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SUPREME COURT OF TEXAS
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No. 24-0384
No. 24-0387

In the Supreme Court of Texas

STEPHANIE MUTH, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, AND THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,

Petitioners,

v.

MIRABEL VOE, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF ANTONIO VOE, A MINOR, AND WANDA ROE, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF TOMMY ROE, A MINOR,

Respondents.

STEPHANIE MUTH, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, AND THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,

Petitioners,

v.

PFLAG, INC. AND ADAM BRIGGLE AND AMBER BRIGGLE, INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF M.B., A MINOR,

Respondents.

On Petition for Review
from the Third Court of Appeals, Austin
Case Nos. 03-22-00420-CV & 03-22-00587-CV

PETITION FOR REVIEW

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Record References

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Statement of the Case

Nature of the Case:	Respondents sued the Governor, Commissioner of the Department of Family and Protective Services (DFPS), and DFPS to enjoin investigations of alleged child abuse as discussed in an Attorney General Opinion concluding certain procedures can constitute child abuse under the Texas Family Code. CR.3-70.
Trial Court:	459th Judicial District, Travis County Hon. Amy Clark Meachum presiding
Disposition in the Trial Court:	The trial court issued a temporary injunction, which applies not just to the investigation into the parties' self-reported actions, but also to any instance of reported medical abuse of a child involving "gender-affirming medical treatment" for all PFLAG members. CR.546-50; SCR.3-8, 10/4/2022.
Parties in the Court of Appeals:	Petitioners are the appellants in the court of appeals. Real parties in interest, Respondents, are the appellees.
Disposition in the Court of Appeals:	In an opinion written by Justice Triana and joined by Chief Justice Byrne and Justice Theofanis, the court of appeals affirmed the district court's injunction as to DFPS and its Commissioner. (Tex. App.—Austin, Mar. 29, 2024, pet. filed).

[1] Citations to the record will be to the record in Case No. 24-0384 unless otherwise specified. The same quotes appear on the same pages of the record in No. 24-0384 and No. 24-0387, but if there is a discrepancy between the two records that will be noted.

Statement of Jurisdiction

The Court has jurisdiction under Texas Government Code section 22.001(a).

Issues Presented

1. Whether plaintiffs' claims are justiciable even though a government agency's investigation that has not yet ripened into an enforcement action—and, given subsequent changes in the law, likely never *will* ripen into an enforcement action—causes no concrete cognizable injury that can be redressed by this Court.

2. Whether plaintiffs state a claim within the waiver of sovereign immunity created by the Administrative Procedure Act by alleging that agency guidance documents citing an AG Opinion exceeded the scope of the issuing official's statutory discretion.

3. Whether a court has authority to issue an injunction that does not remedy the Respondent's alleged harm against a government official who lacks authority to take the challenged action and has not threatened to take the challenged action.

To the Honorable Supreme Court of Texas:

DFPS is charged with protecting Texas children from abuse, including "physical injury that results in substantial harm to the child." Tex. Fam. Code §261.001(1)(C). As most people accused of child abuse deny wrongdoing, DFPS must be able to investigate. But it cannot intervene without going to court, which it has not done regarding any of Respondents who seek to provide puberty blockers to children, nor any of the members of PFLAG, the Association Respondent. Nor is DFPS likely to do so now given that Senate Bill 14, which has been in force since September, bans providing such care to minors.

Nonetheless, on March 29, 2024, the court of appeals affirmed the trial court's injunction barring DFPS from investigating possible child abuse for *any* PFLAG member—not just the investigation into plaintiffs. But investigations standing alone, especially those that have been closed without enforcement, are not a judicially cognizable injury. A DFPS press release is not a rule under the APA—even if it still had practical effect after SB14. *See Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 443 (Tex. 1994). Because the Third Court ignored these fundamental principles (and more), the Court should grant the petition, reverse the lower court, and render judgment for Petitioners.

Statement of Facts

On August 6, 2021, the Governor sent a letter to the DFPS Commissioner inquiring whether genital mutilation (sex reassignment) of a child for purposes of gender transitioning through reassignment surgery constituted child abuse. CR.23839. The Commissioner responded that surgical sex reassignment of a child "may cause

a genuine threat of substantial harm from physical injury to a child" as defined under the Texas Family Code. CR.241–42. The letter concluded by acknowledging that all such allegations would be investigated. *Id.*

A few months later, in mid-February 2022, the Attorney General issued a formal opinion confirming that, under the Texas Family Code, "'sex change' procedures and treatments...when performed on children, can legally constitute child abuse." AG's Opinion *1. The Governor forwarded that opinion to DFPS's Commissioner, urging DFPS to "follow the law," which forbids "subject[ing] Texas children to a wide variety of elective procedures for gender transitioning."[1] CR.258–59.

Shortly after, Respondents, three sets of parents brought this suit individually and on behalf of their children together with PFLAG, Inc., a national organization dedicated to LGBTQ+ advocacy, to enjoin investigations of child abuse that were opened, and future investigations. Respondents sued the Commissioner and DFPS, seeking both permanent and temporary injunctive relief. They sought temporary injunctive relief only on APA grounds.

Following a day-long hearing, the trial court issued its ruling on all of the Respondents' temporary-injunction application on July 8, 2022. CR.546–549. The trial court granted relief only as to the Roes and Voes—the only parties with active investigations at the time. *Id.* Specifically, it enjoined the DFPS Commissioner and DFPS from further investigating the reports of medical abuse against the Voes and the

[1] Letter from Gov. Greg Abbott to Comm'r Jaime Masters at 1 (Feb. 22, 2022), https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf.

Roes. *Id.* The trial court did, however, permit DFPS to "administratively close or issue a 'ruled out' disposition in any of these open investigations based on the information DFPS [had] to date—if this action require[d] no additional contact with members of the VOE or ROE families." CR.549.

Two and a half months later, the trial court granted PFLAG and the Briggles' temporary injunction against DFPS. SCR.3-8, 10/4/2022. The trial court granted blanket relief for all 600 PFLAG members, along with anyone who joins PFLAG upon learning they are under investigation. *Id.* The injunction insulates them entirely from any investigation into child abuse where the allegations are "that the person(s) have a minor child who is gender transitioning, or receiving or being prescribed gender-affirming medical treatment." *Id.* DFPS timely appealed both orders. 2SCR.9–11, 10/4/2022.

The Third Court of Appeals upheld the injunctions. *Muth v. Voe*, 2024 WL 1340855, at *27. First, the Third Court concluded that all Respondents had standing: the parents because of harm to their fundamental right to direct their child's medical care and the stress of the investigation (at *8); the children because of this same stress along with the harm to their right to receive equal medical treatment; and PFLAG based on a misunderstanding of its purpose and its own members' standing (at *13-16). The court further opined that such injuries were ripe based on the investigation alone because facts do not matter: Respondents "need not wait for the Department to make initial or ultimate determinations." *Id.* at 19. The court also decided sovereign immunity was waived because DFPS's press statement constituted a rule under the APA, *id.* at 21-23, which exceeded Defendants statutory authority.

The Third Court affirmed the broad relief granted by the trial court in its injunctions, which extended not just to the parties being investigated, but to *all* PFLAG members, current and future. The court further concluded SB14, then in effect for 6 months, was irrelevant to its jurisdiction because "gender-affirming medical care is still being legally provided in other states." *Id.* at 21.

Summary of the Argument

I. This case is not now, nor has it ever been justiciable. An investigation alone, and especially a closed investigation, causes no judicially cognizable injury, so the Respondents lack standing. The claims are also unripe and will not ripen. Indeed, because a justiciable controversy requires a threat of *enforcement*, a claim based on an *investigation* is never ripe until a definitive decision is made. Here, that is unlikely *ever* to happen, because following SB14 and this Court's recent decision in *State v. Loe*, No. 23-0697, 2024 WL 3219030 (Tex. 2024), it is unlawful for anyone to give children the procedures addressed in the AG's Opinion, period. Whether done in a manner constituting child abuse is irrelevant. Further, PFLAG has not met the standard for associational standing because none of its members have standing, and the relief thought is not germane to its purpose.

II. Respondents' claims are barred by sovereign immunity. The APA's waiver for challenges to "rules" is inapplicable because a press statement is not a "rule" because it doesn't affect private parties' rights. Nor does the UDJA help as the UDJA waives sovereign immunity for constitutional challenges to a "statute or ordinance," not a press statement. Finally, their *ultra vires* theories fail because the

Commissioner has discretion in carrying out DFPS's statutory duty to conduct such investigations.

III. The trial court's temporary injunctions must be vacated because a court without subject-matter jurisdiction cannot enjoin anything. But Respondents also lack a cause of action and have not shown a probable right to injunctive relief—particularly for PFLAG's members, current and future. Respondents have also failed to show irreparable harm that the temporary injunctions could remedy, especially given *Loe*. 2024 WL 3219030. The Court should at minimum vacate the temporary injunctions and the Third Court's opinion as against the public interest. *Abbott v. City of El Paso*, 677 S.W.3d 914, 915 (Tex. 2023) (per curiam) (citing *Morath v. Lewis*, 601 S.W.3d 785 (Tex. 2020)).

ARGUMENT

I. Respondents' Claims Are Non-Justiciable.

To start, this case should have been dismissed as non-justiciable for multiple reasons. Most notably, Plaintiffs lacked standing, and their challenges to DFPS's understanding of what constitutes child abuse are unripe (and now, in the light of SB14, unlikely to ripen).

A. Respondents have no standing.

For standing, Respondents "must allege personal injury fairly traceable to the [Petitioner's] allegedly unlawful conduct and likely to be redressed by the requested relief." *Tex. Propane Gas Ass'n v. City of Houston*, 622 S.W.3d 791, 799 (Tex. 2021). "[P]arallel[ing]" the federal requirements, *id.*, Texas law requires plaintiffs' injuries

to be "concrete, particularized, and actual or imminent." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013); *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). No plaintiff has shown such an injury based on mere investigation of whether the care being provided to Minor Voe, Minor Roe, and M.B. falls within the statutory definition of child abuse.

1. The Individual Respondents lack standing.

Below, the Individual Respondents argued (Appellee's Br. at *18-19) that DFPS's "rule" "violated Appellees' right to due process," including their "fundamental rights as parents," and "violated Tommy, Antonio, and M.B.'s right to equality under the law." But the bare existence of a law, without more, does not confer standing—no matter how aggrieved the Respondent may feel about the law's existence. *See, e.g.*, *Collins v. Yellen*, 141 S. Ct. 1761, 1779 (2021). "[P]laintiffs who want the courts to pass judgment on the legality of government action must seek relief against the particular government official or agency responsible for the challenged action." *In re Abbott*, 645 S.W.3d 276, 280 (Tex. 2022). "Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm" caused by an actual enforcement action. *Laird v. Tatum*, 408 U.S 1, 13-14 (1972).

To identify an injury-in-fact, the court "must consider [Respondents'] actual injury—not the labels [Respondents] put on" it. *E.T. v. Paxton*, 41 F.4th 709, 717 (5th Cir. 2022). The Respondents below identified two government actions as sources of injury: (1) "unlawful investigations" (at 47) and (2) "prevent[ing] the Appellee Parents from consenting to" medical procedures (at 20). The Third Court

further identifies that stopping puberty blockers might cause increased incidents of depression and suicidality in Minor Roe, Minor Voe, and M.B., which is a potential injury. *Muth v. Voe*, 2024 WL 1340855, at *26. But none of these are concrete injuries given SB14, which prohibits the giving of puberty blockers to minors, and which was upheld as constitutional in *Loe*.

a. To the extent the Individual Respondents' first putative injury-in-fact arises from the investigation, it does not suffice. Standing requires "an invasion of a *legally protected* interest." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (emphasis added); *cf. TransUnion LLC v. Ramirez*, 594 U.S. 413, 426 (2021). Respondents cannot legally stop DFPS from "investigat[ing] a report of child abuse or neglect." Tex. Fam. Code §261.301(a); *Laird*, 408 U.S. at 13-14. And while they have a right to defend themselves if DFPS initiates a court action potentially affecting parental rights, *In re Abbott*, 645 S.W.3d at 282, DFPS has not brought that action, and no indication exists that it is imminent.

The Respondents intimate (Appellee's Brief at 23) that merely being investigated "chill[s] the exercise of [their] rights," but "[t]he normal judicial role in this process is to act as the gatekeeper against unlawful interference in the parent-child relationship, not to act as overseer of DFPS's initial, executive-branch decision to investigate whether allegations of abuse may justify the pursuit of court orders." *In re Abbott*, 645 S.W.3d at 282. And although some government investigations might subjectively cause a chill, a "subjective chill" is not enough. *Laird*, 408 U.S. at 13-14; *cf. Clapper*, 568 U.S. at 402. A Respondent who relies on such a theory must still

identify a concrete injury, which the Respondents have not done. *See Clapper*, 568 U.S. at 402.

b. The Respondents' second alleged injury—that DFPS's press release "prevent[s] Appellee Parents from consenting to" medical procedures (Appellee's Brief at 20)—cannot fill this gap. To start, DFPS's press release merely restates Texas law as explained in the AG Opinion, and thus doesn't represent a threat of enforcement sufficient to confer standing. *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 181 (5th Cir. 2020). This is particularly clear after SB14 and *Loe* because the procedures to which Doe wishes to consent are now entirely unlawful. *Compare* 2RR.87, 117, 131-34; 3RR.13, *with Loe*, 2024 WL 3219030 at *2 (quoting Tex. Health & Safety Code §161.702(3)). Therefore, even if preventing the Appellee Parents from consenting to these procedures were an injury, enjoining the DFPS press release will do plaintiffs no good as they are barred from consenting to those procedures for another reason. Additionally, for at least two Respondents, their claims are moot because DFPS has already closed their investigations—and done so with a "ruled out" determination in each one. SCR.10, 9/12/2022; RR.273:7–10.

2. PFLAG lacks standing.

Because the individual Appellees lack standing, PFLAG lacks associational standing. An association has standing to sue on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Texas Ass'n of Bus.*, 852 S.W.2d at 447 (quoting *Hunt v.*

Washington State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977)). None of those conditions are present here.

First, because no PFLAG member has standing, PFLAG cannot make the "clear showing" of standing, which requires evidence of specific members with standing. *See Barber v. Bryant*, 860 F.3d 345, 352 (5th Cir. 2017); *Campaign Legal Center v. Scott*, 49 F.4th 931, 938 (5th Cir. 2022). PFLAG identifies only five members, none of which have standing to sue in their own right. They have not been subject to any enforcement action or "child abuser" label, and none of the member has had achildren taken from them. *See* CR.37–39. They therefore lack standing for the reasons discussed above. *Supra* p. [x].

Second, PFLAG also fails to meet the second requirement of associational standing: that the interests it seeks to protect are germane to its purpose. *Tex. Ass'n of Bus.*, 852 S.W.2d at 447. PFLAG's purpose is "[t]o create a caring, just, and affirming world for LGBTQ+ people and those who love them." *PFLAG*, https://pflag.org/ (last visited Oct. 4, 2022). But a member of PFLAG—and, by extension, PFLAG itself—would satisfy their first element only if an enforcement action was brought because there is cause to think a member was guilty of child abuse. PFLAG cannot satisfy the second prong of associational standing based on its members' general concerns about "a caring, just, and affirming world" while satisfying the first prong solely based on certain members' unrelated concerns about being found to have abused their child. *See Save Our Springs All., Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 886 (Tex. App.—Austin 2010, pet. denied); *see also Abbott v. Mex. Am. Leg. Caucus, Tex. House of Rep.*, 647 S.W.3d 681, 694 (Tex. 2022).

Third, the claims asserted and relief sought inherently require individual members to participate in this lawsuit themselves to demonstrate both an injury and an entitlement to relief. This precludes a finding of associational standing, which exists only if neither the claims asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt,* 432 U.S. at 343. Any claim contrariwise is belied by the fact that three of PFLAG's members are individual parties in this suit making individualized allegations about the investigations they underwent. For example, one's investigation is now closed and did not immediately receive temporary injunctive relief, while the Voes and Roes did receive "relief" from their investigations—to be clear, there was no injury so there was no actual relief—that merely emphasizes that any "relief" in this case will be decided on an individual, not collective, basis. SCR.3–8, 10/4/2022.

B. Respondents' claims are unripe.

"Ripeness, like standing, is a threshold issue that implicates subject matter jurisdiction." *Patterson v. Planned Parenthood of Houston & Se. Texas, Inc.*, 971 S.W.2d 439, 442 (Tex. 1998). Ripeness requires a showing that "facts have developed sufficiently so that an injury has occurred or is likely to occur, rather than being contingent or remote." *Id.* at 442. As this Court explained, "DFPS does not need permission from courts to *investigate*, but it needs permission from courts to *take action* on the basis of an investigation." *In re Abbott*, 645 S.W.3d at 282. Because court intervention is necessary before any adverse action can be taken, the proper time to raise an objection is in that subsequent court proceeding. *See, e.g.*, *Reisman v. Caplin*, 375 U.S. 440 (1964); *Twitter, Inc. v. Paxton*, 56 F.4th 1170 (9th Cir. 2022); *Waco ISD* v.

Gibson, 22 S.W.3d 849, 851-52 (Tex 2000). Here, until DFPS "has arrived at a definitive position," there is nothing for the Court to do. *Rea v. State*, 297 S.W.3d 379, 383-84 (Tex. App.—Austin 2009, no pet.).

Below, the Respondents argued (Appellee's Brief at 33) that their claims are prudentially ripe because the case is dealing with a "pure question of law" rather than the specifics of Respondents' investigation. But without a redressable injury, a purely legal dispute requires an advisory opinion, which Texas courts cannot provide. *See Tex. Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993).

II. Sovereign Immunity Bars This Suit.

Even if this case were justiciable, sovereign immunity bars Respondents' claims.

1. In support of their claims, Respondents begin with the waiver of sovereign immunity for challenges to a "rule" under the APA. CR.53. That theory fails. "Not every statement by an administrative agency is a rule" under the APA. *TEA v. Leeper*, 893 S.W.2d at 443. A "rule" is "a state agency statement of general applicability that: (i) implements, interprets, or prescribes law or policy; or (ii) describes the procedure or practice requirements of a state agency." Tex. Gov't Code §2001.003(6)(A).

Here, the purported "rule" is a spokesman's statement to a reporter. An agency spokesman must be able to "practically express its views to an informal conference," *Brinkley v. Tex. Lottery Comm'n*, 986 S.W.2d 764, 769 (Tex. App.—Austin 1999, no pet.), but only "[t]he commissioner" may "oversee the development of rules," Tex. Hum. Res. Code §40.027(c)(3). Press statements do not "implement[], interpret[], or prescribe[] law or policy." Tex. Gov't Code §2001.003(6)(A)(i). Nor

do they "describe[] the procedure or practice requirements of a state agency." *Id.* §2001.003(6)(A)(ii). Press statements therefore are not "rules."

Even if the press statement were a rule, it is excluded from the APA's scope as a "statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures." *Id.* at §2001.003(6)(C). "[S]uch statements have no legal effect on private persons absent a statute that so provides or some attempt by the agency to enforce its statement against a private person," neither of which applies. *Brinkley*, 986 S.W.2d at 770. The "core concept" distinguishing a "rule" from the internal management exception is that "the agency statement must *in itself* have a binding effect on private parties." *Slay v. TCEQ*, 351 S.W.3d 532, 546 (Tex. App.—Austin 2011, pet. denied) (emphasis added). Nothing about the press release binds any private party.

2. Respondents also seek relief under the UDJA, CR.61, but "[t]he UDJA's sole feature that can impact trial-court jurisdiction to entertain a substantive claim is the statute's implied limited waiver of sovereign or governmental immunity that permits claims challenging the validity of *ordinances or statutes*." *Ex parte Springsteen*, 506 S.W.3d 789, 799 (Tex. App.—Austin 2016, pet. denied) (emphasis added); *see* Tex. Civ. Prac. & Rem. Code §37.006(b); *Tex. Parks & Wildlife Dep't v. Sawyer Tr.*, 354 S.W.3d 384, 388 (Tex. 2011). Respondents are not challenging an ordinance or statute, but instead a statutory interpretation. The UDJA's limited waiver of sovereign immunity does not extend to such "bare statutory construction claims." *McLane Co. v. TABC*, 514 S.W.3d 871, 876 (Tex. App.—Austin 2017, pet. denied); *see Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 622 (Tex. 2011). Even if that were

not the case, the claim against the Commissioner is not cognizable under the UDJA. *See Patel v. TDLR*, 469 S.W.3d 69, 76 (Tex. 2015) (permitting such suit only against the relevant government agency).

3. Respondents next tried to avoid sovereign immunity by suing the Commissioner under an *ultra vires* theory. CR.61. That too fails. "An *ultra vires* action requires [Respondents] to 'allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.'" *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017) (quoting *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009)). Respondents rely on the "without legal authority" theory, *see* CR.62, alleging the Commissioner's statement "exceeds...the Commissioner's authority," CR.65-66, and violates "separation of powers" under the Texas Constitution by "redefining" the Legislature's statutory definition of child abuse, CR.153. But it is simply "[n]ot so" that a "legal mistake is an *ultra vires* act." *Hall*, 508 S.W.3d at 241. Also unavailing is Respondents' separation-of-powers theory. *See* CR.67-70. None of the various allegedly offending statements replace the statutory definition with a new one nor purport to do so. *See In re Abbott*, 645 S.W.3d at 280-81.

III. The Trial Court Erred in Issuing the Temporary Injunctions.

The temporary injunctions should be vacated for lack of jurisdiction—*see In re Abbott*, 601 S.W.3d 802, 805 (Tex. 2020) (orig. proceeding) (per curiam)—and because Respondents have not met their heavy burden to obtain injunctive relief. Respondents' duty was to "plead and prove three specific elements: (1) a cause of action against the [Petitioner]; (2) a probable right to the relief sought; and (3) a

probable, imminent, and irreparable injury in the interim." *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Because an injunction "is executory, a continuing decree," longstanding principles of equity required the court of appeals to assess its enforceability at the time of that court's judgment—including whether "th[e] right has been modified by [a] competent authority"—namely, the Legislature. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421, 431-32 (1855). The court of appeals failed to do so.

A. Respondents have no probable right to injunctive relief.

1. To obtain an injunction, Respondents must show "not only that the [law] is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement." *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923). A court cannot enjoin a law—or, here, a press release—itself. *See Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021) (per curiam). Rather, "the court enjoins, in effect, not the execution of the statute, but the acts of the official, the statute notwithstanding." *Mellon*, 262 U.S. at 488. That means Respondents cannot obtain the relief they really seek, an injunction of the AG Opinion. That is particularly so here because the procedures at issue are now all unlawful under SB14 and *Loe*. *Supra* at 5-6,8.

2. Respondents are also not entitled to the temporary injunctions as their two provisions, CR.193-95, are both unlawful.

First, the trial court enjoined Petitioners from "taking any actions against [Respondents and other members of PFLAG] based on" the Governor's letter, DFPS's press statement, and the AG Opinion. CR.195 But DFPS has "pre-existing legal

obligations" to investigate suspected abuse. *See In re Abbott*, 645 S.W.3d at 281. To the extent the first provision prohibits DFPS from investigating Respondents in any respect, this provision is overbroad as DFPS can investigate if it independently believes the "care" constitutes "child abuse" under section 261.001(a). *See also In re Abbott*, 645 S.W.3d at 286 (Lehrmann, J., concurring). Given the documented existence of such phenomena as Munchausen by proxy, it is not hard to imagine how such circumstances could arise—even if there is a good-faith dispute regarding how often.

Second, "[i]f in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association **actually injured**." *Texas Ass'n of Bus.*, 852 S.W.2d at 448 (quoting *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)). Providing relief to *all* PFLAG members regardless of the individual harm they do, or do not, suffer, violates this long-standing precedent. In other words, even if PFLAG had identified certain members with standing to sue—and it has not—it could only obtain, at most, an injunction preventing DFPS from investigating *those members*.

B. Respondents have not shown irreparable harm.

Respondents also failed to show irreparable harm. The injuries Respondents allege do not provide subject-matter jurisdiction, *see supra* 5-10, so they cannot support a temporary injunction. And a Respondent's burden to show irreparable injury is greater than what is necessary to meet the "constitutional minimum" necessary for standing. *Lujan*, 504 U.S. at 560; *see Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam). To obtain a preliminary injunction, allegations are insufficient; the

Respondent must make "a clear showing" of irreparable harm. *Mazurek*, 520 U.S. at 972. For the same reasons Respondents failed to show a cognizable injury for standing purposes, Respondents showed no likelihood of irreparable harm—particularly after *Loe*. *See* 2024 WL 3219030 at *2.

Even if DFPS remains enjoined from investigating abuse during the pendency of this litigation, Respondents' actions will not be immunized from scrutiny if the injunctions are vacated. *See, e.g.*, *Am. Postal Workers Union, AFL-CIO v. U.S. Postal Serv.*, 766 F.2d 715, 722 (2d Cir. 1985); *Ohio v. Yellen*, 539 F. Supp. 3d 802, 821-22 (S.D. Ohio 2021). A temporary injunction prohibiting enforcement ceases to be binding when "it is reversed by orderly and proper proceedings." *United States v. United Mine Workers of Am.*, 330 U.S. 258, 293 (1947). So, a temporary injunction cannot alleviate Respondents' fears that their actions might be addressed as child abuse in the future. *See Am. Postal Workers*, 766 F.2d at 722. A court cannot issue an injunction redressing unsubstantiated harm. *See id.*; *Ohio*, 539 F. Supp. 3d at 821-22.

Prayer

The Court should grant the petition.

Respectfully submitted.

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On July 12, 2024, this document was served on Paul Castillo, lead counsel for respondents, via pcastillo@lambdalegal.com.

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