Nos. 24-0384, 24-0385 & 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, AND PFLAG, INC. AND ADAM BRIGGLE AND AMBER BRIGGLE, INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF M.B., A MINOR,

Respondents.

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS, AND 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.

JANE DOE, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF MARY DOE, A MINOR; JOHN DOE, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF MARY DOE, A MINOR; AND DR. MEGAN MOONEY,

Respondents.

On Petitions for Review
from the Third Court of Appeals, Austin

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Texas Department of Family and Protective Services
Greg Abbott, in his official capacity as Governor of the State of Texas

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Wanda Roe, individually and as parent and next friend of Tommy Roe, a minor
Adam Briggle, individually and as parent and next friend of M.B., a minor
Amber Briggle, individually and as parent and next friend of M.B., a minor
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Statement of the Case

Nature of the Case: In a 2022 Opinion, Attorney General Paxton concluded that certain irreversible medical procedures colloquially known as "gender affirming care"—which can render a child permanently sterile—could constitute child abuse within the meaning of the Texas Family Code. Tex. Att'y Gen. Op. No. KP-0401 (2022) ("AG's Opinion"). DFPS, in a press release, explained that it will comply with the Opinion. Although no one had accused Respondents of such abuse, Respondents immediately sued the Governor, the Department of Family and Protective Services ("DFPS"), and the DFPS Commissioner to enjoin investigations of alleged child abuse as discussed in the AG's Opinion. VCR.3-70, DCR.4-80. The lawsuit sought to enjoin Petitioners from investigating whether *any* such procedures could constitute abuse *anywhere* in the State. VCR.3-70, DCR.4-80.

Trial Court: 201st & 459th Judicial District Courts, Travis County
Hon. Amy Clark Meachum presiding

Disposition in the Trial Court: The trial court issued multiple temporary injunctions, prohibiting Petitioners from investigating not just the parties' self-reported actions, but also any instance of reported medical abuse of a child involving "gender-affirming medical treatment" for all PFLAG members. VCR.546-50; DCR.235-36.

Parties in the Court of Appeals	Appellants: Stephanie Muth, in her official capacity as Commissioner of the Texas Department of Family and Protective Services, Texas Department of Family and Protective Services, and Greg Abbott, in his official capacity as Governor of the State of Texas. Appellees: Individuals through Next Friends, Dr. Megan Mooney, and PFLAG, Inc.
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. *Muth v. Voe*, 691 S.W.3d 93 (Tex. App.—Austin [3d Dist.] 2024, pet. pending). In an opinion written by Justice Smith and joined by Chief Justice Byrne and Justice Triana, the court of appeals affirmed the district court's injunction as to DFPS and its Commissioner but reversed and rendered as to the Governor. *Abbott v. Doe*, 691 S.W.3d 55, 63 (Tex. App.—Austin [3d Dist.] 2024, pet. pending).

Statement of Jurisdiction

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

Issues Presented

The issues presented are:

1. Whether plaintiffs have standing to challenge a DFPS press release acknowledging the Attorney General's non-binding legal opinion in in the absence of actual or imminent enforcement.
2. Whether intervening developments such as S.B. 14 and the lack of any minor plaintiffs (through aging) renders this case moot.
3. Whether a public statement that does not change the status quo or bind any parties qualifies as a "rule" sufficient to waive sovereign immunity under the Administrative Procedure Act.
4. Whether an injunction that does not remedy the alleged harm is proper.

Introduction

The Texas Family Code charges the Department of Family and Protective Services (DFPS) with protecting Texas children from abuse, including "physical injury that results in substantial harm to the child." Tex. Fam. Code § 261.001(1)(C). If there is abuse, DFPS may intervene to protect the child—but only after "seek[ing] court orders authorizing it to intervene." *In re Abbott*, 645 S.W.3d 276, 282 (Tex. 2022) (orig. proceeding). Here, DFPS has neither intervened nor threatened to do so regarding any Respondent. Yet a trial court issued two statewide injunctions barring DFPS from investigating possible child abuse based on "gender affirming" medical procedures, and the Third Court of Appeals affirmed, holding that DFPS promulgated a rule without following the proper procedure. *See generally Muth v. Voe*, 691 S.W.3d 93, 136 (Tex. App.—Austin [3d Dist.] 2024, pet. pending); *Abbott v. Doe*, 691 S.W.3d 55, 93 (Tex. App.—Austin [3d Dist.] 2024, pet. pending).

In the years since the injunctions, much has changed. First, this Court held that the challenged actions are nonbinding and do not change the status quo. *In re Abbott*, 645 S.W.3d at 284. Second, the Texas Legislature prohibited performing "gender affirming" medical procedures on minors in the interest of children's health and safety. Tex. Health & Safety Code § 161.702; *see generally State v. Loe*, 692 S.W.3d 215 (Tex. 2024) (rejecting constitutional challenges). Third, the sole remaining minor in the case grew up, and legally is now an adult. Ex. A (¶ 9).

The trial court's and Third Court's decisions were wrong when issued and even more so now. This Court should reverse and render judgment for Petitioners.

Statement of Facts

I. Attorney General Opinion

On August 6, 2021, the Governor sent a letter to the DFPS Commissioner inquiring whether genital mutilation (also referred to as "sex reassignment") of a child for purposes of "gender transitioning" through reassignment surgery constituted child abuse. VCR.238-39. The Commissioner responded that surgical sex reassignment of a child "may cause a genuine threat of substantial harm from physical injury to a child" as defined under the Texas Family Code. *Id.* at 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." *Id.* at 244-56. The opinion focused on elective procedures and treatments that could result in permanent sterilization. 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." *Id.* at 258.

II. DFPS's Investigatory Process

DFPS is responsible for investigating allegations of abuse. Tex. Fam. Code § 261.001(1), (4). In doing so, "DFPS generally considers the Opinions of the Attorney General as persuasive authority in the absence of a law or judicial decision ruling otherwise." VCR.278 (¶ 24). DFPS may prioritize reports of abuse, *see* Tex. Fam. Code § 261.301(d), and it does so based on the immediacy of the risk and the severity of the possible harm to the child, VCR.276 (¶ 14).

After the Attorney General Opinion and letter from the Governor, DFPS released the following statement to the media:

> In accordance with Governor Abbott's directive today to Commissioner Masters, we will follow Texas law as explained in Attorney General opinion KP-0401. At this time, there are no pending investigations of child abuse involving the procedures described in that opinion. If any such allegations are reported to us, they will be investigated under existing policies of Child Protective Investigations.

Texas Dept. of Family & Protective Servs., Statement (Feb. 22, 2022). As of July 2022, DFPS had received a total of eleven reports that advanced to investigations regarding the administration of hormone therapy or puberty suppressants to minors. VCR.277 (¶ 18). DFPS investigated these reports as it does with any other report of potential abuse involving a medical concern. *Id.* at 278-79 (¶ 28); 2VRR.264:19-20. Within a month, at least eight of the eleven reported cases were closed. VCR.278 (¶ 26); 2VRR.273:7-10.

III. The *Doe* Case

After Jane Doe, a DFPS employee, informed her supervisor that she provided her child, Mary Doe, hormone-altering medication and puberty blockers, she was placed on paid administrative leave pending an investigation. 2DRR.85-86, 89. In March 2022, the Does filed suit to stop the underlying investigation and investigations of *any* allegations of child abuse involving medical procedures addressed in the AG's Opinion. DCR.3-70. They were joined by Respondent Mooney, a psychologist who works with gender-dysphoric youth and "fears" the consequences of reporting patients for receiving procedures addressed in the AG's Opinion. *See* DCR.26-28;

3DRR.25. Mooney did not, however, allege that any defendant *has*, much less threatened to *use*, any authority to discipline her. *See* DCR.62-70; 3DRR.26.

On March 11, 2022, the trial court granted a universal injunction prohibiting Petitioners from—among other things—investigating or prosecuting alleged child abuse based on facilitation or provision of "gender-affirming" "care" or the fact that the minors "are transgender, gender transitioning, or receiving or being prescribed gender-affirming medical treatment." DCR.236. The trial court also forbid Petitioners to impose reporting requirements on persons aware of the same. DCR.236. Petitioners appealed. DCR.226.

The court of appeals reinstated the temporary injunction under Rule 29.3. *See Abbott v. Doe*, No.03-22-00126-CV, 2022 WL 837956 (Tex. App.—Austin [3d Dist.] Mar. 21, 2022, order) (per curiam). This Court, on review, granted relief-in-part because "the court of appeals lacks authority to afford statewide relief to nonparties." *In re Abbott*, 645 S.W.3d at 280, 283. This Court also clarified that "DFPS was not compelled by law to follow" the Governor's letter or the AG's Opinion. *Id.* at 281. And although a majority concluded that Petitioners did not carry their burden to vacate the entire injunction pending resolution of the appeal, *id.* at 284, it observed that "[t]he normal judicial role in this process is … 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," *id.* at 282. This Court then instructed the Third Court to vacate its injunction against the Governor, explaining that he does not have statutory authority to direct DFPS action in this context. *Id*. at 283-84.

In resolving the appeal, the Third Court vacated the temporary injunction of the Governor. *Abbott*, 691 S.W.3d at 64. But it concluded that all Respondents had standing: Doe because she was placed on administrative leave, *id.* at 76, 81; her daughter because discontinuing her gender dysphoria treatment allegedly risked depression and suicidality, *id.*; the Does collectively because the State allegedly did not assert that the Does lacked standing, *id.* at 81; and Mooney because of a threatened loss of revenue, *id.* at 78-79. The court further opined that such injuries were ripe because claims brought by Respondents were "purely legal" questions under the APA, and that Respondents were merely challenging a final rule. *Id.* at 72-73. The court also decided the APA's sovereign immunity waiver applied because DFPS's press statement constituted a rule that exceeded its statutory authority. *Id.* at 84-85.

With respect to the temporary injunction, the Court decided that the trial court properly imposed it on Petitioners, except the Governor. *Id.* at 87-93. The Third Court also affirmed the statewide relief granted by the trial court in its temporary injunction. *Id.* at 90-91.

IV. The *Voe* Case

Respondents include three sets of parents: (1) Mirabel Voe, individually and as parent and next friend of Antonio Voe, a minor; (2) Wanda Roe, individually and as parent and next friend of Tommy Roe, a minor; and (3) Adam Briggle and Amber Briggle, individually and as parents and next friends of M.B., a minor. The *Voe* Individuals and PFLAG, Inc., a national organization dedicated to LGBTQ+ advocacy, together sought to enjoin investigations of child abuse that were already opened, as well as future investigations. VCR.4-80. The *Voe* Respondents sued the

Commissioner and DFPS, seeking both permanent and temporary injunctive relief. They sought temporary injunctive relief only on APA and ultra vires grounds. *Id.*

Following a day-long hearing, the trial court issued its ruling on all *Voe* Respondents' temporary-injunction application on July 8, 2022. *Id.* at 546–549. The trial court granted relief only as to the Roes and Voes—the only parties with active investigations at the time. *Id.* Specifically, it enjoined the DFPS Commissioner and DFPS from further investigating the reports of medical abuse against the Voes and the Roes. *Id.* The trial court did, however, permit DFPS to "administratively close or issue a 'ruled out' disposition in any of these open investigations based on the information DFPS [had] to date—if this action require[d] no additional contact with members of the VOE or ROE families." *Id.* at 549.

Two and a half months later, the trial court granted PFLAG and the Briggles' request for a temporary injunction against DFPS. SCR.3-8.[1] The trial court enjoined any actions by DFPS based on the AG's Opinion *Id.* The trial court also granted blanket relief for all 600 PFLAG members, along with anyone who joins PFLAG upon learning they are under investigation. *Id.* at 4-5. 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.* at 4. DFPS timely appealed both orders. *Id.* at 9–11.

[1] SCR refers to the Supplemental Clerk Record in *Voe*, dated 10/4/2022.

On appeal, the Third Court upheld the injunctions. *Voe*, 691 S.W.3d at 138. First, the Third Court concluded that all Respondents had standing: the parents because of harm to their fundamental right to direct their children's medical care and the stress of the investigation, *id.* at 111; the children because of this same stress along with the harm to their right to receive equal medical treatment; and PFLAG based largely on its own members' standing, *id.* at 118-23. The court further opined that such injuries were ripe based on the investigation alone because Respondents "need not wait for the Department to make initial or ultimate determinations." *Id.* at 126. The court also decided that the APA's sovereign immunity waiver applied because DFPS's press statement constituted a procedurally defective rule that exceeded Defendants' statutory authority. *Id.* at 129-33. The Third Court affirmed the broad relief granted by the trial court, which extended not just to the parties being investigated, but to *all* PFLAG members, current and future. As in *Doe*, the court held that S.B. 14 was irrelevant to its jurisdiction because "[g]ender-affirming medical care is still being legally provided in other states." *Id.* at 129.

V. S.B. 14 and *Loe*

Between the trial court proceedings and Third Court decisions, the Texas Legislature convened for the 2023 legislative session. The Legislature enacted Senate Bill 14 "relating to prohibitions on the provision to certain children of procedures and treatments for gender transitioning, gender reassignment, or gender dysphoria." *Loe*, 692 S.W.3d at 223 (quoting Act of May 17, 2023, 88th Leg., R.S., ch. 335, § 2, 2023 Tex. Gen. Laws 732, 732). S.B. 14 "prohibits a physician or health care provider from performing certain actions on a child" for the purpose of "transitioning" to or

"affirming" a child's perceived sex, if different from his or her biological organs. *Id.* at 223–24 (citing Tex. Health & Safety Code § 161.702). S.B. 14 identifies two exceptions for bonafide health concerns and enumerates "over twenty 'prohibited practice[s].'" *Id.* at 224 (alteration in original) (citing Tex. Health & Safety Code §§ 161.702, .703(a)). Prior to S.B. 14 taking effect, a group of parents alleging that their children had been diagnosed with gender dysphoria challenged the constitutionality of the law. *Id.* The trial court enjoined the law as a violation of due process (against both parental rights and physicians' occupational freedom) and equal protection. *Id.* at 225.

This Court reversed, holding that S.B. 14 was consistent with the Texas Constitution. *Id.* at 239. It explained that: i) our Nation's and State's histories show that parental autonomy is not absolute, *id.* at 230-31; ii) regulation of the medical practice is fairly within the Legislature's prerogative, *id.* at 235-36; and iii) the statute treats males and females equally, *id.* at 236-38. S.B. 14 is thus good law today. Yet the Third concluded that S.B. 14, then in effect for 6 months, was irrelevant to its jurisdiction because "gender-affirming medical care is legally provided outside Texas." *Abbott*, 691 S.W.3d at 77 n.16. The court did not explain how such medical "care" is likely to be subject to a DFPS investigation for child abuse under the putative rule at issue.

Summary of the Argument

I. This case is not, nor has it ever been, justiciable. The Individual Respondents lack standing because there is no actual or imminent threat of enforcement by DFPS. Indeed, all but one of the investigations have been closed without enforcement—and Mary Doe, the single open case, is no longer a minor. Mere investigations, especially closed ones, are not a judicially cognizable injury. *See In re Abbott*, 645 S.W.3d at 282. The remaining Respondents never alleged an injury: Mooney does not even claim to have been investigated, and any consequences she might potentially face are outside Petitioners' authority; and, because none of PFLAG's members have standing, it lacks associational standing.

II. Sovereign immunity bars Respondents' claims. This case involves "a non-binding Attorney General Opinion" and a letter from the Governor that do not change DFPS's pre-existing discretion. *Id.* at 284. This Court has already held that these actions did not affect the status quo. *Id.* There is no "rule," then, that was adopted in violation of the APA. Even if there were, the Legislature ratified the "rule" by passing S.B. 14. Nor does the UDJA help because that sovereign immunity waiver applies only to constitutional challenges to a "statute or ordinance," neither of which are at issue here. Finally, Respondents' *ultra vires* theories fail because the Commissioner has discretion in carrying out DFPS's statutory duty to conduct such investigations.

III. The injunctions cannot stand. Respondents have not shown a probable right to injunctive relief; even if there were subject matter jurisdiction, a press statement confirming that an agency will "follow the law" is not a "rule" under the APA.

Respondents also failed to show irreparable harm that the temporary injunctions could remedy, especially given *Loe*, 692 S.W.3d 215. Yet the trial court issued statewide injunctions. The Court accordingly should, at minimum, vacate the temporary injunctions and the Third Court's judgments 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) (per curiam)).

Standard of Review

A defendant may challenge the trial court's subject-matter jurisdiction in a plea to the jurisdiction. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553-54 (Tex. 2000). Sovereign immunity, too, "implicates courts' subject-matter jurisdiction." *Hous. Belt & Terminal Ry. v. City of Houston*, 487 S.W.3d 154, 160 (Tex. 2016). "Whether a court has subject[-]matter jurisdiction is a question of law" reviewed *de novo*. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

A "temporary injunction is an extraordinary remedy and does not issue as a matter of right." *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993) (per curiam). A trial court holds discretion to grant or deny such relief, and a reviewing court "should reverse an order granting injunctive relief" if the "court abused that discretion." *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). "A court clearly abuses its discretion when it makes an error of law." *In re Abbott*, 645 S.W.3d at 282 (citing *In re Geomet Recycling LLC*, 578 S.W.3d 82, 91 (Tex. 2019) (orig. proceeding)).

ARGUMENT

Respondents failed to carry their burden to obtain injunctive relief. Respondents had a duty to "plead and prove three specific elements: (1) a cause of action against [Petitioners]; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *Abbott v. Harris Cnty.*, 672 S.W.3d 1, 8 (Tex. 2023) (quoting *Butnaru*, 84 S.W.3d at 204). Because Respondents cannot satisfy any of the necessary elements, and because subject-matter jurisdiction is lacking, this Court should reverse the Third Circuit's judgments, vacate the trial court's injunctions, and dismiss the underlying cases.

I. Respondents' Claims Are Non-Justiciable.

These cases should have been dismissed as non-justiciable for multiple reasons. First, Respondents lacked standing because they failed to show a "credible threat" of enforcement by DFPS. *See Abbott*, 672 S.W.3d at 8. Without an injury-in-fact—a "constitutional minimum" for judicial intervention, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)—Respondents lack standing. And "[a] plaintiff who lacks standing will always lack a probable right to relief[.]" *Abbott*, 672 S.W.3d at 8. For the same reasons, Respondents' challenges to DFPS's policy were unripe at the time Respondents filed suit. Finally, if Respondents ever had claims, they are now moot. All the investigations but one have been closed. And while Mary Doe's investigation was not closed because of the underlying injunction, Mary Doe is no longer a minor.

A. Respondents have no standing.

Texas's standing requirements "parallel the federal test for Article III standing." *In re Abbott*, 601 S.W.3d 802, 812 (Tex. 2020) (orig. proceeding); *accord Tex.*

Propane Gas Ass'n v. City of Houston, 622 S.W.3d 791, 799 (Tex. 2021). Respondents "must allege personal injury fairly traceable to the [Petitioners'] allegedly unlawful conduct and likely to be redressed by the requested relief." *In re Abbott*, 601 S.W.3d at 812. The injury must be "actual or imminent, not conjectural or hypothetical." *Id.*; *see Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (an injury must be "concrete, particularized, and actual or imminent").

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

This Court has explained how a plaintiff may "establish standing based on a perceived threat of injury that has not yet come to pass[.]" *In re Abbott*, 601 S.W.3d at 812. "[T]he 'threatened injury must be certainly impending to constitute injury in fact'; mere '[a]llegations of possible future injury' are not sufficient." *Id.* (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)). When "seeking an injunction against a defendant's enforcement of a governmental enactment" a plaintiff "may establish injury-in-fact by demonstrating 'a credible threat of prosecution thereunder.'" *Abbott*, 672 S.W.3d at 8 (quoting *In re Abbott*, 601 S.W.3d at 812).

1. The Individual Respondents in *Voe* and *Doe* lack standing.

a. The Individual Respondents fail to identify an injury that is either actual or imminent.[2] Respondents alleged that, absent an injunction, DFPS would: (1) find abuse occurred based solely on allegations that a child is transgender and taking hormone blockers, and (2) proceed to enforcement. But the evidence is to the contrary. DFPS closed all but one investigation based on such claims. Ex. A (¶¶ 6, 7); 2VRR.240:7-10 (Briggles). And none of those investigations resulted in court intervention or placement on the child-abuse registry. Ex. A (¶¶ 5, 6).

Given that "DFPS will not investigate new reports involving the same allegation that has already been investigated," VCR.278, Respondents and PFLAG members whose investigations have been closed have no basis to claim a possible future harm. The sole remaining investigation, into the Does, is only "open" because of the underlying injunction. Ex. A (¶ 7). But Mary Doe is no longer a minor, meaning that there is nothing left for DFPS to investigate. Ex. A (¶¶ 8-10). Respondents can show neither "a credible threat of prosecution," *Abbott*, 672 S.W.3d at 8, nor any "threatened injury" that is "certainly impending," *In re Abbott*, 601 S.W.3d at 812.

Absent threat of enforcement, Respondents' grievance is one of policy—i.e., it is generalized and not particular. *See Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) (explaining that the "injury in fact" requirement "screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action"). The bare existence of a law, without more,

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[2] "Individual Respondents" means the minors through their next friend. Mooney is addressed separately below. *Infra* Part I.A.2 & I.C.

does not confer standing—no matter how aggrieved the Respondent may feel about the law's existence. *See id.* at 379 ("[C]ourts [do not] operate as an open forum for citizens 'to press general complaints about the way in which government goes about its business.'" (quoting *Allen v. Wright*, 468 U.S. 737, 760 (1984)).

Finally, to the extent any injuries exist, they are not traceable to the DFPS Commissioner. "[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 at 280. Recall that the AG's opinion, acknowledged by DFPS, applied only to procedures that were "non-medically necessary" and could result in permanent, physical harm. *See, e.g.*, CR.251. But those procedures are no longer lawful due to S.B. 14, which is neither challenged here nor, in any event, enforced by DFPS. *See* Tex. Health & Safety Code § 161.706 (providing the Attorney General the power to enforce by seeking an injunction *against a medical provider*). These injuries are not traceable to DFPS or the Commissioner and are not "likely" to be redressed by an order against these defendants. *Data Foundry, Inc. v. City of Austin*, 620 S.W.3d 692, 696 (Tex. 2021). The absence of traceability and thus redressability also defeats standing.

b. The Individual Respondents argued below that DFPS's "rule" "violated the Doe Appellees' right to due process," including their "fundamental rights as parents," and "violated [the minor]'s right to equality under the law." *Doe* Brief at 19-20; *Voe* Brief at 18-19. The Individual Respondents below identified two government actions as sources of injury: (1) "unlawful investigations" and (2) "prevent[ing] the

Doe Parents from consenting to" medical procedures. *Doe* Brief at 18, 21; *Roe* Brief at 17-18, 20.[3] Neither of these establish standing.

Mere investigation does not constitute an injury-in-fact. 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 v. Tatum, 408 U.S. 1, 13-24 (1972).* 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.

For example, in *Gates*, the appeals court rejected a plaintiff's claim—that DFPS's investigation of reported child abuse, which resulted in Gates's placement on DFPS's central child abuse registry, violated her rights—as unripe because the administrative appeals process challenging that designation was ongoing. *See, e.g.*, *Gates v. DFPS*, No. 03-11-00363-CV, 2013 WL 4487534, at *1 (Tex. App.—Austin 2013, pet. denied) (mem. op.). The court concluded that the claims were not ripe

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[3] *Doe* Respondents asserted below that "Doe's suspension and placement on administrative leave" and her "potential loss of employment" are injuries. *Doe* Brief at 37-38. But Doe was not "suspended"; she was placed on paid administrative leave because she sued her employer on a matter directly related to her role as an intake specialist. 2DRR.85. She has not shown that loss of employment is an actual or imminent concrete threat. Nor has Doe sought to enjoin any adverse employment actions, *see* DCR.235-36, so any injury from such actions is irrelevant for standing purposes. Even if all the above were incorrect, "standing is not dispensed in gross." *Heckman v. Williamson Cnty., 369 S.W.3d 137, 153 (Tex. 2012).*

because "the parent's relationship with her children was not legally affected by [DFPS's] actions." *Id.* at *4. The plaintiff "did not lose custody or visitation of her children or otherwise have her parental rights affected in any way." *Id.* Finally, "[w]hatever disruption or disintegration of family life the [parent] may have suffered as a result of [a] child abuse investigation does not, in and of itself, constitute a constitutional deprivation." *Id.* at *5 (quoting *Croft v. Westmoreland Cnty. Children & Youth Servs.*, 103 F.3d 1123, 1125-26 (3rd Cir. 1997)) (emphasis added)).

So too here. As in *Gates*, Respondents' claims are not yet ripe because no court order affects their parent-child relationships. DFPS is required to investigate reports of child abuse and neglect. *See, e.g.*, Tex. Fam. Code § 261.301(a). But, as this Court has explained, while "DFPS does not need permission from courts to *investigate*" instances of abuse, "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 id.*; *Waco ISD* v. *Gibson*, 22 S.W.3d 849, 851-52 (Tex 2000).

Respondents assert that merely being investigated "chill[s] the exercise of [their] rights[.]" *Doe* Brief at 25; *Voe* Brief at 23. 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 even if some government investigations could subjectively cause a chill, a "subjective chill" is not enough to create standing. *Laird*,

408 U.S. at 13-14; *cf. Clapper*, 568 U.S. at 417-18. Further, as explained, any "chill" going forward would be from S.B. 14, which makes these procedures unlawful, and not from the DFPS statement, which reiterates a non-binding legal interpretation. Respondents have not identified a concrete injury sufficient to establish standing. *See In re Abbott*, 601 S.W.3d at 812; *Clapper*, 568 U.S. at 402.

c. A non-binding press release rendered superfluous by the Texas Legislature does not supply an injury-in-fact, either. The Individual Respondents' second alleged injury—that DFPS's press release "prevent[s] the Doe Parents from consenting to" medical procedures—cannot fill this gap. *Doe* Brief at 21; *Voe* Brief at 20. To start, DFPS's press release merely restates Texas law as explained in the AG's Opinion, and thus does not represent a threat of enforcement sufficient to confer standing. *See, e.g.*, *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 181 (5th Cir. 2020). This is particularly clear after S.B. 14 and *Loe* because the procedures to which Doe wishes to consent are now entirely unlawful. *Compare* 2DRR.91:18-21, 117:10-20, 131-34, *with Loe*, 692 S.W.3d at 224 (quoting Tex. Health & Safety Code § 161.702(3)). Therefore, even if preventing the Doe Parents from consenting to these procedures were an injury, enjoining the DFPS press release will not give Respondents the relief they seek as they are barred from consenting to those procedures for another reason.

d. Any factual situation that depends on multiple, highly speculative events does not satisfy the injury-in-fact requirement. The Third Court further identified that stopping puberty blockers might cause depression and suicidality in Mary Doe, which may result in an investigation into neglect on the part of the Doe Parents. *Doe*, 691 S.W.3d at 73-74. But this rests on two speculative premises: first, that a doctor

would stop prescribing puberty blockers to Mary Doe because of the DFPS statement and not S.B. 14, which prohibits that practice; and second, that DFPS would initiate an investigation in that circumstance. Even then, the Doe Parents would have to show that the DFPS statement repeating the "nonbinding Attorney General Opinion," *In re Abbott*, 645 S.W.3d at 284, caused the chain of events. *See Clapper*, 568 U.S. at 412–13 (holding that speculation defeats traceability where "numerous other" outcomes could cause the injury).

2. Respondent Mooney lacks standing.

Mooney's alleged injuries—which depend on an unknown entity investigating her for reporting her patients—do not show imminent enforcement, especially by DFPS. Her theory of injury is that her failure to report child abuse raises "the prospect of civil and criminal penalties, the loss of her license, and other severe consequences." DCR.27. But she does not allege any government agency has investigated her, much less threatened to prosecute her or to revoke her license to practice as a psychologist. *See* DCR.26-28. The "theoretical possibilit[y]" this could happen someday does not suffice. *In re Gee*, 941 F.3d 153, 164 (5th Cir. 2019) (per curiam); *see also Clapper*, 568 U.S. at 410 (injury that "relies on a highly attenuated chain of possibilities" does not support standing). Mooney's alleged injuries involve a series of contingencies that render them neither "actual or imminent" nor "concrete [and] particularized[.]" *Clapper*, 568 U.S. at 409; *see In re Abbott*, 601 S.W.3d at 812 ("[M]ere '[a]llegations of possible future injury' are not sufficient[.]"). Without such allegations, she fails to establish an injury sufficient to confer standing.

But even if Mooney had identified an injury-in-fact, her injuries are not traceable to DFPS or the Commissioner and are not "likely" to be redressed by an order against these defendants. *Data Foundry*, 620 S.W.3d at 696. DFPS has not threatened to revoke Mooney's psychologist's license—nor can it. Respondents admit that psychologists' licenses are overseen by the Behavioral Health Executive Council, not DFPS. *See* 3DRR.26. And criminal prosecutions are brought by District Attorneys. DFPS cannot take any enforcement action against Mooney and cannot be enjoined from taking some official action which it has no authority to take.

3. PFLAG lacks 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." *Tex. Ass'n of Bus.*, 852 S.W.2d at 447 (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)). Because the Individual Respondents lack standing, PFLAG does, too.

PFLAG's members do not have standing to sue in their own right. The purpose of this requirement is "to weed out plaintiffs who try to bring cases, which could not otherwise be brought, by manufacturing allegations of standing that lack any real foundation." *New York State Club Ass'n v. City of New York*, 487 U.S. 1, 9 (1988). None of the Respondents, all of whom are PFLAG members, suffered a cognizable harm. There are no court orders or requests for court orders pending against them, much less orders based on the sole claim that one of their children is taking hormone

blockers. If the mere presence or possibility of an investigation by DFPS were sufficient for a subject of that investigation to not only have standing but to then use that standing to halt the investigation, DFPS would be precluded from ever investigating allegations of child abuse or neglect in a timely manner.

To obtain a preliminary injunction, PFLAG must make a "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 Ctr v. Scott*, 49 F.4th 931, 937 (5th Cir. 2022). PFLAG does no such thing. PFLAG merely claims its members are being harmed by virtue of a policy that "subject[s] [them]… to the peril and stigma of being labeled a 'child abuser' and having the child removed from the parent's care." VCR.38 (¶ 108). But none of the five members that PFLAG mentions have been labeled a "child abuser" or have had children removed. VCR.37-39. PFLAG fails to identify any member who has had these events occur or are in imminent danger of them occurring. *See id.* Neither PFLAG's reliance on named members who have not suffered harm nor its general reference to "[o]ther current and future PFLAG members with transgender or nonbinary children," VCR.35 (¶ 107), satisfies the first associational standing prong.

The infirmities related to traceability and redressability doom PFLAG, too. The AG's Opinion focused on elective procedures and treatments that could result in permanent sterilization. VCR.261; *id.* at 258–59 (explaining that the law forbids "subject[ing] Texas children to a wide variety of elective procedures for gender transitioning"). Those procedures are no longer lawful due to S.B. 14, which is neither challenged here nor, in any event, enforced by DFPS. *See* Tex. Health & Safety Code

§ 161.706 (providing the Attorney General the power to enforce S.B. 14 by seeking an injunction *against a medical provider*). These injuries are not traceable to DFPS or the Commissioner and are not "likely" to be redressed by an order against these defendants. *Data Foundry*, 620 S.W.3d at 696. The absence of traceability and thus redressability also defeats standing for PFLAG members.

PFLAG also fails to satisfy the final prong of associational standing because the claims asserted and relief sought inherently require individual members to participate in this lawsuit themselves. Associational standing exists only if "neither the claims asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt*, 432 U.S. at 343. But by their very nature, PFLAG's claims require individuals' participation to demonstrate both an injury and entitlement to requested relief. More to the point, PFLAG's claims require allegedly affected members to participate in the litigation if they are to demonstrate particular injuries they have suffered and the relief they are entitled to. *Warth v. Seldin*, 422 U.S. 490, 515-16 (1975) (association lacked standing to sue because "whatever injury may have been suffered is peculiar to the individual member concerned, and both the fact and extent of injury would require individualized proof"); *cf. Tex. Ass'n of Bus.*, 852 S.W.2d at 446-47 (holding that an organization should not be allowed to sue on behalf of its members when damages varies with each member). This precludes a finding of associational standing.

Determining whether a PFLAG member is being harmed, in what way, and the appropriate relief requires an inquiry tailored to each potential victim, not an averaging or agglomeration of disparate situations. PFLAG is seeking to vindicate the

rights of "[o]ther current and future PFLAG members with transgender or nonbinary children." VCR.38 (¶ 107). But Respondents cannot show any restrictions outside of medical procedures. *See, e.g.*, 2DRR.107-09. Even S.B. 14, which prohibits elective procedures, has caveats. *See* Tex. Health & Safety Code § 161.703. Thus, a report leading to investigation does not mean an enforcement action will occur. And no two reports received or investigations conducted by DFPS are the same. Indeed, three of PFLAG's members are individual parties in this suit making individualized allegations about the investigations they underwent, none of which resulted in an enforcement action. *See United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 553-54 (1996) (holding that "a proper case" of associational standing "reasonably suppose[s] that the remedy, if granted, will inure to the benefit of those members … actually injured").

A court order that prohibits investigating all PFLAG members would effectively deprive DFPS of its statutory discretion to determine the proper action to take on reports of child abuse. Under the injunction, any PFLAG member investigated for abuse for *any* reason can seek relief from the trial court. DFPS, in response, would have to lay out the reason that triggered investigation and ask the court to give it clearance to continue. That sequence is exactly what this Court said should *not* happen. *See In re Abbott*, 645 S.W.3d at 282 ("DFPS does not need permission from courts to *investigate*, but it needs permission from courts to *take action* on the basis of an investigation.").

But this is precisely the situation that the trial court created by extending the injunction to all PFLAG's members. *Contra id.* at 283 (prohibiting lower court from

granting relief to parties that were not before it and preventing statewide relief). PFLAG cannot establish the required elements of associational standing and should accordingly be dismissed.

B. The Individual Respondents' claims are moot.

Even if the Individual Respondents had a claim at some point, those claims would be moot: DFPS closed all underlying cases except for Mary Doe, who is no longer a minor. Regardless, the elective procedures at issue are no longer available in Texas. "Mootness occurs when events make it impossible for the court to grant the relief requested or otherwise 'affect the parties' rights or interests." *State ex rel. Best v. Harper*, 562 S.W.3d 1, 6 (Tex. 2018) (quoting *Heckman*, 369 S.W.3d at 162). Mootness, like standing, "bars … courts from deciding a case." *Heckman*, 369 S.W.3d at 162. The question, then, is whether an order from this Court would affect Respondents' rights or interests. It would not.

The trial court identified 13 (purportedly non-exhaustive) rights and interests that it seeks to protect. *See Voe*, 691 S.W.3d at 137 (listing these). The Third Court broke them down into the following categories: "being subjected to an unlawful and unwarranted child abuse investigation; intrusion and interference with parental decision-making; the deprivation or disruption of medically necessary care for the parents' adolescent children; and the chilling of the exercise of the right of Texas parents to make medical decisions for their children[.]" *Id.* at 138. Yet an order from this Court would not affect any of these rights.

An order from this Court would not affect Respondents interest in "being subjected to an unlawful and unwarranted child abuse investigation" because all cases

are closed or outside of DFPS's jurisdiction. There are four families here: the Briggles, Does, Roes, and Voes. For the Briggles, Roes, and Voes, the trial court order permitted DFPS to administratively close the investigations. *See Voe*, 691 S.W.3d at 108. And DFPS did. Ex. A (¶ 6). The order in the *Doe* proceeding did not include that provision. Ex. A (¶ 7); DCR.233-36. Although it is all but certain that DFPS would close the Doe case once permitted, this Court need not decide on that basis because Mary Doe is no longer a minor and thus beyond the reach of DFPS's investigatory reach. Ex. A (¶¶ 8-10). An order would thus not prevent investigations against these Respondents because DFPS already terminated them (on its own accord) or lacks authority to investigate.

Nor would an order from this Court affect the remaining interests, which pertain to alleged fundamental parental rights and medical autonomy, because this Court already held that a ban on the underlying elective medical procedures does not violate either. *See Loe*, 692 S.W.3d at 223. Following S.B. 14, parents and doctors sued on the same grounds while also raising an equal protection claim. *Id.* at 222-23, 227. The Court rejected the claims, noting "the Legislature's constitutional authority to regulate medical treatments," *id.* at 228, and that "parental control and authority have never been understood as constitutionally mandated absolutes," *id.* at 231. Nor was equal protection implicated because "the prohibitions in S.B. 14 do not treat any person differently from those in a similar situation because of that person's sex." *Id.* at 238. The Court concluded that "the Legislature made a permissible, rational policy choice to limit the types of available medical procedures for children, particularly in light of the relative nascency of both gender dysphoria and its various modes of

treatment and the Legislature's express constitutional authority to regulate the practice of medicine." *Id.* at 223.

Because this Court can afford no relief, even by affirming, the Individual Respondents' claims are moot. *See Heckman*, 369 S.W.3d at 166–67 ("[C]ourts have an obligation to take into account intervening events that may render a lawsuit moot."). Vacatur, however, is still required. *See, e.g.*, *Paxton v. Comm'n for Law. Discipline*, 707 S.W.3d 115, 117 (Tex. 2025) (vacatur is appropriate where the "'State is a frequent litigant'; the court of appeals' opinion, if left standing, would 'ha[ve] some meaningful precedential value'; the issue it decided is 'potentially of consequence' far beyond the circumstances of this single case" (quoting *Lewis*, 601 S.W.3d at 791-92)). For example, the decisions acknowledge the existence of S.B. 14 but reject its relevance. *Doe*, 691 S.W.3d at 77 n.16; *Voe*, 691 S.W.3d at 128-29. Allowing this erroneous reasoning to stand, particularly considering *Loe*, would leave conflicting guidance for the State and anyone subject to the Third Court's jurisdiction.

C. The Remaining Respondents' claims are unripe.

Mooney and PFLAG's claims are not ripe, and therefore not justiciable, because they turn on contingent and hypothetical situations. *See Heckman*, 369 S.W.3d at 147 (explaining "the justiciability doctrine of … ripeness"); *Patterson v. Planned Parenthood of Houston & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998) ("Ripeness, like standing, is a threshold issue that implicates subject matter jurisdiction."). 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." *Patterson*, 971 S.W.2d at 442. A case is not ripe when its resolution depends on contingent or

hypothetical facts, or upon events that have not yet come to pass. *See King St. Patriots v. Tex. Democratic Party*, 521 S.W.3d 729, 738 n.42 (Tex. 2017) (explaining that "'[t]he ripeness doctrine prevents premature adjudication of hypothetical or contingent situations' and a decision ruling on an unripe issue would constitute an 'impermissible advisory opinion'" (quoting *Gibson*, 22 S.W.3d at 853)).

To determine whether a plaintiff's claims are ripe, courts look to the facts and evidence existing when the suit was filed. *See Gibson*, 22 S.W.3d at 851-52 (examining ripeness based on the facts alleged "at the time th[e] suit was filed"). Courts review "the entire record to ascertain if any evidence supports the trial court's subject-matter jurisdiction." *Id.* at 853; *see also Rusk State Hosp. v. Black*, 392 S.W.3d 88, 96 (Tex. 2012). Declaratory judgment actions must also satisfy this bedrock requirement. *See, e.g.*, *Sw. Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 685 (Tex. 2020) (explaining that the UDJA "does not remove the requirement that the court must have subject matter jurisdiction over the suit—that is, that the parties must have standing, and a ripe, justiciable controversy must exist"). Texas courts have held that a declaratory judgment action is premature if other proceedings that will affect the parties' respective rights remain pending. *See, e.g.*, *Gibson*, 22 S.W.3d at 853.

In *Gibson*, parents sued the school district over a policy that set testing standards that would determine whether and how students would be promoted to the next grade. *Id.* at 850. When the suit was filed, no student had been promoted to or retained in a particular grade. *Id.* Instead, the district had sent letters informing parents that particular students' retention risk based on projected test scores. *Id.* at 852.

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

Respondents Mooney and PFLAG have identified only "hypothetical" and "conjectural" risks. *See id.* Mooney's alleged injury is that her failure to report child abuse raises "the prospect of civil and criminal penalties, the loss of her license, and other severe consequences." DCR.27. Her other option, she alleges, is to comply with the law but lose the trust (and business) of her clients. *Id.* But, as explained, she does not allege any government agency has so much as investigated her, much less threatened to prosecute her or to revoke her license to practice as a psychologist. *See* DCR.26-28. Nor has she alleged that she lost any customers because of the DFPS statement. The "theoretical possibilit[y]" that this could happen someday does not suffice. *In re Gee*, 941 F.3d at 164. Mooney's alleged injuries were "contingent on uncertain future events" and "only hypothetical when the suit was filed[.]" *Gibson*, 22 S.W.3d at 852. Without such allegations, she fails to establish an injury sufficient to confer standing.

Below, Respondents argued that their claims are prudentially ripe because the case is dealing with a "pure question of law" rather than the specifics of Respondents' investigation. *Doe* Brief at 42; *Voe* Brief at 33. But without a redressable injury,

a purely legal dispute requires an advisory opinion, which Texas courts cannot provide. *See Harper*, 562 S.W.3d at 6 ("[A]ny decision would constitute an advisory opinion that is 'outside the jurisdiction conferred by Texas Constitution article II, section 1.'" (quoting *Matthews v. Kountze ISD*, 484 S.W.3d 416, 418 (Tex. 2016)); *Tex. Ass'n of Bus.*, 852 S.W.2d at 444.

II. Sovereign Immunity Bars This Suit.

Even if Respondents had standing, sovereign immunity bars their claims.

A. Sovereign immunity protects the State of Texas and its agencies and subdivisions not just from liability but from suit as well. *See PHI, Inc. v. Tex. Juv. Just. Dep't*, 593 S.W.3d 296, 301 (Tex. 2019). As a result, "the State and its officers are shielded from judicial scrutiny unless the State consents to suit." *State v. Zurawski*, 690 S.W.3d 644, 660 (Tex. 2024). "While the doctrine of sovereign immunity originated to protect the public fisc from unforeseen expenditures that could hamper governmental functions … it has been used to shield the state from lawsuits seeking other forms of relief[.]" *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 621 (Tex. 2011). Thus "the underlying action … must be one for which immunity has expressly been waived." *Id.* at 622.

Here, Respondents rely on waiver of sovereign immunity for challenges to a "rule" under the APA. VCR.53. That theory fails. "Not every statement by an administrative agency is a rule" under the APA. *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 443 (Tex. 1994). 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 DFPS spokesman's statement to a reporter. But only "[t]he commissioner" may "oversee the development of rules," Tex. Hum. Res. Code § 40.027(c)(3). And 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). This press statement therefore is not a "rule." *See In re Abbott*, 645 S.W.3d at 281 (holding that "nothing before this Court supports the notion that DFPS is so bound" by the press statement); *Cf. Brinkley v. Tex. Lottery Comm'n*, 986 S.W.2d 764, 769 (Tex. App.—Austin [3d Dist.] 1999, no pet.) (holding that an agency must be able to "practically express its views to an informal conference").

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." Tex. Gov't Code § 2001.003(6)(C). Though sparingly addressed, this Court has applied the "internal management" language in accordance with its plain meaning. For example, the Court rejected the claim that a "cutoff date" for claims that impact hospitals' reimbursement rates was "not a statement regarding the agency's internal management or organization but rather affect[ed] the Hospitals' private rights" by "directly affecting [their] right to reimbursement." *El Paso Hosp. Dist. v. Texas Health & Hum. Servs. Comm'n*, 247 S.W.3d 709, 714-15 (Tex. 2008). This Court already held that this case involves only "a nonbinding Attorney General Opinion; … a nonbinding

statement by the Governor; and … a state agency, DFPS, with the same discretion to investigate reports of child abuse that it had before issuance of OAG Opinion ... and the Governor's letter." *In re Abbott*, 645 S.W.3d at 284. Because none of the challenged actions are binding on DFPS or Respondents, there is no unlawfully adopted rule.

B. Respondents do not bring a proper challenge under the UDJA, which "waives sovereign immunity in particular cases" such as "a declaratory judgment action that challenges the validity of a statute[.]"*Sefzik*, 355 S.W.3d at 622; *see* Tex. Civ. Prac. & Rem. Code § 37.006(b). Respondents are not challenging an ordinance or statute, but instead a statutory interpretation. And the UDJA's limited waiver of sovereign immunity applies only where a plaintiff is "challenging the validity of a statute" and not merely "challenging [Agency] actions under it[.]" *Sefzik*, 355 S.W.3d at 622. UDJA claims must also be "viable" before immunity is waived. The Texas Supreme Court has repeatedly held that "'[a] plaintiff suing the [government] must plead facts that, if true, affirmatively demonstrate that [governmental] immunity either does not apply or has been waived'" … because the government 'retains immunity from suit unless the [plaintiff] has pleaded a viable claim.'" *Perez v. Turner*, 653 S.W.3d 191, 202 (Tex. 2022); *see Zurawski*, 690 S.W.3d at 661–62. Because Respondents' claim would fail on the merits (*see infra* Part III.A), the UDJA would not provide a waiver even if the claims were proper. Finally, the claim against the Commissioner is not cognizable under the UDJA. *See Patel v. Tex. Dep't of Licensing and Regul.*, 469 S.W.3d 69, 76 (Tex. 2015) (permitting such suit only against the relevant government agency).

C. Respondents next tried to avoid sovereign immunity by suing the Commissioner under an *ultra vires* theory. VCR.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* VCR.62, alleging the Commissioner's statement "exceeds...the Commissioner's authority," *id.* at 65-66, and violates "separation of powers" under the Texas Constitution by "redefining" the Legislature's statutory definition of child abuse, *id.* at 69. 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* VCR.67-70. None of the 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.

This Court should vacate the temporary injunctions for lack of jurisdiction and because Respondents have not met their heavy burden to obtain injunctive relief. *See In re Abbott*, 601 S.W.3d at 805.

A. Respondents have no probable right to injunctive relief.

Respondents have no probable right to injunctive relief for many of the same reasons addressed herein. For example, Respondents lack standing, and "[a] plaintiff who lacks standing will always lack a probable right to relief[.]" *Abbott*, 672 S.W.3d at 8. The claims suffer from other justiciability issues, too. *See Patterson*, 971

S.W.2d at 442 ("Ripeness, like standing, is a threshold issue that implicates subject matter jurisdiction."); *Heckman*, 369 S.W.3d at 162 (same for mootness). 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 Third Court "ha[d] an obligation to take into account intervening events" and failed to do so. *Heckman*, 369 S.W.3d at 166-67.

Even if Petitioners are wrong about all of that, Respondents would still lose on the merits because the DFPS Statement is not a "rule" under the APA. The trial court and Third Court of Appeals concluded that "the Families have established a probable right to relief on their claim that the [DFPS] Statement is an invalid rule because it is a rule within the meaning of the APA and it was adopted without following proper rulemaking procedures." *Voe*, 691 S.W.3d at 137; *see Doe*, 691 S.W.3d at 85, 87 (same). As explained, this case does not involve a rule. *Supra* Part II.A; *see In re Abbott*, 645 S.W.3d at 281. The injunctions thus rest on legal error. *See id.* at 282 ("A court clearly abuses its discretion when it makes an error of law.").

Even if the Statement was a "rule," the Legislature ratified it and this Court affirmed it. The AG's Opinion said that Texas law prohibits elective procedures that could result in permanent sterilization. The Legislature adopted the same in S.B. 14, determining that it is not in the public interest to allow these procedures for minors. Like those who challenged S.B. 14, Respondents argued that it infringed on their parental rights. This Court disagreed. *See Loe*, 692 S.W.3d at 223. That not only defeats

any remedy this Court may afford, *supra* Part II, but shows that the Third Court of Appeals was wrong on the merits, too.

B. Respondents have not shown irreparable harm.

To obtain an injunction, Respondents must show "not only that the [law] is invalid," but that they have "sustained or [are] 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's Opinion. That is particularly so here because the procedures at issue are now all unlawful under S.B. 14 and *Loe*. *Supra* pp. 7-8.

Respondents also failed to show irreparable harm. The injuries Respondents allege do not provide subject-matter jurisdiction. *See supra* Part I. And a party'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* 692 S.W.3d at 223-25.

C. The injunction is fatally overbroad.

Aside from the legal errors that defeat this injunction, the trial court's injunction is fatally overbroad, and the Third Court misunderstood this Court's guidance. *Cf. In re Abbott*, 645 S.W.3d at 283. The unworkability of the lower courts' drastic remedy is reason alone to reverse and vacate.

First, the trial court enjoined DFPS 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. VCR.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 this provision prohibits DFPS from investigating

Respondents in any respect, it is overbroad; DFPS should be permitted to investigate if it independently believes the "care" constitutes "child abuse" under section 261.001. Justice Lehrmann recognized as much. *Cf. id.* at 286 (Lehrmann, J., concurring) (explaining that the order "does not preclude DFPS from investigating reports that a child diagnosed with gender dysphoria is receiving treatment that is medically unnecessary or inappropriate").

Second, the trial court's injunction also enjoined Petitioners from "investigating reports [of alleged child abuse] in the State of Texas against *any and all persons*," "prosecuting or referring for prosecution" such reports of abuse, or "imposing reporting requirements on *persons* in the State of Texas who are aware of others who" engage in the conduct at issue. DCR.236 (emphasis added). This Court directed the Third Court to vacate its corresponding Rule 29.3 order because it "lacks authority to afford statewide relief to nonparties." *In re Abbott*, 645 S.W.3d at 283. This Court

rested its holding on the text of Rule 29.3, which "plainly limits the scope of the available relief to that which is necessary to preserve *the parties'* rights." *Id.* at 282.

The same principles apply to the temporary injunction. A court lacks power to "grant[] a remedy beyond what [is] necessary to provide relief to [the Respondents]." *Lewis v. Casey*, 518 U.S. 343, 360 (1996); *see also Operation Rescue-Nat'l v. Planned Parenthood of Houston & Se. Tex., Inc.*, 975 S.W.2d 546, 568 (Tex. 1998). The trial court could not properly "enjoin enforcement of [a challenged law] as to anyone other than the named [Respondents]." *In re Abbott*, 954 F.3d 772, 786 n.19 (5th Cir. 2020), *vacated as moot sub nom. Planned Parenthood v. Abbott*, 141 S. Ct. 1261 (2021).

The Third Court's contrary analysis, *Doe*, 691 S.W.3d at 90-91, is unavailing. The Third Court first stated that "[c]rafting a plaintiffs-only injunction that would permit relief without compromising the Doe Family's anonymity would likely not be possible." *Id.* at 90. But that could have been said the last time the case was before the Court. The Court still found the Third Court's order improper. Similarly off base is the court's view that not granting statewide relief would result in similarly situated non-plaintiffs filing multiple identical suits. *See id.*; *see also Voe*, 691 S.W.3d at 123 n.19. But this is not a class action. More fundamentally, such a raft of litigation is unlikely given that Texas's prohibition via S.B. 14 on administering puberty blockers to minors is constitutional. *See Loe*, 692 S.W.3d at 223-25.

Third, the trial court enjoined enforcement actions that DFPS has no responsibility to take in the first place: "prosecuting or referring for prosecution" and "imposing reporting requirements." DCR.236. Petitioners understand those provisions to refer, respectively, to criminal prosecution and to the mandatory reporting

requirements found in Texas Family Code section 261.101. But any criminal prosecution for child abuse would be brought by the appropriate district attorney, and reporting requirements are imposed by the Legislature, not by DFPS. *See* Tex. Fam. Code § 261.105. As a result, neither DFPS nor its Commissioner is the appropriate target of such an injunction. *See Zurawski*, 690 S.W.3d at 658-60.

Fourth, regarding PFLAG, "[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*, 432 U.S. at 343). Providing relief to *all* PFLAG members whether they suffer any harm at all violates this longstanding precedent. In other words, even if PFLAG had identified certain members with standing to sue, it could only obtain, at most, an injunction preventing DFPS from investigating *those members*. *Contra Voe*, 691 S.W.3d at 123 n.19.

Prayer

The Court should reverse the lower court and render judgment for Petitioners. If the Court determines the case is moot, Petitioners request that the Court vacate the judgments below.

Respectfully submitted.

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Certificate of Compliance

Microsoft Word reports that this document contains 10,011 words, excluding exempted text.

/s/ Jacob C. Beach
Jacob C. Beach

Exhibit A: Declaration of Marta Talbert

DECLARATION OF MARTA L. TALBERT

1. My name is Marta L Talbert, and I am over the age of 18, of sound mind, capable of making this unsworn declaration, and personally acquainted with the facts herein stated.

2. I am an Associate Commissioner of Child Protective Investigations for the Texas Department of Family and Protective Services (DFPS), and I make this declaration in my official capacity and as part of my assigned duties and responsibilities.

3. I have been with DFPS for over 25 years. Prior to my current position, I held roles as a caseworker, supervisor, a program director, a program administrator, a regional director, and a field director. I have been in my current role since 2023. In 2022, I served as the Field Director of Child Protective Investigation.

4. In my role as Field Director of Child Protective Investigation, I became familiar with the cases underlying the litigation in *PFLAG, Inc. v. Abbott*, No. 03-33-00587-CV (also referred to as the *Voe* case), and *Doe v. Abbott*, No. 03-22-00587-CV, which I understand to be before this honorable Court as a consolidated proceeding. I testified at the "Hearing on Motion for Temporary Injunction" in *PFLAG, Inc. v. Abbott* on July 6, 2022, in the 459th district court in Travis County, Texas. My testimony there was also in my official capacity and as part of my assigned duties and responsibilities.

5. At that time, I testified that DFPS had received 12 reports alleging child abuse related to Puberty Blocking Hormone Treatment (PBHT), 11 of which had proceeded to investigation. At the time of hearing, 5 had been closed with a "ruled out" designation, meaning no finding of child abuse or neglect. Those 5 included the following case numbers: 48665275; 49038115; 49043230; 49049057; and 49034064. Of the remaining 6, I testified that 2 more should be closed out within a week or two with a "ruled out" designation. I testified that DFPS could not continue with the remaining 4 cases because of the stays issued in *Doe* (on March 2, 2022) and *Voe* (on June 10, 2022).

6. The district court's temporary injunction in *Voe*, issued on July 8, 2022, stated that DFPS may proceed with the related cases only to the extent that DFPS was closing them with a "ruled out" finding. DFPS proceeded to close the three cases that fell under the *Voe* injunction, including the Voe, Roe, and Koe cases. Consistent with the trial court's order, all three were closed with a "ruled out" designation.

7. The temporary injunction in *Doe*, issued March 11, 2022, did not include that condition, so DFPS could not proceed, even to close the case with a "ruled out" designation. As a result, the sole remaining case (*Doe*) could not be closed because of the injunction.

8. DFPS's investigative authority is limited to protecting minor children who may be abused or neglected. If a child underlying an investigation is no longer a minor, and the subject parent(s) do not have another child, DFPS no longer has authority to investigate.

9. Based on my knowledge, Mary Doe, the child underlying the investigation, is no longer a minor. Because there are no other children in the Doe case, DFPS no longer has authority to investigate. To comply with the trial court's anonymity order, I do not include the specific facts that support my understanding. I could, in the appropriate setting, provide these facts if a court so orders.

10. When DFPS's authority ceases to exist before a determination has been made, it is DFPS policy to close the case with a "unable to complete" designation where alleged perpetrators are not cooperative and the investigation has not been completed. I have no reason to believe that DFPS will depart from policy if DFPS is allowed to proceed in the Doe case.

11. The statements contained in the foregoing declaration are within my personal knowledge and are true and correct.

Pursuant to Texas Civil Practice & Remedies Code § 132.001, I declare under penalty of perjury that the foregoing is true and correct.

Executed in the City of Austin, Travis County, Texas, on the 16th day of April, 2025.

s/ Marta Talbert

Marta Talbert
Associate Commissioner, Child Protective Investigations
Texas Department of Family and Protective Services

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