As the United States Supreme Court noted in *Goldfarb v. Virginia State Bar*, “[i]t would be unrealistic to view the practice of professions as interchangeable with other business activities, and automatically to apply to the professions antitrust concepts which originated in other areas.” 421 U.S. 773, 788 n.17 (1975).<sup>18</sup> Even the State of Texas, in enacting SB14, only regulated gender-affirming medical care by amending the Texas Health and Safety and Occupations Codes—not the DTPA. SB14 §§ 1-5 (Tex. Health & Safety Code §§ 161.702, 161.706; Tex. Occupations Code § 164.0552).

Simply put, the DTPA does not provide the OAG with the authority it asserts in the Demands, and the Demands are therefore outside the scope of authority provided by the DTPA.

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<sup>17</sup> “Claims that a physician or health care provider was negligent may not be recast as DTPA actions to avoid the standards set forth in the Medical Liability and Insurance Improvement Act.” *Sorokolit*, 889 S.W.2d at 242.

<sup>18</sup> Multiple state courts have interpreted consumer protection laws like the DTPA **not to regulate** the practice of medicine. For example, in Michigan, courts found that applying the Michigan Consumer Protection Act to “[a]llegations that concern misconduct in the actual performance of medical services or the actual practice of medicine would be improper.” *Nelson v. Ho*, 564 N.W.2d 482, 486 (Mich. 1997). It did so because “to interpret the act as such, the legislative enactments and well-developed body of law concerning medical malpractice could become obsolete.” *Id.* So have other courts. *See also, e.g., Brookins v. Mote*, 292 P.3d 347, 360 (Mont. 2012) (finding *Nelson*’s reasoning to be “especially persuasive”); *Simmons v. Stephenson*, 84 S.W.3d 926, 928 (Ky. Ct. App. 2002); *Haynes v. Yale-New Haven Hosp.*, 699 A.2d 964, 972 (Conn. 1997); *Hampton Hosp. v. Bresan*, 672 A.2d 725, 731 (N.J. App. Div. 1996) (finding “no purpose to a requirement that hospital services be within the purview of the Consumer Fraud Act when those same services fall within the purview of the Department of Health”); *Feldstein v. Guinan*, 499 N.E.2d 535, 538 (Ill. 1986) (“The statutory language making the Act applicable to trade or commerce does not include the practice of medicine ... .”); *cf. Cripe v. Leiter*, 703 N.E.2d 100, 107 (Ill. 1998) (concluding “the legislature did not intend the Consumer Fraud Act to apply to regulate the conduct of attorneys in representing clients”).



### C. The Demands Violate the Constitutional Rights of PFLAG and Its Members.

The Demands violate PFLAG and its members' rights to freedom of association and speech under the First Amendment to the U.S. Constitution and Article I, Sections 8 and 27 of the Texas Constitution. *See* U.S. Const. amend. I,<sup>19</sup> XIV;<sup>20</sup> Tex. Const. art. I, §§ 8,<sup>21</sup> 27,<sup>22</sup> 29.<sup>23</sup>

The Demands seek information, documents, and communications that target PFLAG's speech and would reveal identities of PFLAG members, and so they are subject to strict scrutiny. Because the Demands explicitly target the PFLAG member families with transgender adolescents, and the instructions to the Demands do not permit any redactions, requiring PFLAG to provide that information or communications with those members will chill Texas families from becoming members of PFLAG and obtaining the resources they need to address the relentless attacks by the OAG and Texas officials against transgender people and Texas families with transgender adolescents. Here, the OAG has explicitly targeted transgender individuals and their families for government scrutiny and interference, including the child abuse directive challenged in *PFLAG v. Abbott*, and so the possibility that the OAG will learn the identities of additional transgender people

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<sup>19</sup> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

<sup>20</sup> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law..." U.S. Const. amend. XIV, § 1.

<sup>21</sup> "Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press." Tex. Const. art. I, § 8.

<sup>22</sup> "The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance." Tex. Const. art. I, § 27.

<sup>23</sup> "To guard against transgressions of the high powers herein delegated, we declare that everything in this 'Bill of Rights' is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto ... shall be void." Tex. Const. art. I, § 29.

and their families by virtue of their association with PFLAG will undoubtedly reduce Texans' willingness to associate with PFLAG. What is more, the Demands seek to chill the ability of PFLAG to provide resources and factual information to its members in Texas.

The onerous requests in the Demands are not related—much less substantially related—to the OAG's alleged interest in preventing fraud “related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures.” PFLAG is a private membership organization that engages in advocacy on behalf of and provides resources for its Texas members, including its members who have transgender adolescents who need or may need access to gender-affirming medical care. PFLAG does not provide or prescribe medical care; there is medical consensus about the safety and efficacy of this health care for gender dysphoria in adolescents; it is medical providers, not PFLAG, that provide information about the safety and efficacy of this care to individual patients and their families as part of the informed consent process; and there are less intrusive means for the OAG to pursue any fraud investigation—however, baseless it may be—without revealing the identities or private information of PFLAG's members.

**1) *The Demands Violate the Freedoms of Association and Assembly.***

The Demands violate PFLAG and its members' right to freedom of association and assembly because they require the disclosure of the identities of PFLAG's members and will have a chilling effect on members' continued participation with PFLAG. The rights of free speech, assembly, and petition include a right to association. “Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment.” *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 375 (Tex. 1998) (“*BACALA*”) (citing *NAACP v. Alabama*, 357 U.S. 449, 460 (1958)). The Texas Constitution protects these same rights to at least the same degree, if not more. *See Davenport v. Garcia*, 834

S.W.2d 4, 15 (Tex. 1992) (“The only limit on the states is that, in relying on their constitutions, they may not deny individuals the minimum level of protection mandated by the Federal Constitution.”). In addition to Art. I, § 27’s protection of the right to assembly for petition purposes and for the common good, “the Texas Supreme Court has adopted the judicially created ‘right of association’ as a right that is ‘instrumental to the First Amendment’s free speech, assembly, and petition guarantees.’” *Zaatari v. City of Austin*, 615 S.W.3d 172, 195 (Tex. App. 2019) (quoting *Osterberg v. Peca*, 12 S.W.3d 31, 46 (Tex. 2000)). The Demands also abridge Texan citizens’ “fundamental right” “to physically congregate, in a peaceable manner, for their shared welfare or benefit.” *Zaatari*, 615 S.W.3d at 197-99. The Texas Constitution protects these rights of association and assembly, even when used for purposes that the State disagrees with. *See, e.g., Bell v. Hill*, 74 S.W.2d 113, 121 (Tex. 1934).

Because the Demands seek information protected by the First Amendment and are not “substantially related to a compelling government interest,” *BACALA*, 982 S.W.2d at 378, they must be set aside.

**a. The Demands Seek Constitutionally Protected Information About PFLAG Members’ Identities.**

The Demands require PFLAG to “Identify” its members, defined as disclosing their complete names, social security numbers, dates of birth, jobs, home addresses, telephone numbers, and email addresses, or to provide documents and communications that will identify them by implication, by reference to Brian Bond’s affidavit in the *Loe v. Texas* matter, various categories of documents and communications allegedly in PFLAG’s possession, and six alleged medical providers of gender-affirming medical care.

These requests, whether framed as an explicit request to “Identify” or to provide documents—which, under the Demands’ terms, cannot be redacted—will effectively identify

many of PFLAG’s Texas members, and specifically the subset of families with transgender adolescents who need gender-affirming medical care. That information—whether the membership at large or that particular subset—is constitutionally protected from disclosure: freedom of association includes “immunity from state scrutiny of membership lists” because of its close relation to the “rights of the members to pursue their lawful interests privately and to associate freely with others.” *NAACP*, 357 U.S. at 466. “It is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters...” *BACALA*, 982 S.W.2d at 375-76 (quoting *NAACP*, 357 U.S. at 460-61). *See also In re Maurer*, 15 S.W.3d 256, 260 (Tex. App. 2000).

**b. Compelled Disclosure Will Have a Chilling Effect on PFLAG and its Members.**

“Compelled disclosure of the identities of an organization’s members or contributors may have a chilling effect on the organization’s contributors as well as on the organization’s own activity.” *BACALA*, 982 S.W.2d at 375. Forcing PFLAG to disclose its members to the OAG—especially since the members who are targeted by the Demands are families with transgender individuals—will have a chilling effect on PFLAG’s membership and members, in violation of their right to associate. This chilling effect is additionally harmful beyond the inherent constitutional injury because members are protected by virtue of their PFLAG membership from being investigated by DFPS for child abuse solely based on their provision of medically necessary care to their transgender adolescents based on the injunctive relief currently in place in *PFLAG v. Abbott*. PFLAG members are also represented in *Loe v. Texas* and, pending the outcome on appeal, may be permitted to seek that care pursuant to the temporary injunction issued by the Travis County District Court.

PFLAG bears an “initial burden to make a *prima facie* showing” to obtain judicial relief preventing the disclosure of its members, but that “burden must be light,” and PFLAG’s evidence “need only show a reasonable probability that compelled disclosure ... will subject [its members] to threats, harassment, or reprisal from either Government officials or private parties,” which can be proven through “specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself.” *BACALA*, 982 S.W.2d at 376. PFLAG can readily satisfy that light burden with “factual, non-speculative evidence of economic and political reprisals against itself and its contributors.” *Id.* at 377.

As set forth in the Petitions filed in *PFLAG v. Abbott* and *Loe v. Texas*, and the evidence adduced by PFLAG at the temporary injunction hearings held in those cases, PFLAG’s members have been targeted by DFPS, the OAG, and other Texas officials because of their support for their transgender children and attempts to treat their children’s gender dysphoria under the care of qualified health professionals and in accordance with the widely-accepted standards of care for that serious medical condition. The harm from the chilling effect of the Demands is particularly serious given that membership in PFLAG is one of the only legal protections against investigation by DFPS available to the families of transgender adolescents who may receive or are receiving gender-affirming medical care under the September 16, 2022 Order Granting Application for Temporary Injunction issued in *PFLAG v. Abbott*, and is one of the bases for standing to obtain the benefits of the August 25, 2023 Temporary Injunction Order issued in *Loe v. Texas*.

Given that the OAG has adopted a hostile position regarding transgender people and their families, and aggressively used every possible tool at its disposal (and some that are not) to punish those who hold a different position, PFLAG’s members have factual, non-speculative evidence that disclosure of their identities will subject them to political reprisal. *See also Ex parte Lowe*,

887 S.W.2d 1, 1 (Tex. 1994) (the “First Amendment associational rights privilege against disclosure of membership lists [is] guaranteed to dissident groups, as applied to the states through the Fourteenth Amendment to the United States Constitution.”). In addition to the targeting of PFLAG’s members through the directives and statutes at issue in those two cases, the OAG has singled out PFLAG’s membership based on their views regarding transgender people and gender identity. The OAG has targeted transgender individuals and their families by seeking information on the number of transgender individuals in the state based on requests to change driver licenses,<sup>24</sup> characterized transgender identity as “the increasingly dangerous fad of ‘transgender’ extremism,”<sup>25</sup> and characterized inclusive Title IX policies as “‘transgender’ ideology.”<sup>26</sup>

The Demands are a continuation of the OAG’s systematic efforts to identify and isolate transgender individuals and their families. Using PFLAG’s private membership lists and communications to accomplish that improper purpose violates the U.S. Constitution and the Texas Constitution.

**c. The OAG Cannot Show the Confidential Information Sought by the Demands Is Substantially Related to a Compelling State Interest.**

Because PFLAG has raised its “qualified privilege against disclosure of membership lists,” the OAG as “the party seeking the list has the burden to establish the constitutionally permissible basis justifying disclosure.” *Ex parte Lowe*, 887 S.W.2d at 2-3. The OAG “must show convincingly a substantial relation between the information sought and a subject of overriding and

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<sup>24</sup> Molly Hennessy-Fiske, “Texas attorney general’s office sought data on transgender Texans,” *The Texas Tribune*, Dec. 14, 2022, <https://www.texastribune.org/2022/12/14/ken-paxton-transgender-texas-data/>.

<sup>25</sup> *See, supra* note 14, May 5, 2023 Press Release.

<sup>26</sup> Press Release, Tex. Att’y Gen. Off., *Texas Launches Lawsuit Against Biden’s Unlawful Title IX Guidance Forcing “Transgender” Policies in Schools by Threatening Education Funds* (June 14, 2023), <https://www.texasattorneygeneral.gov/news/releases/texas-launches-lawsuit-against-bidens-unlawful-title-ix-guidance-forcing-transgender-policies>.

compelling state interest.” *Id.* at 3. The First Amendment “requires that a compelling state interest be shown before a court may order disclosure of membership in an organization engaged in the advocacy of particular beliefs.” *BACALA*, 982 S.W.2d at 375. “It is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.” *Tilton v. Moye*, 869 S.W.2d 955, 956 (Tex. 1994) (quoting *NAACP*, 357 U.S. at 460-61).

The information the Demands seek is not “substantially related to a compelling government interest.” *BACALA*, 982 S.W.2d at 378. The OAG must show more than “mere relevance” to “discover information protected by the First Amendment.” *Id.* at 378. The Demands purport to relate to “an investigation of actual or possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law” or “possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures.” There is no such substantial relationship here.

*First*, PFLAG does not provide or prescribe gender-affirming medical care. It is a national membership organization with a mission to create a caring, just, and affirming world for LGBTQ+ people and those who love them, including by supporting and strengthening families of LGBTQ+ people.

*Second*, PFLAG is not an organization of experts, nor does it purport to be. But there is medical consensus, by medical experts, about the safety and efficacy of this health care for gender dysphoria in adolescents.

*Third*, it is medical providers who prescribe and provide that care, not PFLAG, who provide information about the safety and efficacy of that care to individual patients and their families as part of the informed consent process.

*Fourth*, there are less intrusive means for the OAG to pursue any fraud investigation—however, baseless—without revealing the identities of PFLAG’s members. Reading PFLAG members’ private correspondence to determine which PFLAG members include families with transgender individuals or who may have some interest in gender-affirming medical care is among the most intrusive means of the OAG pursuing such investigations. Moreover, while the documentary production requested by the Demands is subject to confidentiality protections, the sworn statement is not: responding to the Demands as written risks exposure not just to the OAG, but to the public, of the identities of PFLAG’s members. *See* Op. Tex. Att’y Gen. No. OR2001-1007 (2001).

That the Demands seek the identities of only some of PFLAG’s members, not the membership rolls in their entirety, does not cure their constitutional infirmity, but rather doubles it: potential PFLAG members who might join to benefit from the protections of the temporary injunction in *PFLAG v. Abbott* are necessarily those with transgender children, and the Demands target those families’ identities specifically by reference to the pursuit of gender-affirming medical care for adolescents. Allowing the OAG to obtain that information will “dissuade others from joining [PFLAG] because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure.” *NAACP*, 457 U.S. at 463. Even if the Demands seek to uncover alleged “representations” regarding a certain kind of medical care, that is not a sufficient reason to disclose the identities of “rank and file” members of the organizations, even incidentally,



especially when there are inadequate or nonexistent protections from the public disclosure of that information.<sup>27</sup> *NAACP*, 457 U.S. at 464.

**2) *The Demands Are Retaliation Against PFLAG and Its Members for Their Exercise of Constitutionally Protected Activity.***

Defendants violated, and continue to violate, PFLAG and its members' First and Fourteenth Amendment rights by launching a bad faith and coercive investigation and serving unreasonable, oppressive, and burdensome Demands in retaliation for PFLAG's petitions, speech, and associational activities. The OAG's use of its powers is meant to discourage PFLAG and its members from supporting the development and work of its Texas PFLAG chapters, including through policy advocacy, coalitions with organizations that share PFLAG's goals, developing trainings and educational materials, and providing resources to members affected by State of Texas's campaign against transgender people and families of transgender adolescents in Texas.

Public officials are prohibited from using their authority to retaliate against, obstruct, or chill citizens' First Amendment rights. "[T]he law is settled that . . . the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out." *Hartman v. Moore*, 547 U.S. 250, 256 (2006). Informal measures, such as "the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation" also can violate the First Amendment. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963). Thus, for example, "[c]ourts will not enforce an administrative subpoena . . . issued for an improper purpose, such as

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<sup>27</sup> The lack of confidentiality is another reason the Demands are an improper attempt to circumvent the stay of civil discovery in *PFLAG v. Abbott* and *Loe v. Texas*. In both of those cases, the individual plaintiffs' identities are protected from public disclosure by pseudonyms and confidentiality orders binding the State. But PFLAG's responses to the Demands are not afforded those same protections, and so not only the identities of PFLAG's members, but also the transgender status of their family members, may be publicly revealed, or revealed to agencies and employees of the State beyond the Consumer Protection Division of OAG.

harassment.” *Burlington N. R.R. Co. v. Office of Inspector General*, 983 F.2d 631, 638 (5th Cir. 1993) (citing *United States v. Powell*, 379 U.S. 48, 58 (1964)).

To prevail on their retaliation claim, PFLAG must show “(1) [it] engaged in constitutionally protected activity, (2) the defendants’ actions caused [it] to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) the defendants’ adverse actions were substantially motivated against the plaintiff[’s] exercise of constitutionally protected conduct.” *Keenan v. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002). At the preliminary injunction stage of proceedings, the causation standard “is more lax”: PFLAG need only show “retaliation was motivated ‘at least in part’ by” PFLAG’s exercise of First Amendment activity. *Netflix, Inc. v. Babin*, 88 F.4th 1080, 1096 (5th Cir. 2023). PFLAG satisfies each element.

*First*, PFLAG’s participation in *Loe v. Texas* and *PFLAG v. Abbott* on behalf of its members challenging Texas law or official policy, along with its rights to free speech and association related to such cases, including the subject matter therein, is constitutionally protected activity. PFLAG’s “right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government.” *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896-97 (1984). The First Amendment also prohibits Defendants from using their authority to deter, obstruct, or chill the associational activities or expressive rights of PFLAG and its members, including advocacy to support transgender youth and their families throughout Texas. *See* § 7.C.1.

*Second*, the OAG has taken action adverse to PFLAG’s constitutionally protected activity. Defendants’ bad faith, harassing, and intrusive Demands are meant to chill the speech and associational activities of PFLAG and its members and will do so absent emergent relief. The OAG’s retaliatory conduct would “deter a person of ordinary firmness” in PFLAG’s position, *Keenan*, 290 F.3d at 259, particularly given the suite of tools Texas law provides the OAG to wield

great coercive authority and punish, harass, and restrain Plaintiffs’ constitutionally protected conduct. *See, e.g.*, Tex. Bus. & Com. Code §§ 17.47, 17.60, 17.62; Tex. Bus. Orgs. Code §§ 12.152, 12.155. Indeed, the OAG has recently shown its propensity to sanction CID recipients who contest, otherwise object to, and do not yield to its demands—particularly when they pertain to gender-affirming medical care. *See, e.g., supra*, Section V.D (discussing *quo warranto* petition against Seattle Children’s Hospital).

The chill imposed by Defendants’ retaliatory actions injures PFLAG’s ability to serve its members and further chills their ability to participate in a robust public discussion about the critical importance of supporting LGBTQ+ young people and their families that has been a core part of PFLAG’s work. The Demands have already subjected PFLAG to the burden of an administrative subpoena issued in bad faith, and PFLAG is also “concerned about the expense of becoming entangled in the legal system.” *Counterman v. Colorado*, 600 U.S. 66, 75 (2023). On February 27, 2024, PFLAG, through counsel, requested that the OAG withdraw its Demands. Counsel for PFLAG and the OAG met and conferred on February 28, 2024, but were unable to come to a resolution. At minimum, PFLAG engaged in protected activity that “arguably affected [its] constitutional interest.” *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979). PFLAG is not “required to await and undergo [an enforcement proceeding] as the sole means of seeking relief.” *Id.*; *see also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014); *Animal Legal Def. Fund v. Vaught*, 8 F.4th 714, 720 (8th Cir. 2021) (“A formal threat ... is not required to establish an injury in fact. The question is whether the plaintiffs have an objectively reasonable fear of legal action that chills their speech.”).

*Third*, there is no serious dispute that the OAG’s Demands are causally linked to PFLAG’s participation as plaintiff on behalf of its members in *Loe v. Texas* and *PFLAG v. Abbott*. The OAG

issued the Demands *less than a week* after the Texas Supreme Court heard argument in *Loe v. Texas* and the Demands are anchored to the affidavit of PFLAG CEO Brian Bond submitted to this Court as part of PFLAG’s initiation of the lawsuit and request to enjoin SB14 in that case. Notably, as a constitutional challenge seeking to maintain the *status quo*, Bond’s statements in *Loe v. Texas* were made in July 2023—nearly two months before the September 2023 effective date of SB14. Moreover, the Demands were issued on February 5, the *first business day after* the briefs in *PFLAG v. Abbott* were set for submission (i.e., on February 2) to the Third Court of Appeals. *Benfield v. Magee*, 945 F.3d 333, 337 (5th Cir. 2019) (stating “[c]lose timing between... [the] protected activity and an adverse action...may provide the ‘causal connection’ required[.]”) What is more, the information sought by the Demands is coterminous with the governmental actions PFLAG is challenging on behalf of its members in *Loe v. Texas* and *PFLAG v. Abbott*.

The material sought by the OAG’s Demands further confirms the causal connection, as it singles out documents and communications by and between PFLAG and its members that pertain to family support and resources about access to health care for adolescents who are or may be experiencing gender dysphoria. Especially in light of the history of targeted attacks against transgender people in Texas and the CID requests directed to healthcare providers and pharmaceutical companies, the Demands evince Defendants’ bad faith motive to retaliate at least in part to PFLAG’s litigation. *Babin*, 88 F.4th at 1092 (noting a court may “trace the abozzo of retaliation from the timeline alone.”)

Absent relief from this Court, the OAG’s retaliatory campaign against PFLAG will injure the organization and its members as long as the Demands are “hanging in the air.”<sup>28</sup> This harm

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<sup>28</sup> Attorney General Paxton’s own words resolve any possible doubt about the uniquely injurious effects of the Demands that will be felt by PFLAG and its members. In 2016, alongside several other state attorneys general, Paxton filed an amicus brief excoriating Massachusetts for using its own deceptive trade practices law to serve a similar civil

will be redressed by an order declaring the OAG’s conduct to be unlawful, setting aside the Demands, and enjoining Defendants from further investigating PFLAG or enforcing the Demands.

**3) *The Demands Violate the Freedom from Unlawful Search and Seizure.***

Article I, Section 9 of the Texas Constitution and the Fourth Amendment to the United States Constitution guarantee freedom from unreasonable searches and seizures. Indeed, Texas courts have acknowledged “no substantive difference” between this provision and the Fourth Amendment to the United States Constitution and have used similar analysis for the two. *See Schade v. Tex. Workers’ Comp. Comm’n*, 150 S.W.3d 542, 550 (Tex. App. 2004); *see also Holder v. State*, 595 S.W.3d 691, 693 (Tex. Crim. App. 2020) (“we have often noted the striking similarities between the two provisions and that they protect the same right to the same degree”).

A CID or other administrative subpoena is an unreasonable search when it is unduly burdensome, overly broad, or a baseless “fishing expedition” by the government to attempt to find some evidence of some violation. *See See v. City of Seattle*, 387 U.S. 541, 544 (1967); *United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950); *FTC v. Am. Tobacco Co.*, 264 U.S. 298, 305-06 (1924). Investigations based on “a mere intuition that illegal activity is afoot” violate these protections, as “it is clear that an investigation predicated solely upon legal activity does not pass muster under any standard,” and investigations into legal activity “are the very type of ‘fishing expeditions’” that are prohibited. *Major League Baseball v. Crist.*, 331 F.3d 1177, 1187-88 (11th Cir. 2003).

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investigative demand on Exxon Mobil—which, notably and unlike PFLAG, is involved in trade practices—regarding claims it misled consumers about the impact of its energy products on climate change. Brief of Amici Curiae, *Exxon Mobil Corp. v. Healey*, No. 4:16-CV-00469-K (N.D. Tex. Sept. 8, 2016), ECF No. 63-2. Attorney General Paxton wrote: “The[] [First Amendment] protections afforded by the Constitution . . . [are] threatened by the chill of subpoenas, like Massachusetts’s CID, hanging in the air. Thus, not only is Massachusetts attempting to silence Exxon through the issuance and threat of compelling a response to the CID, this very action harms everyone[.]” *Id.* at 6. He added that “[t]he authority attorneys general have to investigate fraud does not allow them to encroach on the constitutional freedom of others to engage in an ongoing public . . . debate.” *Id.* at 3.

A CID additionally violates the constitutional right to be free from unreasonable searches and seizures when the issuing agency exceeds its statutory authority in issuing it. *See Morton Salt Co.*, 338 U.S. at 652 (1950). Texas law mandates that “[a] civil investigative demand may contain a requirement or disclosure of documentary material which would be discoverable under the Texas Rules of Civil Procedure.” Tex. Bus. & Com. Code § 17.61(c). Thus, CIDs issued by the Texas State Government must only request materials that are appropriately discoverable under the Texas Rules of Civil Procedure to avoid violating constitutional protections against unreasonable searches and seizures.

When protections against unreasonable searches and seizures overlap with First Amendment protections, the judicial scrutiny of administrative subpoenas is especially strict: where “the materials sought to be seized” by an administrative subpoena “may be protected by the First Amendment,” the requirements of the Fourth Amendment are applied with “scrupulous exactitude.” *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978) (citing *Stanford v. Texas*, 379 U.S. 476, 485 (1965)).

Here, the Demands constitute a violation of Article 1, Section 9 of the Texas Constitution because they are an overbroad and unduly burdensome fishing expedition, carried out to retaliate against Plaintiff PFLAG. Defendants’ attempt to circumvent the discovery process not only violates Texas Rules of Civil Procedure, but also violates Plaintiff’s freedom from unlawful searches and seizures. That these unconstitutional Demands further implicate the First Amendment mean that they deserve exacting scrutiny. PFLAG’s mission to support LGBTQ+ families is legal, and Defendants’ unconstitutional and abusive attempts to intrusively investigate such activity should not be permitted.

**VIII. IN THE ALTERNATIVE, REQUEST FOR A REASONABLE EXTENSION TO RESPOND AND MODIFY THE SCOPE OF DEMANDS**

PFLAG needs a temporary restraining order from this court because requiring PFLAG to respond to the Demands on the noticed date would violate the constitutional rights of PFLAG and its members, irreparably harming PFLAG and its members.

Ultimately, the court should set aside/quash the Demands in their entirety on the merits. At the very least, PFLAG must have a reasonable opportunity to object to each component of the Demands and seek a modification of the scope of the demands because of the First Amendment issues associated with some of the requests, as well as the privacy concerns raised by the Demands' refusal to permit redactions, the absence of a protective order, and the specific requests for personal identifying information, such as Social Security numbers. If the court is not inclined to permanently set aside the Demands in their entity, PFLAG requests the opportunity to brief its objections to each component of the Demands.

**IX. PRAYER FOR RELIEF**

WHEREFORE, PFLAG prays this Court enter judgment on all counts and award it the following relief against Defendants:

1. Issue a temporary restraining order extending the return date for and staying the Demands, extending PFLAG's time to respond to the Demands, and preventing the OAG from taking any adverse action in relation to the Demands against PFLAG, its officers, members, chapters, agents, servants, employees, and attorneys, and upon those persons in active concern or participation with them, including but not limited by taking any affirmative step to revoke, suspend, forfeit, dissolve, or void the ability of PFLAG or any of its chapters to operate in Texas, during the pendency of this case;

2. Issue a temporary injunction extending the return date for and staying the Demands, extending PFLAG's time to respond to the Demands, and preventing the OAG from taking any adverse action in relation to the Demands against PFLAG, its officers, members, chapters, agents, servants, employees, and attorneys, and upon those persons in active concern or participation with them, including but not limited by taking any affirmative step to revoke, suspend, forfeit, dissolve, or void the ability of PFLAG or any of its chapters to operate in Texas, during the pendency of this case;
3. Enter a declaratory judgment declaring that the Demands are beyond the scope of authority under the DTPA and violative of the rights of PFLAG and its members under the Texas and United States Constitutions;
4. Enter an order an order setting aside the Demands and permanently enjoining the OAG, its officers, agents, servants, employees, and attorneys, and upon those persons in active concern or participation with them, from:
  - a. Utilizing the DTPA to circumvent the discovery rules and procedures in other litigation, including *Loe v. Texas* and *PFLAG v. Abbott*;
  - b. Utilizing the DTPA against PFLAG, its officers, members, chapters, agents, servants, employees, and attorneys based on the OAG's belief that gender-affirming medical treatment for gender dysphoria is not safe, efficacious, or evidence-based; and
  - c. Taking adverse action against PFLAG, its officers, members, chapters, agents, servants, employees, and attorneys, including but not limited by taking any affirmative step to revoke, suspend, forfeit, dissolve, or void the ability of PFLAG or any of its chapters to operate in Texas for not



complying with the Demands;

5. In the alternative, enter an order allowing PFLAG an extension to object or otherwise respond to the Demands, including through submission of a supplemental petition to modify the Demands, and entering a to-be-negotiated protective order to the extent any production is ordered;
6. Award attorney's fees and costs as permitted by law; and
7. Grant such other relief as the Court may deem just and proper.

Dated: February 28, 2024

Respectfully submitted,

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forthcoming.

*Attorneys for Plaintiff*



## PFLAG - Verification Brian K. Bond.pdf

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### E-Signature Summary

**E-Signature 1: Brian K. Bond (BKB)**

February 28, 2024 14:55:54 -6:00 [1B9F57F8D34D] [98.218.23.132]  
 BrianBond@pflag.org (Principal) (Personally Known)

**E-Signature Notary: Grace C Ojionuka (GCO)**

February 28, 2024 14:55:54 -6:00 [5AA828DBA04B] [163.116.254.46]  
 GandJTexasRemoteNotary@gmail.com

I, Grace C Ojionuka, did witness the participants named above electronically sign this document.



CAUSE NO. \_\_\_\_\_

**PFLAG, Inc.,**

**Plaintiff,**

§ **IN THE DISTRICT COURT OF**

§

§

§

§

**v.**

§ **TRAVIS COUNTY, TEXAS**

§

**OFFICE OF THE ATTORNEY  
GENERAL OF THE STATE OF  
TEXAS; WARREN KENNETH  
PAXTON, JR., in his official  
capacity as Attorney General of  
Texas,**

§

§

§ \_\_\_\_\_ **JUDICIAL DISTRICT**

§

**Defendants.**

§

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**DECLARATION OF BRIAN K. BOND**

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My name is Brian K. Bond. I am over eighteen years of age, of sound mind, and fully capable of making this declaration. I am the Chief Executive Officer of PFLAG, Inc. I have read the attached Original Verified Petition to Set Aside Civil Investigative Demands, for Declaratory Judgment, and Application for Temporary Restraining Order and Temporary and Permanent Injunctive Relief. I verify that the facts set forth in paragraphs 1, 11-24, 35, 47, 52-53, and 60 are within my personal knowledge and are true and correct.

2AF51C6D-BC55-4518-A6B9-21CA7F8624D1 --- 2024/02/28 14:49:25 -6:00 --- Remote Notary



Brian K. Bond  
Signed on 2024/02/28 14:55:54 -6:00

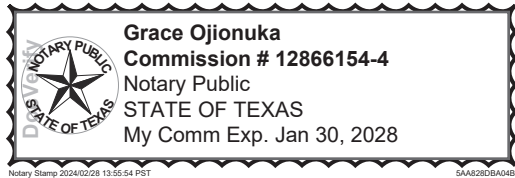
Brian K. Bond  
Chief Executive Officer, PFLAG, Inc.


STATE OF TEXAS           §  
   §  
COUNTY OF HARRIS       §

**Notary Verification**

Brian K. Bond personally appeared before me, and being first duly sworn declared that he signed this declaration in the capacity designated, if any, and further states that he has read the attached Original Verified Petition to Set Aside Civil Investigative Demands, for Declaratory Judgment, and Application for Temporary Restraining Order and Temporary and Permanent Injunctive Relief and the statements contained in the paragraphs designated herein are true.

Sworn and subscribed before me on the 28th day of February 2024 by Brian K. Bond.



  
Signed on 2024/02/28 14:55:54 -6:00  
Notary Public's Signature

Notarial act performed by audio-visual communication

2AF51C6D-BC55-4518-A6B9-21CA7F8624D1 --- 2024/02/28 14:49:25 -6:00 --- Remote Notary



# Exhibit A



STATE OF TEXAS  
OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION DIVISION

**CIVIL INVESTIGATIVE DEMAND**

TO: Susan Thronson  
President  
Brian K. Bond  
Chief Executive Officer  
PFLAG, Inc.  
1625 K Street NW #700  
Washington, DC 20006

via CMRRR: 7014 1200 0000 2191 6998  
via First Class Mail

Registered Agents Inc.  
1401 21st Street, Suite R  
Sacramento, CA 95811

via CMRRR: 7014 1200 0000 2191 7001  
via First Class Mail

Pursuant to this Office's specific authority under section 17.61 of the Texas Deceptive Trade Practices—Consumer Protection Act, Texas Business & Commerce Code §§ 17.41–17.63 (“DTPA”), PFLAG, Inc. (“PFLAG”), a Nonprofit Corporation, is hereby directed to produce the items listed in Exhibit “B” attached hereto. Such production is governed by the Instructions and Definitions set forth in Exhibit “A” on this page and subsequent pages.

You are to make available the documentary material described in Exhibit “B” to the undersigned Assistant Attorney General or other authorized agent(s) identified by the Consumer Protection Division (“Division”). This documentary material shall be produced for inspection and copying during normal business hours at your principal office or place of business, or may be sent electronically or by certified mail to the Office of the Attorney General, 300 W. 15<sup>th</sup> Street, 9<sup>th</sup> Floor, Austin, TX 78701 and is due on **Monday, February 26, 2024**. If providing documents electronically, please provide them to Sam Weeks at [Samuel.Weeks@oag.texas.gov](mailto:Samuel.Weeks@oag.texas.gov).

The Division believes that you are in possession, custody, or control of documentary material relevant to the subject matter of an investigation of actual or possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.

**TAKE NOTICE THAT** pursuant to section 17.62, Texas Business and Commerce Code, any person who attempts to avoid, evade, or prevent compliance, in whole or in part, with this directive by removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material may be guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000.00 or by confinement in the county jail for not more than one year, or both.

ISSUED THIS 5th day of February 2024.

*/s/ David Shatto*

DAVID SHATTO, Assistant Attorney General  
Consumer Protection Division, OAG  
T: (512) 463.2185 | F: (512) 370.9125  
[David.Shatto@oag.texas.gov](mailto:David.Shatto@oag.texas.gov)

Other Authorized Agent:  
Sam Weeks, Investigator  
Consumer Protection Division, OAG  
T: (512) 936.0501 | F: (512) 370.9125  
[Samuel.Weeks@oag.texas.gov](mailto:Samuel.Weeks@oag.texas.gov)

## **EXHIBIT A: INSTRUCTIONS**

1. **Read These Instructions/Definitions Carefully.** Your production must comply with these instructions and definitions.
2. Unless the context clearly indicates otherwise, words used in the singular include the plural, the plural includes the singular, and the neutral includes the masculine and feminine.
3. **Duty to Preserve Documents.** All documents and/or other data which relate to the subject matter or requests of this Civil Investigative Demand must be preserved. *Any ongoing, scheduled, or other process of document or data destruction involving such documents or data must cease even if it is your normal or routine course of business for you to delete or destroy such documents or data and even if you believe such documents or data are protected from discovery by privilege or otherwise.* Failure to preserve such documents or data may result in legal action and may be regarded as spoliation of evidence under applicable law.
4. **Relevant Time Period.** Unless otherwise noted, the requests in this Civil Investigative Demand require production of documents from March 8, 2023, to the date of the production of documents in response to this Civil Investigative Demand, herein called the "Relevant Time Period."
5. **Custody and Control.** In responding to this Civil Investigative Demand, you are required to produce not only all requested documents in your physical possession, but also all requested documents within your custody and control. A document is in your custody and control if it is in the possession of another person and you have a right to possess that document that is equal or superior to that other person's right of possession. On the rare occasion that you cannot obtain the document, you must provide an explanation as to why you cannot obtain the document which includes the following information:
  - a. the name of each author, sender, creator, and initiator of such document;
  - b. the name of each recipient, addressee, or party for whom such document was intended;
  - c. the date the document was created;
  - d. the date(s) the document was in use;
  - e. a detailed description of the content of the document;
  - f. the reason it is no longer in your possession, custody, or control; and
  - g. the document's present whereabouts.

If the document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the document was destroyed or otherwise disposed of, and the date and manner of the destruction or disposal.

6. **Non-identical Copies to be Produced.** Any copy of a document that differs in any manner, including the presence of handwritten notations, different senders or recipients, etc. must be produced.



7. **No Redaction.** All materials or documents produced in response to this Civil Investigative Demand shall be produced in complete unabridged, unedited, and unredacted form, even if portions may contain information not explicitly requested, or might include interim or final editions of a document.

8. **Document Organization.** Each document and other tangible thing produced shall be clearly designated as to which request, and each sub-part of a request, that it satisfies. The documents produced shall be identified and segregated to correspond with the number and subsection of the request.

9. **Production of Documents.** You may submit photocopies (with color photocopies where necessary to interpret the document) in lieu of original hard-copy documents if the photocopies provided are true, correct, and complete copies of the original documents. If the requested information is electronically stored information, it shall be produced in electronic form. Electronically stored information shall be produced with the accompanying metadata, codes, and programs necessary for translating it into usable form, or the information shall be produced in a finished usable form. For any questions related to the production of documents you may consult with the Office of the Attorney General representatives above.

10. **Privilege Log.** For each Document and any other requested information that you assert is privileged or for any other reason excludable from production, please provide a privilege log, wherein you:

- a. Identify that Document and other requested information;
- b. State each specific ground for the claim of privilege or other ground for exclusion and the facts supporting each claim of privilege or other ground for exclusion;
- c. State the date of the Document or other requested information; the name, job title, and address (including city, state and ZIP Code) of the person who prepared it; the name, address (including city, state, and ZIP Code), and job title of the person to whom it was addressed or circulated or who saw it; and the name, job title, and address (including city, state, and ZIP Code) of the person now in possession of it; and
- d. Describe the type and subject matter of the Document or other requested information.

## DEFINITIONS

1. **“You,” “Your,” “PFLAG, Inc.,”** (also referred to herein as the **“Company”**) means the entity named on page one of this Civil Investigative Demand, with an address of 1625 K Street NW #700, Washington, DC 20006, and a registered agent at Registered Agents Inc., at 1401 21st Street, Suite R, Sacramento, CA 95811, and includes its past and present directors, officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, Affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidance of or on behalf of any of the above. The terms **“subsidiary,” “Affiliate,”** and **“joint venture”** refer to any firm in which there is total or partial ownership (25 percent or more) or control between the Company and any other person or entity.
2. The words **“and”** and **“or”** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.
3. **“Affiliate(s)”** includes, but is not limited to, PFLAG Tyler/ East Texas; PFLAG Houston; PFLAG Dallas, Inc.; PFLAG Fort Worth, Inc.; PFLAG San Antonio; PFLAG Odessa; PFLAG Denton; PFLAG Seguin; PFLAG Longview; PFLAG Boerne; PFLAG Corpus Christi; PFLAG Midland-Odessa; PFLAG Georgetown; PFLAG Amarillo; PFLAG Mesquite; PFLAG of the Big Country; PFLAG-Kerr County; PFLAG Brownsville Chapter; PFLAG Beaumont Chapter; PFLAG San Marcos, Inc.; PFLAG Brenham Chapter; PFLAG San Angelo; PFLAG Huntsville TX; PFLAG Corpus Christi, Texas, Chapter; PFLAG/HATCH YOUR SCHOLARSHIP FOUNDATION; PFLAG San Juan, Chapter of PFLAG; PFLAG of Montgomery (Parents, Families and Friends of Lesbians and Gays; and any other similarly related entity registered in Texas, either domestic or foreign.
4. **“Communication”** means any conversation, discussion, letter, email, correspondence, memorandum, meeting, note, or other transmittal of information or message, whether transmitted in writing, orally, electronically, or by any other means.
5. **“Document”** is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced, or stored (manually, mechanically, electronically, or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail (e-mail), instant messages, text messages or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices, and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking

made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof.

6. **“Gender Transitioning and Reassignment Treatments and Procedures”** means any and all procedures or treatments for the purpose of “transitioning” a Child’s biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child’s perception of the child’s sex if that perception is inconsistent with the child’s biological sex, including but not limited to surgeries or procedures that result in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue, the provision of medications that induce transient or permanent infertility (including puberty suppressing and blocking drugs or supraphysiologic doses of testosterone to females and estrogen to males), and any other treatments, therapies, or procedures that are provided to address gender identity disorder, gender dysphoria, and any other similar or related conditions.

7. **“Identify”** means the following:

- a. With respect to a natural Person, the complete name, any alias(es), social security number, date of birth, occupation, title(s), job responsibilities, street and mailing address for both home and business at the time in question and at the time of responding (if different), home, cellular, and business telephone numbers, and personal and business email addresses;
- b. With respect to a business or an entity, its name(s), business address(es), legal address(es), state(s) of incorporation, registered or unregistered tradename(s), name(s) under which it does business, or any other associated name(s), electronic email domains and websites operated by the entity, tax identification number(s), and the identity of its agent(s) for the service of process; and
- c. With respect to a Document, its Bates or other sequential notation, title, date, location, author(s), signatory(ies), recipient(s), description (e.g., memorandum, letter, contract, form), the number of pages, and a summary of the contents.

8. **“Person”** includes You and means any entity or natural person.

**EXHIBIT B:  
DOCUMENTS TO BE PRODUCED**

In accordance with the requirements set forth in the "Definitions" and "Instructions" sections of this Civil Investigative Demand, You are specifically required to respond in writing to each of the following Requests within the time frame set forth below:

**Produce within 20 days:**

1. All Documents and Communications that form the basis of, or relate to, Brian K. Bond's personal knowledge of the information contained in the affidavit attached hereto as "EXHIBIT B1."
2. All Communications to, or from, any PFLAG representative regarding, relating to, or referencing, "contingency plans" and/or "alternative avenues to maintain care," as those phrases are used in the affidavit attached hereto as "EXHIBIT B1."
3. All recommendations, referrals, and/or lists of pediatric and/or adolescent "health care providers" (as that term is used in paragraph 13 of the affidavit attached hereto as "EXHIBIT B1") in Texas, that PFLAG (or any of its representatives) has created, maintained, received, or distributed since March 8, 2023.
4. All Communications to, or from, Brian K. Bond regarding, or relating to, the contents and preparation of the affidavit attached hereto as "EXHIBIT B1."
5. In reference to the affidavit attached hereto as "EXHIBIT B1," produce all Documents, meeting minutes, and Communications that support Brian K. Bond's sworn statement that "PFLAG families with transgender and nonbinary adolescents ... have been asking chapters for alternative avenues to maintain care in Texas."
6. All Communications to, or from, any PFLAG representative regarding, relating to, or referencing any of the individuals or entities identified in the document attached here to as "EXHIBIT B2" since March 8, 2023.
7. Any and all contractual and charter agreements between PFLAG's Texas chapters and national chapter.
8. The governing documents and bylaws of PFLAG's Texas chapters and national chapter.

EXHIBIT B1

**LAZARO LOE, et al.**

**Plaintiffs**

**v.**

**STATE OF TEXAS, et al.,**

**Defendants.**

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**IN THE DISTRICT COURT OF**

**TRAVIS COUNTY, TEXAS  
\_\_\_\_\_ JUDICIAL DISTRICT**

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**AFFIDAVIT OF BRIAN K. BOND**

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I, Brian K. Bond, hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am the Executive Director of PFLAG, Inc. ("PFLAG"). Founded in 1973, PFLAG is the first and largest organization for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") people, their parents and families, and allies. We are a 501(c)(3) non-profit organization.

3. PFLAG has over 350 chapters across the country and approximately 325,000 members and supporters nationwide. Our members and supporters cross multiple generations of families in major urban centers, small cities, and rural areas across America. PFLAG envisions an equitable and inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved. Our mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them.

4. Our founder, Jeanne Manford, marched with her son Morty in the 1972 Christopher Street Liberation Day March in New York City and created the very first support group for parents and families of LGBTQ+ people in 1973. Supporting LGBTQ+ young people by supporting and strengthening their families has been a core part of our work ever since. Today, the gold-standard advocated by PFLAG parents and families—and set forth by pediatricians and therapists—is to accept, support, and affirm LGBTQ+ people’s sexual orientation and/or gender identity and expression; parental rejection is widely understood to be abusive and damaging.

5. We know, too, that LGBTQ+ youth thrive when supported in their schools and community. So, our work also includes ending bullying, discrimination, and harassment in educational settings by providing training for teachers, administrators, and district leaders, and advocating in the public square to ensure LGBTQ+ people are treated fairly and equally when accessing public accommodations and health care.

6. We know that change happens and support grows one interaction at a time, one family at a time.

7. PFLAG is a national membership organization and we have local chapters in 49 states and the District of Columbia. Our chapters in Texas include PFLAG Amarillo, PFLAG Austin, PFLAG Beaumont, PFLAG Boerne, PFLAG Brenham, PFLAG Dallas, PFLAG El Paso, PFLAG Fort Worth, PFLAG Georgetown, PFLAG Houston, PFLAG Lubbock, PFLAG Mesquite, PFLAG Midland/Odessa, PFLAG Montgomery, PFLAG San Antonio, PFLAG San Marcos, PFLAG Seguin, and PFLAG Tyler/East Texas.

8. PFLAG’s membership is comprised of chapter members and national members. Individuals can become a PFLAG member by joining the national organization directly or by

joining their local chapter, which sends a portion of the member's dues to PFLAG National, also making them national members. In addition to our formal members, PFLAG serves thousands of community members through our programs, events, and services every year.

9. PFLAG's members play a central role in electing our organizational leadership. Of the 21 members of the PFLAG National Board of Directors, seven are elected directly by our membership. Seven more are elected by the Regional Directors Council, a body of 13 volunteers who are themselves each elected by the members of one of PFLAG's thirteen regions to work with PFLAG National staff to provide support, resources, training, and help to start new affiliates, and to share the perspectives and activities of members with PFLAG National staff. The remaining seven are elected by the Board itself.

10. As Executive Director, I am the leader of the professional staff who carry out the work of the PFLAG National office, including supporting the development and work of the PFLAG Chapter Network and promoting PFLAG's presence in the national arena, including through policy advocacy, coalitions with organizations who share our goals, developing trainings and educational materials, and engaging with the media. Supporting the PFLAG Chapter Network is PFLAG National's largest program and our national staff works closely with chapter leaders and members across the country to reinforce their efforts to establish and grow their chapters, providing them with infrastructure, publications, online learning tools, advocacy support, media training, and countless other services and supports.

11. Because promoting the wellbeing of LGBTQ+ youth through encouraging and supporting love and affirmation by their families is a core part of our mission and because we have an extensive network of chapters and nearly 1500 members who live in Texas, we have been actively involved in supporting and providing resources to our members and constituents in

light of the increasingly hostile climate for transgender youth and their families in the state over the last few years. This includes PFLAG joining litigation on behalf of our members in order to protect them from Governor Abbott's directive deeming all affirming health care for transgender adolescents, regardless of medical necessity, to be "child abuse" and the Texas Department of Family and Protective Services' ("DFPS") subsequent adoption and implementation of that directive to investigate parents alleged to be helping their children access such care. Suddenly the very thing we know to be good for LGBTQ+ children—supporting and loving your child for who they are and ensuring they receive care they need to thrive—was a reason to be reported and subjected to an intrusive and traumatic investigation.

12. In September 2022, the Travis County District Court issued an injunction blocking DFPS from carrying out this directive, protecting PFLAG member families from investigation. Although the State appealed that injunction, the Court of Appeals reinstated its protections shortly thereafter. That case is still pending, but at least PFLAG families are presently protected from being investigated for child abuse based solely on allegations they sought medically necessary care for their transgender or nonbinary child.

13. This brief sigh of relief we felt from the DFPS Rule being enjoined ended when SB 14 was signed into law on June 2, 2023. PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposition regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and



nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming medical care or leave the state as a result of SB14. Requests for mental health care providers have skyrocketed, as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents' existing mental health issues connected to their gender dysphoria. Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date. And chapter leaders have heard concerns about the impacts on transgender and non-binary youth in the foster care system, who receive health care coverage through Medicaid and will lose coverage for their medical care for gender dysphoria if SB14 goes into effect.

14. SB 14 subjects PFLAG's Texas members with a transgender or nonbinary child in need of gender-affirming medical care to a substantial risk of harm. PFLAG has members in Texas whose children are being or will be monitored for the appropriate time to begin puberty blockers, are currently or soon will be on puberty blockers, and are currently or soon will be on hormone therapy, all as part of a medically prescribed course of care for gender dysphoria. Some of those families are being harmed right now by SB 14's passage, whether because they have had appointments for scheduled care cancelled, are losing access to healthcare providers who are moving their practice out of state or ending their provisions of gender-affirming care for fear of

losing their medical licenses or state funding, or have otherwise had their imminent plans to obtain the established course of medically necessary care for their transgender or nonbinary children disrupted or foreclosed.

15. Other current and future PFLAG members with transgender or nonbinary children face a substantial risk of being harmed if SB 14 goes into effect, including being denied the right to make medical decisions for their child because the care their child's healthcare providers have declared medically necessary for them has been deemed unlawful, being prevented from obtaining the puberty blockers or hormone therapy their child needs solely because they are treatment for gender dysphoria, or losing coverage for care that has previously been covered under state funded health plans. SB 14 will force PFLAG families who have seen their children thrive as a result of medical care to treat their gender dysphoria to stop providing that care, putting those children at risk of serious mental and physical harm—the very reasons those families sought medical care in the first place.

16. While SB 14 has caused or will cause some PFLAG families to leave Texas entirely or to have to access the medically necessary care their transgender or nonbinary child needs in another state, the logistical and financial costs of doing so are incredibly high. No family should be forced to leave their home, jobs, or community or to split up their family to access the established course of medical care for their child's health condition, but SB14 is putting Texas PFLAG families in exactly that position. For countless others, those costs are simply too high; thus SB 14 leaves those transgender and nonbinary Texas youth and their families with no way to access the medically necessary care they need. Parents are prioritizing their children's mental and physical health, but SB14 will strip them of the ability to make the

decisions that they, their children, and their children's medical providers know are in their best interests. SB14 will put these adolescents' lives at risk.

17. Although these members could challenge SB 14 in their own right—as the other Plaintiff families are doing—PFLAG brings claims on behalf of its members to represent their interests to shield them from harm, to vindicate their rights to make the medical decisions they, their child, and their medical providers know to be in their child's best interests, and to allow them to maintain their focus on their child's health and wellbeing rather than litigation.

18. Representing the interests of these members in challenging SB 14 is directly connected to PFLAG's mission in two ways. First, that mission includes encouraging and supporting parents and families of transgender and gender non-conforming people in affirming their children and helping them access the social, psychological, and medical supports they need. We work with our families to encourage love and support of their transgender and gender non-conforming children and to help them ensure that the children's needs are met. The provisions of SB 14 send the opposite message and prevent families from meeting their child's needs. SB 14 bars families from supporting their child's affirmation of their gender identity by seeking the established medically necessary care that has been prescribed for them, depriving youth of medically necessary gender-affirming care, resulting in anxiety, depression, and other negative health outcomes associated with denying or cutting off medically necessary care. In order to fulfill our mission to our members, we must fight back against a law that prevents them from doing the very thing we encourage because we know it is in the best interests of the children.

19. Second, we teach our members to advocate for a caring, just, and affirming world where LGBTQ+ people are safe, celebrated, empowered, and loved, and to advocate for equitable laws and policies that protect them. We have spoken out against bans on medically

necessary care for youth with gender dysphoria such as SB 14 because they directly conflict with parents' abilities to act in their children's best interest and do nothing to protect the health and well-being of youth or anyone who needs access to medical care. SB 14 is the antithesis of an equitable law, interfering with and obstructing decisions made between PFLAG parents, their child, and their child's provider to deprive that child of care that is proven to be safe, medically sound, and necessary for treating gender dysphoria. As an organization dedicated to parents and families of LGBTQ+ youth, we cannot in good faith sit back as our members' fundamental rights to make decisions about their child's medical care are infringed solely because their child is transgender or nonbinary.

20. PFLAG exists to foster a world where LGBTQ+ children can become thriving, healthy, and happy LGBTQ+ adults. Our members depend on us to provide support and community for them in a society that often still treats their children as second-class citizens, attempts to silence them, or denies their very existence. For our members who have transgender and nonbinary children and are doing nothing more than loving them and following the advice of qualified medical professionals, PFLAG is here to do all we can to support them in those efforts and protect them from harmful, invasive laws like SB 14.



Brian K. Bond  
Executive Director, PFLAG, Inc.

**Notary Verification**

District of Columbia

Brian K. Bond personally appeared before me, and being first duly sworn declared that he signed this declaration in the capacity designated, if any, and further states that he has read the above declaration and the statements therein contained are true.

Sworn to and subscribed before me on the 11<sup>th</sup> day of July 2023, by Brian K. Bond.



  
Notary Public's Signature

## **EXHIBIT B2**

Texas Children's Hospital  
Baylor College of Medicine  
Seattle Children's Hospital  
QMed/QueerMed  
QueerDoc  
Plume Health, P.C.

# Exhibit B



STATE OF TEXAS  
OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION DIVISION

**NOTICE OF DEMAND FOR SWORN WRITTEN STATEMENT**

**TO:** Susan Thronson  
*President*  
Brian K. Bond  
*Chief Executive Officer*  
PFLAG, Inc.  
1625 K Street NW #700  
Washington, DC 20006

*via CMRRR: 7014 1200 0000 2191 6998*  
*via First Class Mail*

Registered Agents Inc.  
1401 21st Street, Suite R  
Sacramento, CA 95811

*via CMRRR: 7014 1200 0000 2191 7001*  
*via First Class Mail*

The Consumer Protection Division has reason to believe that a “person,” as defined by the DTPA, is engaging in, has engaged in, or is about to engage in an act or practice declared unlawful by the DTPA. Pursuant to section 17.60 of the Texas Deceptive Trade Practices—Consumer Protection Act, §§ 17.41 *et seq.*, Tex. Bus. & Com. Code (“DTPA”), PFLAG, Inc. (“PFLAG”) is hereby directed to file on the prescribed form provided herein written answers under oath to the requests found in Exhibit “B.”

The information requests must be answered fully, correctly, and under oath, in accordance with the “Definitions and Instructions” set forth in Exhibit “A.” Your sworn written answers must be returned to the undersigned attorney general on or before **Monday, February 26, 2024**. You may change the terms of this notice of demand for sworn written statement only by written agreement with an authorized Texas assistant attorney general or by court order. If providing documents electronically, please provide them to Sam Weeks at [Samuel.Weeks@oag.texas.gov](mailto:Samuel.Weeks@oag.texas.gov).

This demand for sworn written statement is relevant to the subject matter of an investigation regarding possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures.

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**TAKE NOTICE THAT** pursuant to § 17.62, Texas Business & Commerce Code, any person who with intent to avoid, evade, or prevent compliance, in whole or in part, with this examination under oath, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any relevant documentary material may be guilty of a misdemeanor that, upon conviction, is punishable by a fine of not more than \$5,000.00 or by confinement in the county jail for not more than one year, or both.

---

**ISSUED THIS** 5th day of February 2024.

*/s/ David Shatto*  
DAVID SHATTO, Assistant Attorney General  
Consumer Protection Division, OAG  
T: (512) 463.2185 | F: (512) 370.9125  
[David.Shatto@oag.texas.gov](mailto:David.Shatto@oag.texas.gov)

Other Authorized Agent:  
Sam Weeks, Investigator  
Consumer Protection Division, OAG  
T: (512) 936.0501 | F: (512) 370.9125  
[Samuel.Weeks@oag.texas.gov](mailto:Samuel.Weeks@oag.texas.gov)



**EXHIBIT A:  
DEFINITIONS AND INSTRUCTIONS**

1. **“You,” “Your,” “PFLAG, Inc.,” and/or “PFLAG,”** (also referred to herein as the **“Company”**) means the entity named on page one of this Demand for Sworn Written Statement, with an address at 1625 K Street NW #700, Washington, DC 20006, and a registered agent at Registered Agents Inc., at 1401 21st Street, Suite R, Sacramento, CA 95811, and includes its past and present officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, Affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidance or on behalf of any of the above. The terms **“subsidiary,” “Affiliate,”** and **“joint venture”** refer to any firm in which there is total or partial ownership (25 percent or more) or control between the Company and any other person or entity.
2. The words **“and”** and **“or”** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.
3. **“Affiliate(s)”** includes, but is not limited to, PFLAG Tyler/ East Texas; PFLAG Houston; PFLAG Dallas, Inc.; PFLAG Fort Worth, Inc.; PFLAG San Antonio; PFLAG Odessa; PFLAG Denton; PFLAG Seguin; PFLAG Longview; PFLAG Boerne; PFLAG Corpus Christi; PFLAG Midland-Odessa; PFLAG Georgetown; PFLAG Amarillo; PFLAG Mesquite; PFLAG of the Big Country; PFLAG-Kerr County; PFLAG Brownsville Chapter; PFLAG Beaumont Chapter; PFLAG San Marcos, Inc.; PFLAG Brenham Chapter; PFLAG San Angelo; PFLAG Huntsville TX; PFLAG Corpus Christi, Texas, Chapter; PFLAG/HATCH YOUR SCHOLARSHIP FOUNDATION; PFLAG San Juan, Chapter of PFLAG; PFLAG of Montgomery (Parents, Families and Friends of Lesbians and Gays; and any other similarly related entity registered in Texas, either domestic or foreign.
4. **“Gender Transitioning and Reassignment Treatments and Procedures”** means any and all procedures or treatments for the purpose of **“transitioning”** a Child’s biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child’s perception of the child’s sex if that perception is inconsistent with the child’s biological sex, including but not limited to surgeries or procedures that result in sterilization, mastectomy, or other removal of otherwise healthy or non-diseased tissue, the provision of medications that induce transient or permanent infertility (including puberty suppressing and blocking drugs or supraphysiologic doses of testosterone to females and estrogen to males), and any other treatments, therapies, or procedures that are provided to address gender identity disorder, gender dysphoria, and any other similar or related conditions.
5. **“Identify”** means the following:
  - a. With respect to a natural Person, the complete name, any alias(es), social security number, date of birth, occupation, title(s), job responsibilities, street and mailing address for both home and business at the time in question and at the time of responding (if different), home, cellular, and business telephone numbers, and personal and business email addresses;
  - b. With respect to an entity, its name(s), business address(es), legal address(es), state(s) of incorporation, registered or unregistered tradename(s), name(s) under which it does

business, or any other associated name(s), electronic email domains and websites operated by the entity, tax identification number(s), and the identity of its agent(s) for the service of process;

- c. With respect to a Document, its Bates or other sequential notation, title, date, location, author(s), signatory(ies), recipient(s), description (*e.g.*, memorandum, letter, contract, form), the number of pages, and a summary of the contents;
- d. With respect to a Communication, the persons participating in the Communication, state the date, time, manner, place, means and substance of the Communication, and also the Document or Documents which refer to the Communication; and
- e. With respect to an event or sequence of events, the date, place, and time of the event or sequence of events, the persons involved, and the facts related to the substance of the particular interrogatory.

6. **“Including”** means including, but not limited to.
7. **“Person”** includes You and means any entity or natural person.
8. **“Relevant Time Period”** Unless otherwise noted, the requests in this Civil Investigative Demand require production of documents from March 8, 2023, to the date of the production of documents in response to this Sworn Written Statement, herein called the “Relevant Time Period.”
9. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.
10. In answering the information requests contained in Exhibit B, you shall furnish such information as is available to you, not merely such information within your officers’ or employees’ personal knowledge. You are to furnish any and all responsive information to each information request in Exhibit B after diligent inquiry into all sources of information available to you.
11. In the event any matter in Exhibit B cannot be fully or precisely answered after the exercise of reasonable diligence, you shall furnish as complete and precise an answer as you can and explain in detail the reasons why you cannot give a full or precise answer, what is needed to be done in order to be in a position to fully and precisely provide the answer, and a time estimate as to when you will be able to provide a full and precise answer.
12. Each response in this sworn written statement must include all relevant information from the Relevant Time Period. If changes in the relevant information, Including processes, procedures, or policies, occurred during the Relevant Time Period, describe the manner and timeframe in which the relevant information changed.
13. At the end of your answers, you are required, under oath, to make and sign the following statement before a licensed notary:

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

My name is [FULL NAME]. I am over the age of 18 and capable of making this sworn statement. The preceding answers are within my personal knowledge and are true and correct.

\_\_\_\_\_

Sworn and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

[NOTARY STAMP AND NOTARY'S DATED SIGNATURE]

**EXHIBIT B**  
**INFORMATION REQUESTS TO BE ANSWERED UNDER OATH**

1. Define the meaning of “gender-affirming medical care” as that phrase is used in the affidavit attached hereto as “EXHIBIT B1.”
2. Define the meaning of “affirming general practitioners” as that phrase is used in the affidavit attached hereto as “EXHIBIT B1.”
3. In reference to the affidavit attached hereto as “EXHIBIT B1,” Identify any “contingency plans” or “alternative avenues” that PFLAG identified, created, or shared with its members relating to obtaining and/or maintaining “gender-affirming medical care” in Texas.
4. In reference to Your response to Information Request No. 3 above, and separately for each “contingency plan” or “alternative avenue,” Identify from whom PFLAG learned about such “contingency plans” or “alternative avenues.”
5. In reference to the affidavit attached hereto as “EXHIBIT B1,” Identify any “contingency plans” or “alternative avenues” that PFLAG has discovered or learned about relating to “gender-affirming medical care” in Texas.
6. In reference to the affidavit attached hereto as “EXHIBIT B1,” Identify all factual bases upon which Brian K. Bond made the sworn statement that he had personal knowledge that “PFLAG families with transgender and nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas.”
7. In reference to the affidavit attached hereto as “EXHIBIT B1,” Identify all factual bases upon which Brian K. Bond made the sworn statement that he had personal knowledge that “Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners...”
8. Identify every health care provider and/or facility, in Texas, to whom PFLAG has referred members since March 8, 2023.
9. Identify every health care provider and/or facility, in Texas, from whom PFLAG has been referred members since March 8, 2023.

EXHIBIT B1

**LAZARO LOE, et al.**

**Plaintiffs**

**v.**

**STATE OF TEXAS, et al.,**

**Defendants.**

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**IN THE DISTRICT COURT OF**

**TRAVIS COUNTY, TEXAS**  
**\_\_\_\_\_ JUDICIAL DISTRICT**

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**AFFIDAVIT OF BRIAN K. BOND**

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I, Brian K. Bond, hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am the Executive Director of PFLAG, Inc. ("PFLAG"). Founded in 1973, PFLAG is the first and largest organization for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") people, their parents and families, and allies. We are a 501(c)(3) non-profit organization.

3. PFLAG has over 350 chapters across the country and approximately 325,000 members and supporters nationwide. Our members and supporters cross multiple generations of families in major urban centers, small cities, and rural areas across America. PFLAG envisions an equitable and inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved. Our mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them.

4. Our founder, Jeanne Manford, marched with her son Morty in the 1972 Christopher Street Liberation Day March in New York City and created the very first support group for parents and families of LGBTQ+ people in 1973. Supporting LGBTQ+ young people by supporting and strengthening their families has been a core part of our work ever since. Today, the gold-standard advocated by PFLAG parents and families—and set forth by pediatricians and therapists—is to accept, support, and affirm LGBTQ+ people’s sexual orientation and/or gender identity and expression; parental rejection is widely understood to be abusive and damaging.

5. We know, too, that LGBTQ+ youth thrive when supported in their schools and community. So, our work also includes ending bullying, discrimination, and harassment in educational settings by providing training for teachers, administrators, and district leaders, and advocating in the public square to ensure LGBTQ+ people are treated fairly and equally when accessing public accommodations and health care.

6. We know that change happens and support grows one interaction at a time, one family at a time.

7. PFLAG is a national membership organization and we have local chapters in 49 states and the District of Columbia. Our chapters in Texas include PFLAG Amarillo, PFLAG Austin, PFLAG Beaumont, PFLAG Boerne, PFLAG Brenham, PFLAG Dallas, PFLAG El Paso, PFLAG Fort Worth, PFLAG Georgetown, PFLAG Houston, PFLAG Lubbock, PFLAG Mesquite, PFLAG Midland/Odessa, PFLAG Montgomery, PFLAG San Antonio, PFLAG San Marcos, PFLAG Seguin, and PFLAG Tyler/East Texas.

8. PFLAG’s membership is comprised of chapter members and national members. Individuals can become a PFLAG member by joining the national organization directly or by

joining their local chapter, which sends a portion of the member's dues to PFLAG National, also making them national members. In addition to our formal members, PFLAG serves thousands of community members through our programs, events, and services every year.

9. PFLAG's members play a central role in electing our organizational leadership. Of the 21 members of the PFLAG National Board of Directors, seven are elected directly by our membership. Seven more are elected by the Regional Directors Council, a body of 13 volunteers who are themselves each elected by the members of one of PFLAG's thirteen regions to work with PFLAG National staff to provide support, resources, training, and help to start new affiliates, and to share the perspectives and activities of members with PFLAG National staff. The remaining seven are elected by the Board itself.

10. As Executive Director, I am the leader of the professional staff who carry out the work of the PFLAG National office, including supporting the development and work of the PFLAG Chapter Network and promoting PFLAG's presence in the national arena, including through policy advocacy, coalitions with organizations who share our goals, developing trainings and educational materials, and engaging with the media. Supporting the PFLAG Chapter Network is PFLAG National's largest program and our national staff works closely with chapter leaders and members across the country to reinforce their efforts to establish and grow their chapters, providing them with infrastructure, publications, online learning tools, advocacy support, media training, and countless other services and supports.

11. Because promoting the wellbeing of LGBTQ+ youth through encouraging and supporting love and affirmation by their families is a core part of our mission and because we have an extensive network of chapters and nearly 1500 members who live in Texas, we have been actively involved in supporting and providing resources to our members and constituents in

light of the increasingly hostile climate for transgender youth and their families in the state over the last few years. This includes PFLAG joining litigation on behalf of our members in order to protect them from Governor Abbott's directive deeming all affirming health care for transgender adolescents, regardless of medical necessity, to be "child abuse" and the Texas Department of Family and Protective Services' ("DFPS") subsequent adoption and implementation of that directive to investigate parents alleged to be helping their children access such care. Suddenly the very thing we know to be good for LGBTQ+ children—supporting and loving your child for who they are and ensuring they receive care they need to thrive—was a reason to be reported and subjected to an intrusive and traumatic investigation.

12. In September 2022, the Travis County District Court issued an injunction blocking DFPS from carrying out this directive, protecting PFLAG member families from investigation. Although the State appealed that injunction, the Court of Appeals reinstated its protections shortly thereafter. That case is still pending, but at least PFLAG families are presently protected from being investigated for child abuse based solely on allegations they sought medically necessary care for their transgender or nonbinary child.

13. This brief sigh of relief we felt from the DFPS Rule being enjoined ended when SB 14 was signed into law on June 2, 2023. PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposition regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and



nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas. Families were not just seeking health care providers who specialize in medical care for gender dysphoria but leads on affirming general practitioners as well so that their adolescents would have access to multiple providers in the event that their primary providers stop providing gender-affirming medical care or leave the state as a result of SB14. Requests for mental health care providers have skyrocketed, as the fear, distress, and anxiety at the prospect of losing access to medically necessary care has exacerbated adolescents' existing mental health issues connected to their gender dysphoria. Parents and families are scrambling as their children's providers have cancelled appointments and begun winding down medical care for gender dysphoria because of SB14's imminent effective date. And chapter leaders have heard concerns about the impacts on transgender and non-binary youth in the foster care system, who receive health care coverage through Medicaid and will lose coverage for their medical care for gender dysphoria if SB14 goes into effect.

14. SB 14 subjects PFLAG's Texas members with a transgender or nonbinary child in need of gender-affirming medical care to a substantial risk of harm. PFLAG has members in Texas whose children are being or will be monitored for the appropriate time to begin puberty blockers, are currently or soon will be on puberty blockers, and are currently or soon will be on hormone therapy, all as part of a medically prescribed course of care for gender dysphoria. Some of those families are being harmed right now by SB 14's passage, whether because they have had appointments for scheduled care cancelled, are losing access to healthcare providers who are moving their practice out of state or ending their provisions of gender-affirming care for fear of

losing their medical licenses or state funding, or have otherwise had their imminent plans to obtain the established course of medically necessary care for their transgender or nonbinary children disrupted or foreclosed.

15. Other current and future PFLAG members with transgender or nonbinary children face a substantial risk of being harmed if SB 14 goes into effect, including being denied the right to make medical decisions for their child because the care their child's healthcare providers have declared medically necessary for them has been deemed unlawful, being prevented from obtaining the puberty blockers or hormone therapy their child needs solely because they are treatment for gender dysphoria, or losing coverage for care that has previously been covered under state funded health plans. SB 14 will force PFLAG families who have seen their children thrive as a result of medical care to treat their gender dysphoria to stop providing that care, putting those children at risk of serious mental and physical harm—the very reasons those families sought medical care in the first place.

16. While SB 14 has caused or will cause some PFLAG families to leave Texas entirely or to have to access the medically necessary care their transgender or nonbinary child needs in another state, the logistical and financial costs of doing so are incredibly high. No family should be forced to leave their home, jobs, or community or to split up their family to access the established course of medical care for their child's health condition, but SB14 is putting Texas PFLAG families in exactly that position. For countless others, those costs are simply too high; thus SB 14 leaves those transgender and nonbinary Texas youth and their families with no way to access the medically necessary care they need. Parents are prioritizing their children's mental and physical health, but SB14 will strip them of the ability to make the

decisions that they, their children, and their children's medical providers know are in their best interests. SB14 will put these adolescents' lives at risk.

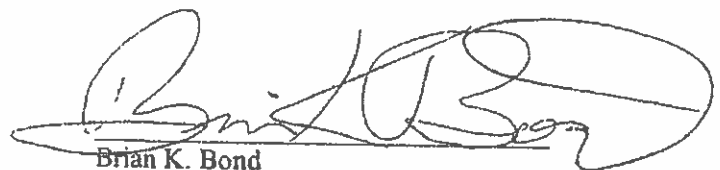
17. Although these members could challenge SB 14 in their own right—as the other Plaintiff families are doing—PFLAG brings claims on behalf of its members to represent their interests to shield them from harm, to vindicate their rights to make the medical decisions they, their child, and their medical providers know to be in their child's best interests, and to allow them to maintain their focus on their child's health and wellbeing rather than litigation.

18. Representing the interests of these members in challenging SB 14 is directly connected to PFLAG's mission in two ways. First, that mission includes encouraging and supporting parents and families of transgender and gender non-conforming people in affirming their children and helping them access the social, psychological, and medical supports they need. We work with our families to encourage love and support of their transgender and gender non-conforming children and to help them ensure that the children's needs are met. The provisions of SB 14 send the opposite message and prevent families from meeting their child's needs. SB 14 bars families from supporting their child's affirmation of their gender identity by seeking the established medically necessary care that has been prescribed for them, depriving youth of medically necessary gender-affirming care, resulting in anxiety, depression, and other negative health outcomes associated with denying or cutting off medically necessary care. In order to fulfill our mission to our members, we must fight back against a law that prevents them from doing the very thing we encourage because we know it is in the best interests of the children.

19. Second, we teach our members to advocate for a caring, just, and affirming world where LGBTQ+ people are safe, celebrated, empowered, and loved, and to advocate for equitable laws and policies that protect them. We have spoken out against bans on medically

necessary care for youth with gender dysphoria such as SB 14 because they directly conflict with parents' abilities to act in their children's best interest and do nothing to protect the health and well-being of youth or anyone who needs access to medical care. SB 14 is the antithesis of an equitable law, interfering with and obstructing decisions made between PFLAG parents, their child, and their child's provider to deprive that child of care that is proven to be safe, medically sound, and necessary for treating gender dysphoria. As an organization dedicated to parents and families of LGBTQ+ youth, we cannot in good faith sit back as our members' fundamental rights to make decisions about their child's medical care are infringed solely because their child is transgender or nonbinary.

20. PFLAG exists to foster a world where LGBTQ+ children can become thriving, healthy, and happy LGBTQ+ adults. Our members depend on us to provide support and community for them in a society that often still treats their children as second-class citizens, attempts to silence them, or denies their very existence. For our members who have transgender and nonbinary children and are doing nothing more than loving them and following the advice of qualified medical professionals, PFLAG is here to do all we can to support them in those efforts and protect them from harmful, invasive laws like SB 14.

A handwritten signature in black ink, appearing to read "Brian K. Bond", written over a horizontal line.

Brian K. Bond  
Executive Director, PFLAG, Inc.


**Notary Verification**

District of Columbia

Brian K. Bond personally appeared before me, and being first duly sworn declared that he signed this declaration in the capacity designated, if any, and further states that he has read the above declaration and the statements therein contained are true.

Sworn to and subscribed before me on the 11<sup>th</sup> day of July 2023, by Brian K. Bond.



  
Notary Public's Signature

# Exhibit C

## Ojionuka, Grace

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**From:** Pollard, Allissa <Allissa.Pollard@arnoldporter.com>  
**Sent:** Wednesday, February 28, 2024 5:01 PM  
**To:** Ryan Baasch; David Shatto  
**Cc:** Pauline Sisson; Harper Seldin; Karen Loewy  
**Subject:** RE: Extension request on behalf of PFLAG

Ryan,

Thank you for your time this morning. While we disagree with the positions outlined below, we appreciate your providing additional information on your position. We are not able to agree your proposal to present PFLAG's CEO for an in-person deposition by March 15 in exchange for the withdrawal of the Demands. In addition to presenting challenges with respect to timing, the proposal would not alleviate the problems with the Requests, including those relating to the scope of the OAG's authority and constitutional protections of the information sought.

Given the relevant deadlines, we will proceed with filing the request for a TRO. We expect to be on file tonight.

Allissa

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Allissa Pollard  
Partner | [Bio](#)

**Arnold & Porter**

700 Louisiana Street | Suite 4000  
Houston, TX 77002-2755  
T: +1 713.576.2451  
[Allissa.Pollard@arnoldporter.com](mailto:Allissa.Pollard@arnoldporter.com)  
[www.arnoldporter.com](http://www.arnoldporter.com) | [LinkedIn](#)

---

**From:** Ryan Baasch <Ryan.Baasch@oag.texas.gov>  
**Sent:** Wednesday, February 28, 2024 1:03 PM  
**To:** David Shatto <David.Shatto@oag.texas.gov>; Pollard, Allissa <Allissa.Pollard@arnoldporter.com>  
**Cc:** Pauline Sisson <Pauline.Sisson@oag.texas.gov>  
**Subject:** RE: Extension request on behalf of PFLAG

**External E-mail**

Allissa,

It was nice speaking with you earlier today. I am following up regarding the proposal that we discussed on our call.

First, the Attorney General's office does not believe that any of your bases for not seeking court relief have any merit. Namely:

- (1) It does not matter whether PFLAG is or is not the subject of a CPD investigation. The DTPA permits us to seek documents and other investigatory material from "any person." DTPA Section 17.61; 17.60(2). That plainly encompasses third-party documents, just like for any other regulator or State agency.
- (2) We respect your position that some of the material we are seeking may be constitutionally protected. It is hard to evaluate that position in the abstract. But surely, not **all** of the material we are seeking is constitutionally protected, such as our demand for "[t]he governing documents and bylaws of PFLAG's Texas chapters and

national chapter.” It would be improper to enjoin us from seeking all material on the basis that merely *some* is protected. And we are happy to confer about your constitutional arguments and potentially narrow the scope or our demands.

- (3) It is irrelevant that there is ongoing litigation in PFLAG v. Texas and Loe v. Texas. Our investigation is not related to those cases. Rather, facts that PFLAG’s affiant swore to *in* those litigations is relevant to our independent investigations. And we are permitted to seek further documentation of those facts. *See, e.g., Humble Oil & Refining Co. v. Daniel*, 259 S.W.2d 580, 591 (Tex.App—Beaumont 1953) (distinguishing between Attorney General’s “lawful powers” to demand documents from company he is adverse to in litigation through administrative subpoena, and contrasting that power against impermissible act of *using* the documents in the “suit [currently] pending”).

That said, as we discussed, we are interested in seeking a compromise with you. Along those lines, we are willing to withdraw our CID and demand for sworn statement if PFLAG will put up Brian K. Bond for an Examination Under Oath sometime **on or before March 15** at our offices in Austin. The topics to be discussed will be limited to those discussed in Affidavit he has submitted and that we attached an Exhibit to our CID.

Thank you,  
Ryan

---

**From:** David Shatto <[David.Shatto@oag.texas.gov](mailto:David.Shatto@oag.texas.gov)>  
**Sent:** Tuesday, February 27, 2024 6:24 PM  
**To:** Pollard, Allissa <[Allissa.Pollard@arnoldporter.com](mailto:Allissa.Pollard@arnoldporter.com)>  
**Cc:** Pauline Sisson <[Pauline.Sisson@oag.texas.gov](mailto:Pauline.Sisson@oag.texas.gov)>; Ryan Baasch <[Ryan.Baasch@oag.texas.gov](mailto:Ryan.Baasch@oag.texas.gov)>  
**Subject:** RE: Extension request on behalf of PFLAG

Ms. Pollard,

Yes, please circulate a calendar appointment and zoom invite for tomorrow at 11:30. Please add [ryan.baasch@oag.texas.gov](mailto:ryan.baasch@oag.texas.gov), as well.

Thank you kindly.

**David G. Shatto**

Assistant Attorney General . Consumer Protection . Office of the Attorney General  
Phone: 512.475.4656 Email: [David.Shatto@oag.texas.gov](mailto:David.Shatto@oag.texas.gov)

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**From:** Pollard, Allissa <[Allissa.Pollard@arnoldporter.com](mailto:Allissa.Pollard@arnoldporter.com)>  
**Sent:** Tuesday, February 27, 2024 5:40 PM  
**To:** David Shatto <[David.Shatto@oag.texas.gov](mailto:David.Shatto@oag.texas.gov)>  
**Cc:** Sam Weeks <[Sam.Weeks@oag.texas.gov](mailto:Sam.Weeks@oag.texas.gov)>; Pauline Sisson <[Pauline.Sisson@oag.texas.gov](mailto:Pauline.Sisson@oag.texas.gov)>  
**Subject:** RE: Extension request on behalf of PFLAG

Mr. Shatto,

Tomorrow at 11:30 works. Can I circulate a calendar appointment and Zoom invite?

---

Allissa Pollard



## Arnold & Porter

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T: +1 713.576.2451

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[www.arnoldporter.com](http://www.arnoldporter.com) | [LinkedIn](#)

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**From:** David Shatto <[David.Shatto@oag.texas.gov](mailto:David.Shatto@oag.texas.gov)>

**Sent:** Tuesday, February 27, 2024 4:28 PM

**To:** Pollard, Allissa <[Allissa.Pollard@arnoldporter.com](mailto:Allissa.Pollard@arnoldporter.com)>

**Cc:** Sam Weeks <[Sam.Weeks@oag.texas.gov](mailto:Sam.Weeks@oag.texas.gov)>; Pauline Sisson <[Pauline.Sisson@oag.texas.gov](mailto:Pauline.Sisson@oag.texas.gov)>

**Subject:** RE: Extension request on behalf of PFLAG

External E-mail

Mrs. Pollard,

We'd like to schedule a call for tomorrow to better understand your position and consider its merits. Our office is available from 10am – 12:45pm and 2-2:45pm tomorrow (central time). Which of these times are you available?

### David G. Shatto

Assistant Attorney General . Consumer Protection . Office of the Attorney General

Phone: 512.475.4656 Email: [David.Shatto@oag.texas.gov](mailto:David.Shatto@oag.texas.gov)

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**From:** Pollard, Allissa <[Allissa.Pollard@arnoldporter.com](mailto:Allissa.Pollard@arnoldporter.com)>

**Sent:** Tuesday, February 27, 2024 3:32 PM

**To:** David Shatto <[David.Shatto@oag.texas.gov](mailto:David.Shatto@oag.texas.gov)>

**Cc:** Sam Weeks <[Sam.Weeks@oag.texas.gov](mailto:Sam.Weeks@oag.texas.gov)>

**Subject:** RE: Extension request on behalf of PFLAG

Mr. Shatto,

Following up on our previous correspondence, I am writing to ask that you withdraw the requests discussed below. For a number of reasons, we believe they are improper. Those reasons include that the requests are not consistent with the scope of authority set out under in the DTPA. As you are no doubt aware, PFLAG is a membership organization that does not sell goods or services related to medical care, so it is unclear how the requests for information from PFLAG could relate to an investigation into that "actual or possible violations of DTPA section 17.46 or issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law." Similarly, it is unclear whether PFLAG itself is the target of the investigation or a third party.

In addition, the requests are seeking information, including membership information, that is constitutionally protected. Finally, the requests are improper in light of the ongoing litigation in both PFLAG v. Abbott and Loe v. Texas.

In the event you are not willing to withdraw the requests, we will have to seek a TRO (and eventually permanent relief). If that becomes necessary, we expect to file a petition tomorrow and request a hearing on Thursday or Friday. Would you please also let us know whether you are opposed to a TRO and, if so, what your availability is like on Thursday and Friday so that we can advise the court?

Again, I am available to discuss by phone if that would be helpful.

Allissa

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Allissa Pollard

Partner | [Bio](#)

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[www.arnoldporter.com](http://www.arnoldporter.com) | [LinkedIn](#)

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**From:** David Shatto <[David.Shatto@oag.texas.gov](mailto:David.Shatto@oag.texas.gov)>

**Sent:** Tuesday, February 20, 2024 11:16 AM

**To:** Pollard, Allissa <[Allissa.Pollard@arnoldporter.com](mailto:Allissa.Pollard@arnoldporter.com)>

**Cc:** Sam Weeks <[Sam.Weeks@oag.texas.gov](mailto:Sam.Weeks@oag.texas.gov)>

**Subject:** RE: Extension request on behalf of PFLAG

External E-mail

Good morning,

Thank you for reaching out. Our office grants a one-week extension to the Civil Investigative Demand and the Sworn Written Statement issued to PFLAG on February 5, 2024, and originally due on February 26, 2024. The new deadline is March 4, 2024.

**David G. Shatto**

Assistant Attorney General . Consumer Protection . Office of the Attorney General

Phone: 512.475.4656 Email: [David.Shatto@oag.texas.gov](mailto:David.Shatto@oag.texas.gov)

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**From:** Pollard, Allissa <[Allissa.Pollard@arnoldporter.com](mailto:Allissa.Pollard@arnoldporter.com)>

**Sent:** Monday, February 19, 2024 4:51 PM

**To:** David Shatto <[David.Shatto@oag.texas.gov](mailto:David.Shatto@oag.texas.gov)>

**Cc:** Sam Weeks <[Sam.Weeks@oag.texas.gov](mailto:Sam.Weeks@oag.texas.gov)>

**Subject:** Extension request on behalf of PFLAG

Mr. Shatto,

With apologies for reaching out on a holiday, I am writing because I represent PFLAG with respect to the attached Civil Investigative Demand and a Demand for a Sworn Statement (I refer to them together as the "Documents"). Both Documents are dated February 5, 2024 and were received by PFLAG on February 9, 2024. Both Documents indicate that the relevant responses are due on February 26, 2024.

I am reaching out to request an extension of both response dates until at least Monday, March 4, 2024 so that PFLAG can more adequately assess and respond to the Documents. As you might imagine, we would appreciate hearing from you as soon as possible regarding the requested extensions. I am available to discuss at your convenience if that would be helpful.

Finally, please note that nothing in this communication should be interpreted as a waiver of any rights otherwise available under law or in equity to my client or as an acknowledgement of the propriety of the Documents or specific requests contained therein.

Allissa

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Allissa Pollard

Partner | [Bio](#)

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