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SUPREME COURT OF TEXAS
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No. _____

IN THE SUPREME COURT OF TEXAS

THE STATE OF TEXAS, *et al.*,

*Appellants*,

v.

LAZAROE LOE, *et al.*;

*Appellees*.

On Direct Appeal from the
201st Judicial District of Travis County, Texas
No. D-1-GN-23-003616

# APPELLEES' EMERGENCY MOTION FOR TEMPORARY RELIEF

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To the Honorable Chief Justice and Justices of the Supreme Court of Texas:

## INTRODUCTORY STATEMENT

Senate Bill 14 ("SB14"), a law that bans medical treatment for minors with gender dysphoria, is scheduled to take effect September 1, 2023. On August 25, 2023, after two full days evidentiary hearings, the trial court enjoined SB14's enforcement after finding (among other things) that (1) SB14 likely violates the Texas Constitution, (2) Appellees will suffer probable, imminent, and irreparable injury unless Appellants are enjoined from enforcing SB14, (3) it was necessary to enter a temporary injunction to maintain the status quo, and (4) the temporary injunction should remain in effect while the merits are examined. Just over an hour after the trial court issued the temporary injunction order, Appellants filed a direct appeal to this Court, which automatically superseded the order. Through this motion, Appellees request emergency relief to preserve the status quo, once again.

SB14 will inflict irreparable harm on Texas parents, children, and healthcare providers if it goes into effect and each day that it is enforced. Appellees are asking the Court to consider this harm when deciding whether to *temporarily* enjoin SB14's enforcement while considering this appeal. Without a temporary injunction, Texas adolescents with gender dysphoria will lose access to safe, effective courses of medical treatment. Halting, delaying, or not receiving such treatment will force these adolescents to experience unwanted—and in some cases irreversible—physical and

psychological effects that will worsen over time. Texas parents will lose the ability to plan, direct, and provide for their children's medical needs related to gender dysphoria. Texas physicians who provide this care will be forced to either violate their professional oaths and disregard their patients' medical needs or put their medical licenses and livelihoods at risk. These are not merely possible harms. Absent an injunction, they are certain, and they compound daily.

With this Motion, Appellees request entry of a temporary order reinstating the trial court's temporary injunction, pursuant to this Court's inherent authority and Texas Rule of Appellate Procedure 29.3 ("Rule 29.3"). This order will preserve the status quo and protect the parties' rights until the disposition of the appeal in this matter. *Appellees respectfully request a ruling on this Motion by this Thursday, August 31, 2023—the day before SB14 is scheduled to take effect.*

## DESCRIPTION OF THE PARTIES

Appellees, who were plaintiffs at the trial-court level, are as follows: seven parents of transgender minor children (Lazaro Loe, Mary Moe, Matthew Moe, Nora Noe, Sarah Soe, Steven Soe, and Gina Goe, collectively, "Parent Appellees"),[1] asserting claims individually and on behalf of their children; the respective transgender minor children of these parents (Luna Loe, Maeve Moe, Nathan Noe,

[1] The Parent Appellees and Minor Appellees are all proceeding under pseudonym, pursuant to the trial court's order. App. B (Agreed Protective Order Regarding Pseudonyms).

Samantha Soe, and Grayson Goe, collectively, "Minor Appellees"); PFLAG, asserting claims on behalf of its members, which include all of the Parent Appellees; three Texas-licensed physicians providing or facilitating medical treatment for gender dysphoria to adolescents in Texas (Dr. Richard Ogden Roberts III, Dr. David L. Paul, and Dr. Patrick W. O'Malley, collectively, "Physician Appellees"), asserting claims as individuals and on behalf of their patients; and GLMA, asserting claims on behalf of its members, which include all of the Physician Appellees.

Appellants, who were defendants at the trial-court level, are the State of Texas, the Office of the Attorney General of Texas, John Scott in his official capacity as Provisional Attorney General of Texas,[2] the Texas Medical Board, and the Texas Health and Human Services Commission.

## FACTUAL AND PROCEDURAL BACKGROUND

On August 15-16, 2023, the trial court heard Appellees' Application for a Temporary Injunction. App. C at 1. Following an evidentiary hearing that included testimony from fact and expert witnesses for both sides, as well as the admission of hearing exhibits for both sides, the trial court issued an order on August 25, 2023, granting Appellees' Application for Temporary Injunction (the "Temporary

[2] John Scott was subsequently replaced as Provisional Attorney General by Angela Colmenero on July 14, 2023.

Injunction Order"). *Id.* at 2. The Temporary Injunction Order is challenged in the direct appeal to this Court. App. D ("Appellants' Notice of Appeal") at 1.

## I. SB14 was signed into law and threatens to categorically ban necessary and lifesaving medical treatment to transgender adolescents in Texas.

On May 19, 2023, the Legislature passed SB14, categorically banning the provision of necessary and often lifesaving medical treatment to transgender adolescents in Texas. Governor Greg Abbott signed SB14 into law on June 2, 2023. Absent sustained injunctive relief from this Court, SB14 will take effect on September 1, 2023 and will irreparably harm Appellees and the hundreds of other similarly situated Texas families and their medical providers.

SB14 categorically bans medical treatment of gender dysphoria for minors in Texas. Under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition ("DSM-5"), gender dysphoria is the clinically significant distress that some transgender people experience as a result of the incongruence between their gender identity and their sex assigned at birth. It is a serious medical condition that, if left untreated, can result in severe and negative health outcomes. Gender dysphoria is only experienced by transgender individuals.

SB14 achieves a categorical ban by prohibiting physicians and other healthcare providers from providing, prescribing, administering, or dispensing medical procedures and treatments "[f]or the purpose of transitioning a child's biological sex as determined by the sex organs, chromosomes, and endogenous

profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex." SB14 § 2 (proposed Tex. Health & Safety Code § 161.702). Specifically, SB14 prohibits "a physician or health care provider" from "knowingly" providing a range of medical treatments used to treat gender dysphoria, including "puberty suppression or blocking prescription drugs to stop or delay normal puberty," "supraphysiologic doses of testosterone to females," "supraphysiologic doses of estrogen to males," and various surgeries, including "mastectom[ies]" (the "Prohibited Care"). *Id.*

SB14 prohibits the provision of such medical treatments only "[f]or the purpose of transitioning a child's biological sex" or for "affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex." *Id.* Under SB14, the provision of the exact same medical treatments is permitted for *any* other purpose, including but not limited to precocious puberty or "a medically verifiable genetic disorder of sex development," which are specifically identified as exceptions under SB14. *Id.*

SB14 includes an arbitrary so-called "wean off" provision, under which an adolescent who began Prohibited Care before June 1, 2023, and "attended 12 or more sessions of mental health counseling" for "at least six months before the" course of treatment began, "shall wean off the prescription drug over a period of time and in a

manner that is safe and medically appropriate." SB14 § 2 (proposed Tex. Health & Safety Code § 161.703).

SB14 subjects medical providers who provide or offer to provide Prohibited Care to a range of penalties, including requiring that the Texas Medical Board "shall revoke the license or other authorization to practice medicine" of any physician who violates SB14. SB14 § 5 (proposed Tex. Occ. Code § 164.0552); *see also id.* § 4 (proposed Tex. Occ. Code § 164.0552(a)).

SB14 further bars coverage for and reimbursement of Prohibited Care under a patient's Medicaid or Children's Health Insurance Program ("CHIP") plan and strips state funding of any kind from any medical provider, medical institution, "entity, organization, or individual that provides or facilitates" such care to transgender adolescents. SB14 § 2 (proposed Tex. Health & Safety Code §§ 161.704, 161.705); *id*. § 3 (proposed Tex. Hum. Res. Code § 32.024). It also grants the Appellant Attorney General carte blanche enforcement authority to bring an action for injunctive relief against "a[ny] person" if the Attorney General has "reason to believe that [the] person is committing, has committed, or is about to commit" a violation of proposed Section 161.702 of the Texas Health and Safety Code, which addresses the Prohibited Care. SB14 § 2 (proposed Tex. Health & Safety Code § 161.706).

## II. Appellees sued to block SB14 from taking effect.

On July 12, 2023, Appellees filed suit, seeking declaratory relief and temporary and permanent injunctions to prevent the devastating and irreparable harms that would befall Appellees and hundreds of similarly situated Texas families and their medical providers if SB14 takes effect. App. A. (Pls.' Verified Original Pet. for Declaratory J. and Appl. for Temporary and Permanent Injunctive Relief, hereinafter referred to as "the Petition"). The Petition asserts five causes of action, including that enforcement of SB14 violates Appellees' rights under the Due Course of Law Clause and both the Equal Rights Provision and the Equal Rights Amendment of the Texas Constitution. App. A at 60-69. In their Petition, Appellees request a temporary injunction blocking Appellants from enforcing or implementing SB14, declaratory judgment that SB14 is unconstitutional, and a permanent injunction restraining the enforcement of SB14. *Id.* at 70-71.

## III. The trial court entered a temporary injunction in Appellees' favor.

### A. Appellees presented extensive evidence to the trial court.

At the evidentiary hearing on August 15-16, 2023, Appellees presented evidence demonstrating that Appellants' enforcement of SB14 will cause severe, irreparable, and ongoing harms to Appellees and other similarly situated transgender adolescents, their parents, and medical providers that provide care prohibited under SB14 to transgender adolescents in Texas. Appellees presented expert testimony showing that the medical care prohibited by SB14 is medically necessary and part

of the standard course of care for gender dysphoria in adolescents, App. E (Temporary Inj. Hr'g Tr., Rep.'s R. vol. 1, 51:21-24, 53:25-54:3, 62:18-23, 82:24-83:15, 89:11-90:4, 94:11-14, 95:6-11, 129:8-130:7), and that the withholding, interruption, or delay of the provision of this medically necessary treatment for gender dysphoria will cause "intensification of [] gender dysphoria" and can cause "worsening depression and anxiety" and "increased thoughts of suicidality or self-harm," in addition to causing "a devastating setback in their gender dysphoria care and their overall health" and "significantly deteriorating mental health," *id.* (vol. 1, 62:22-63:1, 95:6-97:3, 128:18-129:7).

**(1) Expert Witnesses**

The trial court heard expert testimony that treatments for gender dysphoria are safe, effective, and widely accepted in the medical community.

Dr. Aron Janssen, a Child and Adolescent Psychiatrist at the Ann and Robert H. Lurie Children's Hospital of Chicago, Assistant Professor of Psychiatry at Northwestern University Feinberg School of Medicine, and founder and former director of the Gender and Sexuality Service at NYU Langone Medical Center, was qualified by the trial court as an expert on the study, assessment, diagnosis, and treatment of gender dysphoria. App. E (vol. 1, 35:6-19, 38:1-8). Dr. Janssen testified that the World Professional Association of Transgender Health (WPATH) and the Endocrine Society Guidelines for the care of gender dysphoria are evidence-based

and viewed by the medical and mental health profession as "the guidelines that we should all be striving to achieve in our clinical care." *Id.* (vol. 1, 44:21-46:7). These guidelines have been recognized as best practices by the "American Medical Association, the American Academy of Child and Adolescent Psychiatry, the American Psychiatric Association, the American Academy of Pediatrics, [and] the American Psychological Association," amongst others. *Id.* (Rep.'s R. vol. 1, 46:8-16). The care recommended by both the Endocrine Society Guideline and the WPATH Standards of Care includes providing puberty blockers or gender-affirming hormone therapy to treat individuals with gender dysphoria. *Id.* (vol. 1, 47:12-18). Dr. Janssen testified that this medical care is both safe and effective. *Id.* (vol. 1, 63:16-19). Based on his clinical experience and published, peer-reviewed, and evidence-based studies, the use of puberty blockers and hormone therapy to treat gender dysphoria leads to improvement in mental health symptoms, improvement in distress, improvement in gender dysphoria, and to "improvements in functioning" for patients. *Id.* (vol. 1, 55:14-19, 56:13-57:5. In fact, not providing treatment when an adolescent has gender dysphoria can result in severe risks for the adolescent's mental health, including the development of anxiety, depression, and an increased risk of suicide. *Id.* (vol. 1, 62:10-63:1).

Dr. Daniel Shumer, a Pediatric Endocrinologist at Mott Children's Hospital University of Michigan, Associate Professor at the University of Michigan Medical

School, the Medical Director of the Child and Adolescent Gender Clinic at Mott Children's Hospital, and the Medical Director of the Comprehensive Gender Services Program at Michigan Medicine, University of Michigan, was qualified by the trial court as an expert on the provision, protocols, and treatment of gender dysphoria in adolescents, and the field of pediatric endocrinology. *Id.* (vol. 1, 74:7-76:11). Dr. Shumer testified that no hormonal or medical interventions are provided before the onset of puberty to treat gender dysphoria. *Id.* (vol. 1, 76:25-77:6). Adolescents with gender dysphoria who have started puberty may benefit from GnRH agonists, known as puberty blockers or puberty suppression, which temporarily pause the development of secondary sex characteristics that increase gender dysphoria and prevent the long-term harm of developing those unwanted characteristics. *Id.* (vol. 1, 79:8-24, 80:22-82:23). Puberty suppression is reversible, safe, effective, and not experimental. *Id.* (vol. 1, 82:20-83:15, 87:6-9). Puberty suppression is also used to treat precocious puberty and in children with cancer prior to chemotherapy to preserve fertility, among other conditions. *Id.* (vol. 1, 83:16-84:2). Older adolescents may benefit from hormone therapy, which is also used by pediatric endocrinologists to treat other conditions where adolescents are unable to make appropriate amounts of testosterone or estrogen. *Id.* (vol. 1, 87:10-89:10). Hormone therapy is safe, effective, and not experimental. *Id.* (vol. 1, 89:11-90:4, 94:11-14). Based on his clinical experience, Dr. Shumer testified that pubertal

suppression and hormone treatment improve patients' lives: "the true reward is watching patients who maybe initiated care feeling hopeless and helpless graduating from care as someone who is maybe going off to college, going to law school, getting married, starting a family, with a life that they didn't dream possible and their parents didn't dream possible before initiating care." *Id.* (vol. 1, 94:15-95:5, 97:9-19). Dr. Shumer testified that the risks of not providing treatment when medical indicated include persisting or intensifying gender dysphoria and deteriorating mental health. *Id.* (vol. 1, 95:12-97:3). Dr. Shumer also testified that "weaning off" care will not mitigate the harm: "There's no protocol or recommendation about withdrawing care that's working slowly, so that would be experimental." *Id.* (vol. 1, 97:4-8).

Dr. Johanna Olson-Kennedy, a medical doctor double board-certified in Pediatrics and Adolescent Medicine, an Associate Professor in Pediatrics at the University of Southern California, and the Medical Director of the Center for Transyouth Health and Development at Children's Hospital Los Angeles, was qualified by the trial court as an expert on the study, research, and treatment of gender dysphoria. *Id.* (vol. 1, 108:22-112:7). Dr. Olson-Kennedy testified that transgender people have been using hormones and surgery to treat gender dysphoria for decades; that puberty-delaying medications, which have been used for almost 50 years, have also been used in adolescents with gender dysphoria since the 1990s; and that surgery, while rare in adolescents, most commonly includes chest

masculinization surgery. *Id.* (vol. 1, 112:8-113:23). For adolescents with gender dysphoria at the onset of puberty, it is highly likely that their gender dysphoria will persist. *Id.* (vol. 1, 114:22-115:4, 123:23-125:12). There is a large body of research that gender-affirming medical care improves mental health in multiple ways. *Id.* (vol. 1, 115:5-20, 116:22-117:22). There are no randomized controlled trials in this area because it would be unethical to withhold care from one patient population in such a trial, and it would not be methodologically sound. *Id.* (vol. 1, 115:21-116:21). But existing studies show that puberty blockers improve mental health, which Dr. Olson-Kennedy has also observed in her clinical experience, *id.* (vol. 1, 117:23-120:6), and the same is true for hormone therapy, *id.* (vol. 1, 120:7-122:11), as well as surgery, *id.* (vol. 1, 122:12-123:8). Dr. Olson-Kennedy also testified that while some individuals detransition, it is very rare (perhaps 2%), and more frequently related to external factors like loss of health insurance or other outside pressure. *Id.* (vol. 1, 125:13-126:25). An even smaller number of people—perhaps 1%—regret their medical treatment. *Id.* (vol. 1, 127:1-20). None of the European studies referenced by Appellants' experts recommend banning treatment or coverage of treatment for adolescents with gender dysphoria. *Id.* (vol. 1, 127:21-128:7). There are no studies demonstrating that psychotherapy alone can address gender dysphoria if medical interventions are indicated. *Id.* (vol. 1, 128:11-17). Delaying medical treatment for gender dysphoria when it is medically indicated leads to significant

mental health deterioration, including the potential for increased suicidality. *Id.* (vol. 1, 128:18-129:7). By contrast, Dr. Olson-Kennedy testified that the mental health benefits of this care are "profound" and enable adolescents to be "thriving" and "have sunshine in their lives." *Id.* (vol. 1, 130:8-131:5).

**(2) Fact Witnesses: Plaintiff Parents and Minors**

Appellee Parents Lazaro Loe, Mary Moe, Sarah Soe, and Gina Goe testified to the irreparable harms their transgender children and families would face without an injunction. Appellee Minor Nathan Noe testified to the harm he and his family will face if SB14 takes effect.

Sarah Soe, the mother of now fifteen-year-old transgender girl Samantha Soe, described the severe mental health struggles her daughter and family faced before Samantha received medical treatment for gender dysphoria that she fears will resume if SB14 takes effect. Samantha—who had been crying herself to sleep every night—came out as transgender to Sarah and her husband Steven around the sixth grade but did not start medical treatment for gender dysphoria until about two years later. App. E (vol. 1, 199:11-24, 206:10-14). During this period, Sarah and Samantha's father, Steven Soe, grew increasingly worried about how withdrawn and sad Samantha seemed. *Id.* (vol. 1, 201:16-202:2). One morning, while Steven was on a call with Samantha's school counselor, the counselor got a "red flag alert" on the computer that Samantha's computer was being used to search "how to kill yourself." *Id.* (vol.

1, 202:3-18). Following this terrifying incident, Sarah and Steven took Samantha to a psychiatrist who prescribed her antidepressants and she began regular therapy. *Id.* (vol. 1, 203:4-15). Samantha continued to struggle, eventually seeing a specialist who formally diagnosed her with gender dysphoria. *Id.* (vol. 1, 203:15-204:21). The specialist recommended puberty blockers to give the family and Samantha time to consider her course of treatment for gender dysphoria. *Id.* (vol. 1, 204:19-205:12). After starting puberty blockers, Sarah observed that Samantha's mental health was "stabilizing" and that Samantha was not "crying at night anymore" and was improving at school. *Id.* (vol. 1, 205:13-21). A year after starting puberty blockers, Samantha began hormone therapy. *Id.* (vol. 1, 206:15-18). After Samantha started hormone therapy, Sarah noticed that Samantha was "smiling more and seeming more open and outgoing," that she started to make new friends, and that she "just seemed a lot happier." *Id.* (vol. 1, 206:19-207:7). If SB14 goes into effect, Sarah is "very afraid" that Samantha would once again be at risk of suicide. *Id.* (vol. 1, 208:1-2, 208:6-17). Sarah testified, "I think if [Samantha's] medical care was taken from her, I would be afraid that she would kill herself." *Id.* (vol. 1, 208:16-17).

Grayson Goe similarly had a history of mental health issues, including suicidal ideation, before receiving medical treatment for gender dysphoria. *Id.* (vol. 1, 31:17-22). When Gina Goe, Grayson's mother, weighed the risks of him starting hormone therapy, she described it as follows: "with a history of suicidal ideation . . .

for me as a parent of my son, I'm deciding between strong mental problems that may lead to suicide or a deep voice and some body hair and not being able to have children . . . I'm going to choose life." *Id.* (vol. 1, 31:17-22). Since Grayson started hormone therapy, Gina notes that Grayson leaves his room and has become more confident, social, and that "things have changed for the better." *Id.* (vol. 1, 31:10-15). Gina fears that, if Grayson cannot continue taking testosterone, things "will just be completely reversed." *Id.* (vol. 1, 31:16).

Gina testified that SB14 "completely hinders my ability [and right] as a parent to make medical decision on a whole for my kid" and that she now has "fractured medical care" for Grayson. *Id.* (vol. 1, 31:23-32:13). Gina does not know what she and Grayson will do if SB14 takes effect; she has attempted to look into care for him in Colorado but there is a waiting list so "there's going to be a gap in his medical care." *Id.* (vol. 1, 32:14-33:4).

Twelve-year-old transgender girl Luna Loe first told her father, Lazaro Loe, that she was a girl around age five. *Id.* (vol. 1, 143:3-6). Lazaro had some initial fears about the challenges Luna would face as a transgender person. *Id.* (vol. 1, 145:8-13). But he saw how much "more joyful" Luna was when they accepted her and allowed her to express herself in girls' clothing, long hair, and feminine nicknames—"it was like she was half a person before, but as we started to accept her more, she just changed. She did better in school and was just happier." *Id.* (vol. 1, 145:15-22). Luna

was diagnosed with gender dysphoria at age six by a child psychologist. *Id.* (vol. 1, 145:23-146:23). Luna expressed a lot of anxiety about going through male puberty, and eventually started puberty blockers at age eleven under the care of a pediatric endocrinologist she had started seeing a year prior. *Id.* (vol. 1, 148:6-149:6). Lazaro describes puberty blockers as an "obviously lifesaving kind of care" for Luna. *Id.* (vol. 1, 150:2-4).

Lazaro testified that if Luna was unable to continue taking puberty blockers it would be devastating and mentally distressing for both of them. *Id.* (vol. 1, 151:12-152:3). "[I]t's incredibly distressing . . . to have to think about . . . your child having to suffer. . . a reversal of [] something that clearly she wants and needs." *Id.* (vol. 1, 151:19-23). Lazaro worries about Luna's mental health and the physical changes that she would experience if forced to cease or disrupt puberty blockers. *Id.* (vol. 1, 151:12-152:3). Lazaro has struggled to come up with a plan for what to do if SB14 takes effect; he describes that it has "already had a chilling effect on the medical community [in Texas] that provides this kind of treatment." *Id.* (vol. 1, 152:4-13).

Mary Moe and Matthew Moe are the parents of a nine-year-old transgender girl, Maeve Moe. Maeve was diagnosed with gender dysphoria and has been living as a girl for many years. *Id.* (vol. 1, 214:23-215:19). Mary notes that, because Maeve has not started puberty, she is not yet receiving any medical care for her gender dysphoria. *Id.* (vol. 1, 217:19-22; 215:20-216:1). Mary testified that doctors in Texas

told her they would not treat Maeve and her gender dysphoria because of SB14. *Id.* (vol. 1, 218:4-8). As a result, Mary and her children have relocated outside of Texas, leaving Matthew in their family home in Texas, to allow Maeve to "go to the doctor and talk about whatever she feels the need to have a conversation with her doctor about." *Id.* (vol. 1, 218:9-18). The changes associated with male puberty are "absolutely terrifying to Maeve" according to Mary. *Id.* (vol. 1, 217:1-5). Mary testified that "SB 14 prevents Maeve from going to the doctor whenever she needs to just to check how her body's changing, to have a conversation with the doctor to ease her anxiety [around puberty starting]." *Id.* (vol. 1, 217:25-218:3).

Mary desires to return her family to Texas where she grew up and where her family and community live. *Id.* (vol. 1, 218:19-219:1). Mary testified to the hardship of having to move away from her husband: "It sucks. It absolutely sucks. We are a family that sits down to dinner four times a week . . . I have not been away from my husband this long since we got married. He's my best friend. I got married because I wanted to do this together with him, and now I feel divided because I've got to protect my children and put their emotional, physical, and mental health first and foremost." *Id.* (vol. 1, 219:2-16).

Nathan Noe is a sixteen-year-old transgender boy who has been taking testosterone for almost two years. *Id.* (vol. 2, 11:1-17, 19:19-21). When Nathan started puberty, he would isolate himself and would not participate in events with

his family: it felt like "something wrong was happening" to him. *Id.* (vol. 2, 11:18-12:15). When Nathan recognized that he was a transgender boy, "it made a lot of sense what the feelings that I had been experiencing – you know, what that meant," and he experienced relief and joy when his family and people around him started using male pronouns for him and treating him as a boy. *Id.* (vol. 2, 12:16-13:19, 15:21-17:9). After many conversations with his parents and his doctors, eventually Nathan began hormone therapy when he was about fourteen. *Id.* (vol. 2, 17:10-18:7). Nathan testified that testosterone "just really improved my life to a point where gender dysphoria almost doesn't bother me as much as it did . . . people were really able to see me as the me that I saw myself as. And having a body that aligned with that was – it felt like a weight being lifted." *Id.* (vol. 2, 18:8-22). Nathan's entire life has improved now that people see him as a boy, and he is "able to just go about [his] life as a teenage boy." *Id.* (vol. 2, 18:23-19:18). Hormone therapy has given Nathan "freedom . . . to live [his] life without having gender dysphoria as a heavy weight on [him]." *Id.* (vol. 2, 21:12-22). Being unable to take testosterone would deprive him of "this medicine" that, in his words, "just really saved [his] life." *Id.* (vol. 2, 19:22-20:18).

**(3) Fact Witnesses: Physician Plaintiffs**

Appellee Physicians Dr. Paul and Dr. Roberts testified to the impact SB14 has had on their ability to practice medicine and on their patients. Dr. Roberts is a double

board-certified Pediatric Endocrinologist licensed in Texas who practices at a large children's hospital in Houston. App. E (vol. 1, 161:11-17, 162:11-13). Approximately 10-20% of Dr. Roberts' clinical time is spent providing medical treatment to youth with gender dysphoria. *Id.* (vol. 1, 164:7-13). Dr. Roberts testified that if SB14 were to go into effect and he were to continue treating his transgender patients consistent with evidence-based medicine, he could lose his license. *Id.* (vol. 1, 169:23-170:2). If SB14 goes into effect, he would be forced to "abandon patients" with which he has "established relationships." *Id.* (vol. 1, 170:3-7). Because of SB14, Dr. Roberts has spent the last month telling his patients he may "not be able to see them come September 1." *Id.* (vol. 1, 170:5-15). Dr. Roberts testified that if SB14 goes into effect, he anticipates that the gender dysphoria of his patients will increase, and it may increase depression and anxiety amongst these patients. *Id.* (vol. 1, 169:12-19).

Dr. Paul is a Texas-licensed, board-certified Pediatric Endocrinologist. *Id.* (vol. 1, 173:25-174:5). His practice includes providing gender-affirming medical care to patients that are Medicaid and CHIP recipients. *Id.* (vol. 1, 178:1-6). He first started treating adolescents with gender dysphoria while serving in the Air Force and working as a Pediatric Endocrinologist on a military base in San Antonio when a transgender adolescent was referred to him. *Id.* (vol. 1, 175:11-176:3). Dr. Paul testified, "I recognize that if these youth do not receive standard of care science-

based help as they undergo gender transition, that it can be life threatening. It can be threatening to their entire life existence, affecting every single aspect of their life." *Id.* (vol. 1, 176:20-25). Dr. Paul testified that SB14 "will strip me of providing this standard of care consensus-approved treatment from 20 U.S. medical organizations . . . It's the only care in my practice that is being removed." *Id.* (vol. 1, 185:18-22). Dr. Paul also testified that SB14's weaning provision will not mitigate harm: "It'll worsen it. There's no such thing as weaning in the healthcare provision for this population. There's no guideline. There's no studies. There's no science . . . there's no science or publication or guideline to say how to" withdraw puberty blockers or hormones in the manner SB14 requires. *Id.* (vol. 1, 187:19-188:10).[3]

**(4) Fact Witnesses: Organizational Plaintiffs**

Brian Bond, the CEO of PFLAG National—the first and largest organization for LGBTQ+ individuals and their families with over 1,500 members in Texas—testified to the impact of SB14 on the members of PFLAG. App. E (vol. 1, 153:20-22, 154:16-22, 158:16-21). PFLAG's mission is "to create a caring, just, and affirming world for LGBTQ+ individuals and those who love them." *Id.* (vol. 1, 154:23-155:12). Mr. Bond testified that PFLAG members include Texas families with transgender children receiving gender-affirming medical treatment, including

[3] As Appellees' expert Dr. Shumer also testified: "There's no protocol or recommendation about withdrawing care that's working slowly, so that would be experimental." *Id.* (vol. 1, 97:4-8).

Appellee Parents and Minors. *Id.* (vol. 1, 158:22-159:9). When asked about the impact of SB14 on PFLAG members, Mr. Bond testified that it is "terrifying" and "very disruptive" for his members, and that PFLAG member families are trying to figure out if they need to move, can afford to move, and what the law means for their ability to care for their children. *Id.* (vol. 1, 159:24-160:10).

Alex Sheldon, the Executive Director of GLMA—the oldest and largest association for LGBTQ+ and allied health professionals in the country—testified to the impact of SB14 on GLMA members and their ability to provide care to their patients. *Id.* (vol. 1, 191:6-7, 191:17-19). GLMA's mission is to both advocate for and advance LGBTQ+ health equity, and to promote equality for LGBTQ+ and allied health professionals in their work. *Id.* (vol. 1, 191:20-21). Mx. Sheldon testified that GLMA members include the Physician Appellees along with other Texas healthcare providers that currently provide gender-affirming medical care for minors. *Id.* (vol. 1, 195:6-13). Mx. Sheldon testified that if SB14 goes into effect it will be "devastating" on GLMA members that provide gender-affirming medical care to minors in Texas and that such members would "would be putting their medical licenses on the line in order to save the lives of their patients." *Id.* (vol. 1, 195:24-196:7). Mx. Sheldon noted that many members "have said that they might be forced to leave the state and practice elsewhere." *Id.* (vol. 1, 195:24-196:12).

### B. The trial court issued a detailed, well-reasoned Temporary Injunction Order.

Based on Appellees' Application for Temporary Injunction, the testimony and evidence presented at the temporary-injunction hearing, the arguments of counsel, and the applicable authorities, the trial court found "sufficient cause to enter a Temporary Injunction against Defendants [Appellants]" and entered a detailed, well-reasoned Temporary Injunction Order. App. C at 2.

The trial court found that, "unless Defendants [Appellants] are immediately enjoined from enforcing the Act, Plaintiffs [Appellees] will suffer probable, imminent, and irreparable injury in the interim" and that "[s]uch injury . . . cannot be remedied by an award of damages or other adequate remedy at law." *Id.* at 2, 4. The trial court thus ordered that Appellants were "*immediately enjoined and restrained from* implementing or enforcing the Act." *Id.* at 5 (emphasis added).

The trial court concluded that there was a substantial likelihood that Appellees would succeed on the merits of each of their claims that SB14 violates the Texas Constitution. The trial court specifically found the following:

***(1) SB14 likely violates Parent Appellees' fundamental rights under Article I, Section 19 of the Texas Constitution.***

- SB14 "likely violates Article I, Section 19 . . . by infringing upon the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Id.* at 2.

- This fundamental right includes "the right of parents to give, withhold, and withdraw consent to medical treatment for their children" and to "seek and to follow medical advice to protect the health and wellbeing of their minor children." *Id.*
- SB14's "prohibitions on providing evidence-based treatment for adolescents with gender dysphoria stands directly at odds with parents' fundamental right to make decisions concerning the care of their children." *Id.* at 2-3.
- SB14 strips Parent Appellees and PFLAG members "of the right to seek, direct, and provide medical care for their children" and "denies their parents, including Parent Plaintiffs and PFLAG parent members, the ability to obtain necessary and in some circumstances, lifesaving medical care treatment" for their children. *Id.* at 3.
- The evidence presented at the hearing demonstrated that SB14 "threatens the health and wellbeing of adolescents with gender dysphoria" rather than protects it, and SB14 is "not narrowly tailored to serve a compelling government interest . . . [and] lacks even a rational relationship to any legitimate government interest." *Id.*

### *(2) SB14 likely violates Physician Appellees' constitutional rights under Article I, Section 19 of the Texas Constitution.*

- SB14 "likely violates Article I, Section 19 of the Texas Constitution by infringing upon Texas physicians' right of occupational freedom." *Id.*
- SB14 specifically "deprives Texas physicians of a vested property right in their medical licenses" and requires "Texas medical providers, including the physician Plaintiffs and health professional members of GLMA, to disregard well-established, evidence-based clinical practice guidelines, and their training and oaths, thereby significantly and severely compromising the health of their patients with gender dysphoria or, alternatively, to risk their livelihoods." *Id.*
- SB14 subjects physicians to discipline if they "provide their transgender adolescent patients with medically necessary treatment" and for "treating a patient according to generally accepted standards of care." *Id*. SB14 is "clearly arbitrary and its effect as a whole is so unreasonably burdensome that it is oppressive." *Id.*

***(3) SB14 likely discriminates against Minor Appellees because of their sex, sex stereotypes, and transgender status in violation of Article I, Sections 3 and 3a of the Texas Constitution.***

- SB14 "likely violates Article I, Sections 3 and 3a of the Texas Constitution by discriminating against transgender adolescents with gender dysphoria because of their sex, sex stereotypes, and transgender status." *Id.* at 3-4.
- SB14 infringes on the guarantees of equality under the law by enacting a "discriminatory and categorical prohibition on evidence-based medical treatments for transgender youth which remains available to cisgender youth." *Id.* at 4.
- Specifically, the treatments prohibited under SB14—such as puberty-blockers and hormone therapy—are prohibited "*only* when used to treat an adolescent for gender dysphoria" even though the same or similar risks exist regardless of the condition for which such treatment is prescribed. *Id.*
- SB14 "is not justified by any legitimate state purpose, let alone a compelling one" and "was passed because of, and not in spite of, its impact on transgender adolescents, depriving them of necessary, safe, and effective medical treatment." *Id.*

With those findings in place, the trial court "immediately enjoined and restrained" Appellants and their agents, officers, employees, attorneys, and others

from "implementing or enforcing" SB14 until "all issues in this lawsuit are finally and fully determined." *Id.* at 5. "[S]uch restraint encompasses but is not limited to:

> (1) enjoining and restraining the State of Texas, Office of the Attorney General of the State of Texas, Angela Colmenero, in her official capacity as Provisional Attorney General, and any successor Attorney General from filing an action to enforce the Act, whether directly through authority provided by proposed Section 161.706 of Texas Health and Safety Code, or indirectly through authority provided by the Texas Medical Practice Act or otherwise;
>
> (2) enjoining and restraining the State of Texas and Texas Medical Board from taking action to implement or enforce the Act, including investigating a complaint, referring a complaint to the Office of the Attorney General, revoking the license or other authorization to practice medicine of a physician, refusing to admit to examination or refuse to issue a license or renewal license to a person based on the Act, whether directly through authority provided by proposed Sections 164.052(a)(24) or 164.0552 of Texas Occupations Code, or indirectly through authority provided by the Texas Medical Practice Act or otherwise;
>
> (3) enjoining and restraining the State of Texas and Texas Health and Human Services Commission from (a) withholding public money from being used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a procedure or treatment based on the Act, and (b) withholding or otherwise limiting reimbursement of or coverage for prohibited care under the Act by Medicaid and/or CHIP insurance plans."

*Id.* at 5-6.

The trial court explained that the temporary injunction ordered was "necessary to maintain[] the status quo and should remain in effect while this [c]ourt, and potentially the Third Court of Appeals and the Supreme Court of Texas, examine the parties' merits and jurisdictional arguments." *Id.* at 5.

### C. Appeal of Temporary Injunction Order.

Appellants filed a notice of accelerated interlocutory appeal directly to this Court under Section 51.014(a)(4) of the Texas Civil Practice and Remedies Code and Section 22.001(c) of the Texas Government Code, which automatically superseded the trial court's Temporary Injunction Order.[4] App. D at 1.

## ARGUMENT AND AUTHORITIES

### I. This Court should use its inherent powers and equitable authority under Rule 29.3 to reinstate a temporary injunction on the terms set forth by the trial court.

Rule 29.3 authorizes appellate courts to "make any temporary orders necessary to preserve the parties' rights until disposition of the appeal." Tex. R. App. P. 29.3. Preservation of the status quo is at the heart of Rule 29.3. Appellees ask this Court to exercise its inherent powers and its authority under Rule 29.3 to issue a temporary order reinstating the terms of the temporary injunction issued by the trial court, which preserves the status quo in this case, protects Appellees' rights, and prevents irreparable and immediate harms to Appellees.

[4] In their direct appeal, Appellants also seek review of the trial court's denial of their Plea to the Jurisdiction ("Plea"). App. D at 1. Under Texas Government Code 22.001(c), "an appeal may be taken to the supreme court only if the appeal was first brought to the court of appeals," except that "[a]n appeal may be taken directly to the supreme court from *an order of a trial court granting or denying an interlocutory or permanent injunction on the ground of the constitutionality of a statute of this state*." Tex. Gov. Code 22.001(c) (emphasis added). This limited grant of jurisdiction will likely be addressed in Appellants' Statement of Jurisdiction. The Plea should not be addressed as part of the Court's consideration of this motion.

### A. A temporary injunction is necessary to preserve the status quo.

Rule 29.3 "broadly empower[s this Court] to preserve parties' rights when necessary," granting the Court "great flexibility in preserving the status quo based on the unique facts and circumstances presented." *In re Geomet Recycling LLC*, 578 S.W.3d 82, 89 (Tex. 2019). Based on the facts and circumstances of this case, temporary injunctive relief of the same scope as issued by the trial court is necessary to preserve the status quo.

Although the trial court's temporary injunction was superseded when Appellants filed their direct appeal, Rule 29.3 authorizes an appellate court to issue its own temporary order effectively continuing that injunction pending resolution of the appeal in order "to preserve the status quo and prevent irreparable harm." *In re Tex. Educ. Agency*, 619 S.W.3d 679, 680 (Tex. 2021). And the "status quo" is "the last, actual, peaceable, non-contested status which preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (quotation marks and citation omitted) (emphasis added). Permitting Appellants to enforce the unconstitutional changes threatened by SB14 would alter and disrupt the status quo in a manner detrimental to the lives of many Texans.

The prohibitory temporary injunction issued by the trial court against Appellants preserves the status quo in this case, and this Court should issue an order enjoining Appellants from the actions outlined in the trial court's temporary

injunction to similarly preserve the status quo. The trial court found that the temporary injunction is necessary to maintain the *status quo*. App. C at 5. Currently, adolescents with gender dysphoria are lawfully able to access the medical care deemed necessary by medical professionals to treat their gender dysphoria; parents are lawfully able to choose and consent to the provision of such care for their children; and providers are lawfully able to prescribe and facilitate such care. If SB14 goes into effect, this *status quo* would be suddenly and irrevocably altered. The minor Appellees would suddenly be prohibited from securing medical treatment that they may have been getting for years. Physicians would suddenly be prohibited from providing ongoing treatment.

Appellate courts have the authority to effectively reinstate a lower court's temporary injunction to preserve the status quo. In *In re Texas Education Agency*, the appellants filed an interlocutory appeal that "automatically suspended enforcement of the trial court's order," which included a temporary injunction. 619 S.W.3d at 683. As this Court noted, "[i]nstead of preserving the status quo, however, suspension of the temporary injunction would . . . have the contradictory effect of permitting the status quo to be altered, because if compliance with the injunction were not required," the plaintiff's rights and position "could be changed from 'the last, actual, peaceable non-contested status [that] preceded the pending controversy.'" *Id.* at 683-84. In such circumstances, temporary relief under Rule 29.3

is appropriate even if that temporary order has the "same practical effect as denying supersedeas of the trial court's injunction." *Id*. at 680; s*ee also In re Abbott*, 645 S.W.3d 276, 282 (Tex. 2022).

Appellate courts have exercised and continue to exercise their authority under Rule 29.3 to preserve the *status quo*. *See Texas Health & Human Servs. Comm'n v. Sacred Oak Med. Ctr. LLC*, No. 03-21-00136-CV, 2021 WL 2371356, at *1, *5 (Tex. App.—Austin June 9, 2021, no pet.) (In reinstating a temporary injunction under Rule 29.3, the court addressed *In re Texas Education Agency* and explained that "[t]he Texas Supreme Court recently confirmed that courts of appeals have the power to provide relief from the State's automatic right to supersedeas under Rule 29.3," even if procedural rules would prevent the trial court from issuing a counter-supersedeas order, if the suspension of the temporary injunction would "have the contradictory effect of permitting the status quo to be altered."); *see also In re Newton*, 146 S.W.3d at 651 (explaining "that the continuation of illegal conduct cannot be justified as preservation of the status quo").

Under these same principles, in *In re Abbott*, this Court denied requested mandamus relief from the court of appeals' reinstatement of a trial court's temporary injunction under Rule 29.3 to maintain the status quo for the parties. 645 S.W.3d at 283. After the State's appeal superseded a district court's injunction barring the Texas Department of Family and Protective Services from enforcing an unlawfully

adopted rule requiring child abuse investigations into the provision of gender-affirming medical care, the court of appeals reinstated that suspended injunction under Rule 29.3. *See Abbott v. Doe*, 2022 WL 837956 (Tex. App.—Austin Mar. 21, 2022, pet. granted). The district court concluded that such investigations had not taken place before adoption of the rule, the rule changed the status quo, and the temporary injunction restored that status quo. *Id.* at *1. The court of appeals thus reinstated the temporary injunction, noting its own authority under Rule 29.3 "to maintain the status quo and preserve the rights of all parties." *Id.* at *2. And this Court held that the court of appeals' order protecting the plaintiffs was within the court of appeals' Rule 29.3 power. *See In re Abbott*, 645 S.W.3d at 683-84.

The Court should exercise its Rule 29.3 authority here and enter injunctive relief on the terms set forth by the trial court because it is the only way to preserve the status quo while the merits are being considered in this matter.

### B. Reinstating the trial court's temporary injunction is necessary to protect Appellees' rights and prevent irreparable harm.

Appellate courts also have "the power to preserve a party's right to judicial review of acts that it alleges are unlawful and will cause it irreparable harm." *Sacred Oak*, 2021 WL 2371356, at *5. Specifically, "Rule 29.3 provides a mechanism by which [this Court] may exercise the scope of [its] authority over parties, including [its] inherent power to prevent irreparable harm to parties properly before [it] pursuant to [its] appellate jurisdiction in an interlocutory appeal." *Tex. Educ.*

*Agency*, 609 S.W.3d at 578. *See also Geomet*, 578 S.W.3d at 90 (noting "the authority of a court of appeals to prevent irreparable harm to parties that have properly invoked its appellate jurisdiction in an interlocutory appeal"). Here, reinstatement of a temporary injunction is necessary to protect the rights of Appellees, who would suffer irreparable and immediate harms in the absence of such a temporary injunction.

In this way, this case is like *Texas Education Agency* and *Sacred Oak.* In *Texas Education Agency*, the plaintiff-appellee was concerned that failure to issue an order under Rule 29.3 to preserve the status quo "could delay remedial measures designed to protect students and improve academic achievement." 619 S.W.3d at 690. And in *Sacred Oak*, the plaintiff-appellee faced irreparable harm from the suspension of its license and continued closure. 2021 WL 2371356, at *8. In both instances, this Court entered a temporary injunction, pursuant to its inherent powers and authority under Rule 29.3, to protect the plaintiffs-appellees' rights and prevent irreparable harm while the appeals were considered.

Like *Texas Education Agency* and *Sacred Oak*, this case presents "compelling circumstances that require the Court to reinstate the trial court's temporary injunction to preserve the parties' rights." *Sacred Oak Med. Ctr. LLC*, 2021 WL 2371356, at *7 (quotations omitted). As the trial court found, "unless Defendants are immediately enjoined from enforcing [SB14], Plaintiffs will suffer probable,

imminent, and irreparable injury in the interim." App. C at 4. Reinstating a temporary injunction is therefore necessary to prevent immediate, ongoing, and irreparable harm to Appellees. Indeed, the trial court recognized that enforcement of SB14 will cause myriad irreparable harms to Appellees, including: the loss of access to safe, effective, and medically necessary treatment for transgender adolescents experiencing gender dysphoria; significantly and severely compromising the health and wellbeing of transgender adolescents experiencing gender dysphoria, including forcing such patients to experience unwanted and unbearable changes to their body; the loss of a parent's ability to direct their child's medical treatment; destabilizing the family unit, including forcing families to leave Texas, travel regularly out of state, and/or choose indefinite family separation; depriving Texas physicians of the right to occupational freedom and their vested property interests in their medical licenses; forcing Texas physicians to either violate their oath by disregarding the patients' medical needs and inflicting needless suffering, or putting their medical license and livelihood at risk; and exacerbating health disparities for transgender adolescent patients who receive Medicaid and Children' Health Insurance Program coverage and who will lose that coverage if SB14 goes into effect. App. C at 4-5. These harms are not static but compound in their severity and likelihood every day an injunction is not in place.

The unconstitutional law at issue here presents Appellees with an impossible choice. For the Parent Appellees and their minor children, as well as other PFLAG members, they must either cease medical treatment for gender dysphoria—care which for many has been lifesaving—or leave their homes and communities to continue to legally access such care i another state. Physician Appellees and other GLMA members must decide whether to violate their oaths taken as physicians and disregard their patients' medical needs, undoubtedly inflicting suffering, or violate SB14 and put their medical licenses and livelihoods at risk.

The deprivation of medical care mandated by SB14 is irreparable harm that cannot be compensated or measured under a pecuniary standard. No price can be put on the physical, social, psychological, and not yet fully known harms that will undoubtably occur if the Minor Appellees are forced to go without medically-necessary care for gender dysphoria. There is no standard of compensation that can measure these certain and—in some instances—irreversible harms, both physical and psychological, that flow from forcing a transgender adolescent to experience an undesired puberty against their wishes, the wishes of their parents, and against the professional recommendations of their healthcare providers. *See, e.g., Bowen v. City of New York*, 476 U.S. 467, 483 (1986) (a risk of suffering "a severe medical setback" is an irreparable injury). An injunction blocking SB14's enforcement is

necessary to allow Minor Appellees to maintain continuity of their medically-necessary care in Texas and prevent these otherwise certain harms.

Of note, in denying mandamus relief in *In re Abbott*, this Court found no abuse of the appellate court's discretion in issuing an injunction pursuant to Rule 29.3 to protect the Doe family from further harmful action by the Defendants. *In re Abbott*, 645 S.W.3d at 283. Appellees are identically situated to the Doe family in the imminent and irreparable harm they face from enforcement of SB14.

Appellees have also satisfied their burden of showing irreparable injury warranting injunctive relief because SB14 infringes their constitutional rights, including the Parent Appellees' right of parental autonomy, the Minor Appellees' equality rights, and the Physician Appellees' property and occupational freedom rights. "[T]he denial of a constitutionally guaranteed right …, as a matter of law, inflicts an irreparable injury." *Iranian Muslim Org. v. City of San Antonio*, 615 S.W.2d 202, 208 (Tex. 1981) (citing *Henry v. Greenville Airport Commission*, 284 F.2d 631, 633 (4th Cir. 1960) for the proposition "that a court has no discretion to deny relief by a temporary injunction where a violation of a constitutional right is clearly established."); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (noting that loss of constitutional "freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury").

Absent relief from this Court, that same imminent, irreparable harm that led the trial court to issue its injunction will persist while this appeal is pending. An order from this Court reinstating a temporary injunction on the terms set forth by the trial court would do Appellants "no harm whatsoever," as any interest they may claim "in enforcing an unlawful (and likely unconstitutional)" statute "is illegitimate." *BST Holdings, L.L.C. v. Occupational Safety & Health Admin., U.S. Dep't of Lab.*, 17 F.4th 604, 618 (5th Cir. 2021); *see also Doe v. Ladapo*, No. 4:23CV114-RH-MAF, 2023 WL 3833848, at *16 (N.D. Fla. June 6, 2023) ("Adherence to the Constitution is always in the public interest.").

### C. Facial injunctive relief is necessary to maintain the status quo and preserve the Appellees' rights.

Temporary relief that effectively reinstates the trial court's injunction against the implementation and enforcement of SB14 is necessary to preserve the parties' rights. This Court has been clear that 29.3 relief is limited "to that which is necessary to preserve *the parties'* rights." *In re Abbott*, 645 S.W.3d at 282. Here, an injunction barring enforcement of SB14 solely against the parties would fail to preserve the parties' rights, both practically and legally.

A court's preservation of the status quo necessarily turns on an assessment of the "unique facts and circumstances presented." *Geomet*, 578 S.W.3d at 89. *See also*, *e.g.*, *Huynh v. Blanchard*, No. 12-20-00198-CV, 2021 WL 3265549, at *8 (Tex. App.—Tyler July 30, 2021, pet. granted) (affirming grant of permanent injunction

that completely shuttered commercial operation, as opposed to merely decreasing its scope to abate a nuisance, because a "more narrow injunction is not economic or feasible, nor would it be equitable to do so…" given the parties' conduct and credibility). Here, the structure and function of SB14 means that only an injunction facially barring its enforcement can sufficiently maintain the status quo and protect the parties' interests during the pendency of the litigation. While SB14 imposes serious and irreparable harms on transgender adolescents and their parents like the Family Appellees and PFLAG members, the mechanism for barring their medically necessary care is a prohibition directed at and enforced against healthcare providers and institutions, including through the loss of public funds. *Cf. City of Austin v. Thompson*, 219 S.W.2d 57, 59 (Tex. 1949) (a prohibition of the expenditure of public funds to pay the expense of something has "the same practical effect" as a prohibition against the things itself). As a result, an injunction specific to the Appellees only would be practically unworkable and fail to provide meaningful protection.

First, physicians, health care providers, and institutions face significant penalties and funding restrictions for failing to comply with SB14. As Plaintiffs testified, this is already causing providers to end the provision of gender-affirming medical care in anticipation of the bill's effective date. App. E (vol. 1, 152:4-13, 159:24-160:10, 169:7-170:15, 218:4-18; vol. 2, 19:22-20:18); *see also* William

Melhado, "'Unbearable': Doctors treating trans kids are leaving Texas, exacerbating adolescent care crisis," The Texas Tribune (July 17, 2023), available at https://www.texastribune.org/2023/07/17/texas-gender-affirming-care-doctors-hospitals/; Ariel Worthy, "Texas Children's Hospital to end gender-affirming care by September 1," Houston Public Media (May 25, 2023), available at https://www.houstonpublicmedia.org/articles/news/health-science/2023/05/25/452850/texas-childrens-hospital-end-gender-affirming-care-by-september-1; Julian Gill, "Texas Children's to discontinue transgender care in coming months, CEO email says," The Houston Chronicle (May 24, 2023), available at https://www.houstonchronicle.com/news/houston-texas/health/article/ceo-texas-children-s-discontinue-trans-care-18117681.php. As a result of these sanctions, "[a] serious chilling effect on access to care is likely to follow, for what doctor or medical institution will continue to offer such care to minors, with the threat of serious sanctions on the horizon?" *Koe v. Noggle*, No. 1:23-CV-2904-SEG, 2023 WL 5339281, at *29 (N.D. Ga. Aug. 20, 2023). A plaintiff-specific injunction will not shield their health care providers or institutions from SB14's sanctions. As a result, "[c]omplete relief will only obtain upon an injunction with a broader sweep"—one that "will mitigate the fears" of providers "and in turn alleviate the [Plaintiffs'] consequent harms." *Whitman-Walker Clinic, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 485 F. Supp. 3d 1, 63 (D.D.C. 2020).

Second, while members of both PFLAG and GLMA would technically be shielded from SB14's harms by a party-specific injunction, *see Warth v. Seldin*, 422 U.S. 490, 515 (1975), and therefore able to access and provide the medical treatments SB14 prohibits, the same practical limitations would apply. PFLAG members would "would have to establish their current membership in the organization to a series of providers, and this could give rise to factual disputes," *Koe*, 2023 WL 5339281, at *30, the resolution of which would occur at the hands of providers who remain under the threat of serious sanctions if they make the wrong call. GLMA members themselves would be shielded from those sanctions for providing or facilitating the provision of gender-affirming medical treatments, but the institutions where they work and the colleagues with whom they work would not, thereby risking the loss of public funding including Medicaid. Without a facial injunction, PFLAG and GLMA members' protection would be nominal at best.

Finally, the Family Plaintiffs are proceeding under pseudonym in order to protect their privacy interests. App. B. Taking advantage of party-specific injunctive relief to access medical treatments for their children would inherently involve identifying themselves as plaintiffs to a host of medical providers, administrative staff, and others involved in the provision or facilitation of and payment for those treatments, thereby undermining the purpose of proceeding anonymously in the first place. *See Koe*, 2023 WL 5339281 at *30 ("it would be administratively

burdensome, if possible at all, to fashion an injunction that would allow them to secure relief without compromising their anonymity"); *see also*, *e.g.*, *In re Does 1-10*, 242 S.W.3d 805, 820 (Tex. App.—Texarkana 2007, no pet.) (explaining in the First Amendment context that the right to speak anonymously, though not absolute, "would be of little practical value if there was no concomitant right to remain anonymous after the speech is concluded").

Moreover, as a legal matter, in a facial constitutional challenge, the only way to provide Appellees meaningful relief from an unconstitutional law is to enjoin it in its entirety. In a facial challenge, "the challenging party contends that the statute, by its terms, always operates unconstitutionally." *Texas Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 518 (Tex. 1995). Appellees allege and the trial court found that they are likely to succeed on their claims that SB14 is facially unconstitutional. As a result, permitting enforcement of SB14 in any manner continues the infringement of Appellees' rights. *See, e.g., Mulholland v. Marion Cnty. Elec. Bd.*, 746 F.3d 811, 819 (7th Cir. 2014) ("We have not encountered before the idea of facial unconstitutionality as applied only to a particular plaintiff. Facial unconstitutionality as to one means facial unconstitutionality as to all, regardless of the fact that the injunctive portion of the judgment directly adjudicated the dispute of only the parties before it."); *see also Doe v. City of Albuquerque*, 667 F.3d 1111, 1127 (10th Cir. 2012) (explaining that "where a statute fails the relevant

constitutional test…it can no longer be constitutionally applied to anyone"). A facial injunction is necessary because when a law conflicts with rights guaranteed by Article I, the Texas Constitution declares that the law is void. *See City of Beaumont v. Bouillion*, 896 S.W.2d 143 (Tex. 1995). Equitable remedies are the established and appropriate means of redress in a constitutional challenge precisely because "[a] law that is declared void has no legal effect," and if that is the case, it cannot be enforced against anyone without furthering the constitutional violation.

Granting a facial injunction here is not a matter of attempting to extend relief to "any and all persons" who are not parties to this lawsuit, *In re Abbott*, 645 S.W.3d at 283, but a matter of ensuring that the parties' rights are meaningfully protected throughout the pendency of the litigation. "[T]he mere fact that nonparties might be affected by a facial injunction does not bar the Court from issuing one. That is, a statewide injunction is appropriate where its scope is principally measured by the extent of the violation established . . . and by that which is necessary to protect the interests of the parties[.]" *Koe*, 2023 WL 5339281, at *29. As the Eighth Circuit recognized in assessing the propriety of temporary relief that facially enjoined enforcement of Arkansas's ban on gender-affirming care for minors, there is simply not a "more narrowly tailored injunction that would remedy Plaintiffs' injuries." *Brandt by & through Brandt v. Rutledge*, 47 F.4th 661, 672 (8th Cir. 2022); s*ee also K. C. v. Individual Members of Med. Licensing Bd. of Indiana*,

No. 123CV00595JPHKMB, 2023 WL 4054086, at *14 (S.D. Ind. June 16, 2023) (granting statewide relief and enjoining the enforcement of a law banning gender-affirming care for minors "against any provider, as to any minor"); *Hecox v. Little*, 479 F. Supp. 3d 930, 988 (D. Idaho 2020), *aff'd*, No. 20-35813, 2023 WL 1097255 (9th Cir. Jan. 30, 2023), and *aff'd*, No. 20-35813, 2023 WL 5283127 (9th Cir. Aug. 17, 2023) (district court granted statewide injunction of Idaho law excluding transgender girls and women from participating in women's sports teams because law was likely unconstitutional).

## CONCLUSION AND PRAYER

Appellees respectfully ask this Court to grant this Motion and issue an order providing temporary injunctive relief on the terms set forth by the trial court until the disposition of the appeal. Such an order is necessary to preserve the status quo and Appellees' rights. Appellees further request that this Court rule on this emergency motion on or before **August 31, 2023**, prior to SB14's September 1, 2023 effective date. Finally, Appellees further request that this Court grant any and all other relief to which they may be entitled.

Respectfully Submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I certify that this Motion contains 9927 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

*/s/ Kennon Wooten*
Kennon Wooten

## CERTIFICATE OF CONFERENCE

Pursuant to Texas Rule of Appellate Procedure 10.1(a)(5), I certify that, on August 27, 2023, I conferred with Appellants' counsel via email regarding this Motion and Appellants' counsel stated that Appellants are opposed to this Motion.

*/s/ Kennon L. Wooten*
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## CERTIFICATE OF SERVICE

I certify that, on August 28, 2023, Appellees electronically served a true and correct copy of the foregoing Motion on the following counsel for Appellants, through the electronic-filing manager in the electronic-filing system.

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