NO. D-1-GN-22-002569

PFLAG, Inc.; MIRABEL VOE, individually and as parent and next friend of ANTONIO VOE, a minor; WANDA ROE, individually and as a parent and next friend of TOMMY ROE, a minor; ADAM BRIGGLE and AMBER BRIGGLE, individually and as parents and next friends of M.B., a minor,	§	IN THE DISTRICT COURT OF
	§	TRAVIS COUNTY, TEXAS
Plaintiffs,	§	
	§	459th JUDICIAL DISTRICT
v.	§	
GREG ABBOTT, sued in his official, capacity as Governor of the State of Texas JAIME MASTERS, sued in her official capacity as Commissioner of the Texas Department of Family and Protective Services; and the TEXAS DEPARTMENT FAMILY AND PROTECTIVE SERVICES	§	
Defendants.	§	

PLAINTIFFS' RESPONSE TO DEFENDANTS' PLEA TO THE JURISDICTION

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Defendants' Plea to the Jurisdiction ("Plea") largely rehashes the same jurisdictional arguments Defendants raised in their response to Plaintiffs' Application for Temporary Injunction. Yet this Court already determined that it has subject matter jurisdiction over Plaintiffs' claims under the Texas Administrative Procedure Act ("APA") when it issued the temporary injunctions against DFPS and the Commissioner on July 8, 2022 and September 16, 2022. Defendants also raised the same arguments to the Third Court of Appeals in their opposition to Plaintiffs' Rule 29.3 Emergency Motions for Temporary Injunctive Relief, contending that Plaintiffs cannot satisfy the first temporary injunction factor because they lack standing, their claims are unripe, and their claims are barred by sovereign immunity. The Third Court, too, implicitly rejected these jurisdictional arguments when it granted temporary injunctive relief to the Voes and Roes. Although Defendants are not entitled to a redundant ruling on jurisdictional issues that have already been decided in Plaintiffs' favor, Defendants file this unmeritorious Plea because they seek a *new* order they can appeal for the purpose of staying the trial court proceedings, even though Defendants' Motion for Stay remains pending and they previously chose not to appeal on jurisdictional grounds.

Defendants' procedural gamesmanship aside, Defendants' Plea is also improper to the extent it seeks a ruling on the merits of Plaintiffs' claims. Plaintiffs are not required to prove the merits of their claims to establish jurisdiction. Plaintiffs' Petition alleges sufficient facts to affirmatively demonstrate subject matter jurisdiction. Defendants purport to attack the existence of jurisdictional facts, but their cited "facts" go to the merits, not jurisdiction. And, even if the Court determines that Defendants' evidentiary arguments create any fact questions regarding jurisdiction, such fact questions require the denial of the Plea because those fact issues must be resolved by the fact finder.

For the reasons herein, the Court should exercise its discretion to defer ruling on Defendants' Plea. Alternatively, the Court should deny the Plea in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND

As has been set forth in numerous filings with this Court, on February 22, 2022, Governor Greg Abbott sent a letter (the "Abbott Directive") to DFPS Commissioner Jaime Masters directing the agency "to conduct a prompt and thorough investigation of any reported instances" of "gender-transitioning procedures," without regard to medical necessity. *See* Plea, Ex. D, p. 1, ¶¶ 1, 3. The Abbott Directive incorporated Attorney General Ken Paxton's Opinion No. KP-0401 ("Paxton Opinion")[1] and claimed that "a number of so-called 'sex change' procedures constitute child abuse under existing Texas law." *See id*. The same day, DFPS announced that it would comply with the Abbott Directive and "investigate[]" any reports of the procedures outlined in the new directives ("DFPS Rule"). *See* Ex. A, p. 1, ¶ 2. Although DFPS had "no pending investigations of child abuse involving the procedures described in that opinion," *id.*, it immediately launched investigations into families around Texas.

On March 1, 2022, one of those families, the Doe Family, filed suit, along with Dr. Megan Mooney, against Defendants Governor Abbott, Commissioner Masters, and DFPS. *See Doe v. Abbott*, Cause No. D-1-GN-22-000977 (353rd Dist. Ct., Travis Cnty., Tex.). The next day, Defendants filed a plea to the jurisdiction, in which they asserted that the plaintiffs lacked jurisdiction and that their claims were not ripe and were barred by sovereign immunity. *See* Defendants' Plea to the Jurisdiction, *Doe v. Abbott*, Cause No. D-1-GN-22-000977 (353rd Dist. Ct., Travis Cnty. March 2, 2022). On March 11, this Court denied Defendants' plea to the jurisdiction and entered a temporary injunction. *See Doe v. Abbott*, No. D-1-GN-22-000977, 2022

[1] The Paxton Opinion is appended to Defendants' Plea as Exhibit C.

WL 831383, at *1 (353rd Dist. Ct., Travis Cnty., Tex. Mar. 11, 2022). Defendants appealed, and the Third Court of Appeals reinstated the injunction under Texas Rule of Appellate Procedure 29.3 ("Rule 29.3"). *Abbott v. Doe*, No. 03-22-00126-CV, 2022 WL 837956, at *1 (Tex. App.—Austin Mar. 21, 2022) (per curiam). Defendants then filed a writ of mandamus to the Texas Supreme Court, raising many of the same arguments contained in their Plea. *See* Pet. for Writ of Mandamus, at 6-10, *In re Abbott*, 645 S.W.3d 276 (Tex. 2022) (orig. proceeding), 2022 WL 945519, at *4-9. On May 13, 2022, the Texas Supreme Court left in place the Rule 29.3 temporary relief as to the *Doe* plaintiffs, implicitly rejecting many of Defendants' jurisdictional arguments. *In re Abbott*, 645 S.W.3d 276, 282-83 (Tex. 2022) (orig. proceeding). The Texas Supreme Court granted mandamus, however, to narrow the scope of the Rule 29.3 injunction to protect only the *Doe* plaintiffs and to enjoin only the Commissioner and DFPS. *Id.* Defendants' interlocutory appeal of the *Doe* Temporary Injunction remains pending before the Third Court of Appeals. *See Abbott v. Doe*, No. 03-22-00126-CV (Tex. App.—Austin filed Mar. 14, 2022).

Following that decision from the Texas Supreme Court, DFPS resumed investigating families with transgender youth based on the Abbott Directive and DFPS Rule. *See* 2 RR 52:17-22.[2] On June 8, 2022, Plaintiffs PFLAG and the Voe, Roe, and Briggle families brought this lawsuit against Governor Abbott, Commissioner Masters, and DFPS. *See* Pls.' Orig. Pet. and Appl. for TRO, Temp. and Permanent Inj., and Req. for Declaratory Relief, Cause No. D-1-GN-22-002569 (459th Dist. Ct., Travis Cnty., Tex. June 8, 2022) (hereinafter "Pet."). Plaintiffs assert six causes of action, including that Defendants' actions procedurally and substantively violated the APA, were *ultra vires*, and violated the Texas Constitution. *Id.* at 50-71, ¶¶ 212-82. Plaintiffs

[2] The transcript of the July 6, 2022 Temporary Injunction Hearing is appended to Defendants' Plea as Exhibit H. This Opposition cites to the transcript using the following citation style: 2 RR [page number: line number].

moved for a temporary restraining order and temporary injunction only under the APA and only against Defendants Masters and DFPS. *Id.* at 71-75, ¶¶ 283-96.[3]

On June 10, 2022, the Court granted Plaintiffs a temporary restraining order against the Commissioner and DFPS under the APA. *See* Temporary Restraining Order, Cause No. D-1-GN-22-002569, at 2 (459th Dist. Ct., Travis Cnty., Tex. June 10, 2022). Before the temporary injunction hearing, Defendants raised many of the same jurisdictional arguments that Defendants now assert in their Plea. *See* Defendants' Response to Plaintiffs' Motion for Temporary Injunction, Cause No. D-1-GN-22-002569 (459th Dist. Ct., Travis Cnty., Tex. July 5, 2022) (hereinafter "Defendants' TI Response"). Defendants argued that Plaintiffs' claims were not ripe, that Plaintiffs lacked standing, that their claims were barred by sovereign immunity, and that their claims lacked merit. *Id.* at 6-12. After the temporary injunction hearing, this Court issued two temporary injunctions against the Commissioner and DFPS on Plaintiffs' APA claim. On July 8, 2022, the Court granted a temporary injunction for the Voe and Roe families. Order Granting Plaintiffs Voes' and Roes' Applications for Temporary Injunction, Cause No. D-1-GN-22-002569 (459th Dist. Ct., Travis Cnty.. Tex. July 8, 2022) (hereinafter "Voe Injunction"). On September 16, 2022, the Court granted a temporary injunction for PFLAG and the Briggles. Order Granting PFLAG, Inc.'s and the Briggle Plaintiffs' Application for Temporary Injunction, Cause No. D-1-GN-22-002569 (459th Dist. Ct., Travis Cnty, Sept. 16, 2022) (hereinafter "PFLAG Injunction"). In its orders, the Court found that Plaintiffs stated a valid cause of action against Commissioner Masters and DFPS and had a substantial likelihood of success under the APA, thereby finding that Plaintiffs had standing to bring their APA claim and that their claims were ripe. *See* Voe Injunction at 2

[3] The fact that Plaintiffs sought temporary relief solely on their APA claims does not mean they have abandoned their other claims; it just means that Plaintiffs' other claims were not at issue at the temporary injunction hearing. *See infra* pp. 13-14.

(Voe and Roe "state a valid cause of action against Commissioner Masters and DFPS and have a probable right to the declaratory and permanent injunctive relief they seek"); PFLAG Injunction at 2 (same as to all Plaintiffs). The Court also expressly found "that PFLAG has standing, and the Briggle Plaintiffs[']claims are ripe, in order to pursue this matter to final trial." PFLAG Injunction at 2. The Court further recognized the probable, imminent, and irreparable injuries to Plaintiffs, including:

> [B]eing 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; the chilling of the exercise of the right of Texas parents to make medical decisions for their children relying upon the advice and recommendation of their health care providers acting consistent with prevailing medical guidelines; intrusion into the relationship between patients and their health care providers; gross invasions of privacy in the home and school, and the resulting trauma felt by parents, siblings, and other household members; outing an adolescent as transgender; adverse effects on grades and participation in school activities; fear and anxiety associated with the threat of having a child removed from the home; increased incidence of depression and risk of self-harm or suicide; having to uproot their lives and their families to seek medically necessary care in another state; being placed on the child abuse registry and the consequences that result therefrom; and criminal prosecution and the threat thereof.

Id. at 3-4; *see also* Voe Injunction at 3-4 (same). Defendants promptly appealed both temporary injunctions from this Court, and once again raised their jurisdictional arguments on appeal. *See* Defendants' Notice of Appeal, Cause No. D-1-GN-22-002569 (459th Dist. Ct., Travis Cnty., Tex. July 8, 2022); Defendants' Notice of Appeal, Cause No. D-1-GN-22-002569 (459th Dist. Ct., Travis Cnty., Tex. Sept. 16, 2022); Response to Appellees' Emergency Motion for Temporary Injunctive Relief, *Masters v. Voe*, Case No. 03-22-00420-CV (Tex. App.—Austin Aug. 1, 2022) (per curiam); Response to Appellees' Emergency Motion for Temporary Injunctive Relief, *Masters v. PFLAG*, Case No. 03-22-00587-CV (Tex. App.—Austin Oct. 6, 2022). The Third Court

of Appeals granted temporary relief under Rule 29.3 for the Voes and Roes and entered temporary relief for PFLAG and the Briggles while it considers Rule 29.3 relief. *See Masters v. Voe*, No. 03-22-00420-CV, 2022 WL 4359561, at *1 (Tex. App.—Austin Sept. 20, 2022); Order, *Masters v. PFLAG*, No. 03-22-00587-CV (Tex. App—Austin Sept. 26, 2022).

On October 14, 2022, Defendants agreed to the entry of a scheduling order for trial, which this Court signed on November 1, that includes a dispositive motion deadline of April 14, 2023. *See* Agreed Joint Motion to Enter a Level III Scheduling Order, Cause No. D-1-GN-22-002569 (459th Dist. Ct., Travis Cnty. Oct. 14, 2022) (hereinafter "Joint Motion to Enter Scheduling Order").[4] Before other agreed-upon deadlines in the scheduling order, Defendants filed the Plea at issue here.

STANDARD OF REVIEW

Where a plea to the jurisdiction challenges the pleadings, the court determines whether "the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause." *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). Pleadings are construed "liberally in favor of the plaintiffs and look to the pleaders' intent." *Id.* If a plea to the jurisdiction challenges the existence of jurisdictional facts, the court considers "relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised." *Id.* at 227. "If the evidence creates a fact question regarding the *jurisdictional issue*, then the trial court cannot grant the plea to the jurisdiction, and the fact issue will be resolved by the fact finder." *Id.* at 227-

[4] Defendants agreed to the joint motion for a scheduling order "insomuch as their motion to stay is not granted." Joint Motion to Enter Scheduling Order at n.1. And, in their motion to stay, Defendants indicated that they planned to file a plea to the jurisdiction if their stay motion was not granted. *See* Defendants' Opposed Motion to Stay, Cause No. D-1-GN-22-002569 (459th Dist. Ct., Travis Cnty. Sept. 20, 2022), at 1-2 (hereinafter "Defendants' Motion to Stay").

28 (emphasis added).

"Whether a determination of subject-matter jurisdiction can be made in a preliminary hearing or should await a fuller development of the merits of the case must be left largely to the trial court's sound exercise of discretion." *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). And while a court may consider evidence outside the pleadings to resolve jurisdictional fact issues, it must "confine itself to the evidence relevant to the jurisdictional issue." *Id.* at 555; *see also Cnty. of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002) ("In deciding a plea to the jurisdiction, a court may not weigh the claims' merits but must consider only the plaintiffs' pleadings and the evidence pertinent to the jurisdictional inquiry."). A plea to the jurisdiction "does not authorize an inquiry so far into the substance of the claims presented that plaintiffs are required to put on their case simply to establish jurisdiction." *Bland Indep. Sch. Dist.*, 34 S.W.3d at 554. In such a case, where the "inquiry is reaching too far into the substance of the claims," a trial court, "in the exercise of its broad discretion over these matters," may decide to "await a fuller development of the merits" before ruling on a plea to the jurisdiction. *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 638 (Tex. 2012).

Thus, "when a plea to the jurisdiction is filed in a case involving intertwined questions of sovereign/government immunity and the merits of a claim purportedly subsumed within an exception to sovereign/government immunity, a trial court should review the evidence under a summary judgment type standard and allow the case to move forward if there are triable issues of fact germane to the intertwined questions of the merits and jurisdiction, even if at trial a jury finds that those facts ultimately do not exist, the case fails on the merits, and consequently jurisdiction did not exist in retrospect." *Tex. Tech Univ. Health Scis.-El Paso v. Flores*, 587 S.W.3d 831, 838 n.6 (Tex. App.—El Paso 2019), *rev'd on other grounds*, 612 S.W.3d 299 (Tex. 2020). In other

words, "the genuine issue of material fact standard provides a framework within which the trial court may act in exercising its discretion; it may decide the jurisdictional issue on the plea if lack of jurisdiction is clear, or else it may defer resolving the jurisdictional issue if there are genuine issues of material fact on the intertwined jurisdictional/merits questions." *Id.*

ARGUMENT & AUTHORITIES

I. The Court should defer ruling on Defendants' Plea.

The Court should exercise its broad discretion to defer ruling on Defendants' Plea because the disputed factual aspects of their Plea are so intertwined with the merits, that resolution of such questions is better addressed *after* the parties are able to undergo the factual development necessary to answer such questions. The only purely legal jurisdictional arguments that Defendants raise have already been ruled upon, such that the Court should not entertain them *again* solely to allow Defendants an automatic stay under Tex. Civ. Prac. & Rem. Code § 51.014(a)(8) after their failure to appeal either of this Court's temporary injunction orders on that basis after raising the *same* jurisdictional arguments.

The substance of Defendants' Plea is nearly identical to that of Defendants' earlier temporary injunction response. *See* Defendants' TI Response at 6-12. Moreover, Defendants rely on essentially the same supporting evidence.[5] In issuing the Voe and PFLAG Injunctions, this

[5] With the exception of the Transcript of the July 6, 2022 Temporary Injunction Hearing, an excerpt from the DFPS Child Protective Services Handbook, and Defendants' August 15, 2022 Advisory to the Court—none of which contains any *new* facts not before the Court when it issued the temporary injunction orders—the exhibits appended to Defendants' Plea were also submitted in support of Defendants' earlier TI Response. *Compare* Defendants' Plea, Exhibits A through J *with* Defendants' TI Response, Exhibits 1 through 5 and 9 through 10. Furthermore, Defendants attempted to introduce the Declaration of Stephen Black (Ex. E to Plea) and Report of Dr. Michael Laidlaw (Ex. F to Plea), and Report of Dr. James Cantor (Ex. G to Plea) at the temporary injunction hearing, and those documents were not admitted on hearsay grounds. *See* 2 RR 173:15-16, 201:24-203:4, 203:12-204:5. These documents, (among others appended to Defendants' Plea) are not competent evidence and, in any event, are irrelevant to the jurisdictional inquiry. *See* Plaintiffs' Motion to Strike and Objections to the Evidence Attached to Defendants' Plea to the Jurisdiction, Cause No. D-1-GN-22-002569 (459th Dist. Ct. Travis Cnty., Tex. Nov. 16, 2022).

Court determined that it has subject matter jurisdiction to issue injunctive relief against the Commissioner and DFPS and expressly found that PFLAG has standing and the Briggle Plaintiffs' claims are ripe. *See* Voe Injunction at 2-3; PFLAG Injunction at 2-3. Defendants elected to appeal both temporary injunction orders under Texas Civil Practice and Remedies Code § 51.014(a)(4), which does not trigger an automatic stay of trial court proceedings. *See* Defendants' Notice of Appeal, Cause No. D-1-GN-22-002569 (459th Dist. Ct., Travis Cnty., Tex. July 8, 2022); Defendants' Notice of Appeal, Cause No. D-1-GN-22-002569 (459th Dist. Ct., Travis Cnty., Tex. Sept. 16, 2022); Tex. Civ. Prac. & Rem. Code § 51.014(a)(4), (b).[6] Seemingly unhappy with that choice, Defendants now ask this Court for *yet another* ruling on issues that have already been ruled upon and are simultaneously asserted on appeal.

In their Plea, Defendants once again claim that Plaintiffs have not suffered any legally cognizable harm by focusing solely on the opening and closing of DFPS investigations. *See, e.g.*, Plea at 13. But the Court has already rejected that argument and acknowledged that not only are those unlawful investigations harmful in and of themselves, but they are only one aspect of Plaintiffs' APA claim and the myriad harms they have experienced. *See* PFLAG Injunction at 3-4 (finding that, absent injunctive relief, members of Plaintiff PFLAG, including the Voe, Roe, and Briggle families . . . will suffer probable, imminent, and irreparable injury in the interim" and enumerating those harms). Defendants' attempt to relitigate, at this preliminary stage and on the very same facts, the issue of whether Plaintiffs have established cognizable harm is improper. Defendants' remaining challenges to Plaintiffs' claims lack merit. Plaintiffs have plainly met their

[6] Defendants erroneously stated in both notices of appeal that all further trial court proceedings were stayed pursuant to Texas Civil Practice and Remedies Code § 51.014(b). In other cases, the State has appealed orders granting requests for a temporary injunction under Texas Civil Practice and Remedies Code §§ 51.014(a)(4) and 51.014(a)(8). Here, Defendants elected to appeal under § 51.014(a)(4) only.

burden of alleging facts sufficient to establish subject matter jurisdiction over their *ultra vires* and constitutional claims. *See infra* pp. 35-42.

Defendants also purport to challenge not only the pleadings, but also the existence of jurisdictional facts, which gives the Court "sound exercise of discretion" to "await a fuller development of the merits of the case." *Bland Indep. Sch. Dist.*, 34 S.W.3d at 554. Defendants' factual contentions reach too "far into the substance of the claims" and raise questions that can only be resolved through discovery. *See id.* Indeed, Defendants' Plea is filled with factual issues that are so intertwined with the merits of Plaintiffs' claims that the Court should defer ruling on Defendants' newly repackaged jurisdictional arguments. *See Cnty. of El Paso v. Aguilar*, 600 S.W.3d 62, 82 (Tex. App.—El Paso 2020, no pet.) ("[T]he discretion-to-defer issue is based on the ultimate question of whether there are apparent genuine issues of intertwined material fact . . . or potential genuine issues of intertwined material fact that have not yet been fully developed." (cleaned up)).

For example, Defendants dispute the very existence of a Rule, *see* Plea at 5-7, which is a central factual dispute that is inappropriate for the Court to resolve in Defendants' favor at this stage of the case. *See Tex. Dep't of Parks & Wildlife*, 133 S.W.3d at 226. Defendants also make numerous factual allegations regarding DFPS's implementation of the challenged Rule, but each of these contentions is a disputed issue of fact. *See* Plea at 3-4, 13, 25. Defendants cite the number of DFPS investigations into the provision of PBHT,[7] and allege that the agency closed a subset of those investigations after it confirmed "the child was not taking PBHT" or verified "that the

[7] Even the number of investigations that DFPS cites in its plea (11) conflicts with a public statement made by a spokesperson for DFPS claiming that 12 investigations have been opened. *See* Ryan Wood, *Transgender 8th grader taken out of class for questioning by Texas child welfare investigator, mom says*, WFAA (Sep. 9, 2022), https://www.wfaa.com/article/news/local/texas/transgender-student-questioned-by-texas-officials-at-school/269-5d234391-3110-4dd9-8a47-a71b999c875a.

treatments were medically necessary." *Id.* at 3, 13, 25. But there is no mention of care that is "medically necessary" in the Abbott Directive or DFPS Rule, and Defendants' bare assertion that they close investigations relating to care that is "medically necessary" is precisely the type of disputed fact that *must* be tested in discovery. Defendants also claim that "[r]eports that a child is transgender or transexual, without medical intervention, are screened and closed at intake" and "[w]hen a case is ruled out, DFPS will not investigate subsequent reports involving the same conduct." *Id.* at 3-4. Both of these statements are highly disputed facts that can only be resolved through discovery. *See infra* pp. 25-27.

Defendants also raise numerous other issues of fact properly reserved for discovery. *See, e.g.*, Plea at 20-21 ("Even if the press statement itself caused investigations (and there is no reason to think it has or will), an investigation does not affect private rights"); *id.* at 21 ("Even if the Governor's letter prompted DFPS to make its decision, there is no chance DFPS mistakenly believed it was bound by that letter"); *id.* at 15 ("At most, the alleged rule authorizing DFPS investigations does no more than permit DFPS to conduct investigations"). Far from disproving jurisdiction, Defendants' sweeping assertions simply highlight questions of fact that give reasons for this Court to "await a fuller development of the case" and allow the "fact issue[s] [to] be resolved by the fact finder." *Tex. Dep't of Parks & Wildlife,* 133 S.W.3d at 227-28.

Defendants' attempt to factually distinguish the DFPS investigation into the Voe family from the Roes and Briggles has no merit and raises factual questions properly reserved for discovery. Plea at 4, 13.[8] Defendants' assertion that DFPS "generally does not have the authority

[8] Specifically, Defendants insinuate that Wanda Voe's refusal to turn over private and confidential medical records to the state may be due to her fear of DFPS discovering wrongdoing. *See* Plea at 3. This argument about Ms. Voe's mindset is speculative. Furthermore, Defendants' Plea is misleading because the Roe and Briggle families also refused to provide medical records to DFPS. *See* Pet., Ex. 6, p. 4, ¶ 27; Pet., Ex. 8, p. 4, ¶ 16.

to intervene in the parent-child relationship without a court order" is also misleading. *Id.* at 13. Defendants' use of the word "generally" seems to acknowledge that DFPS *can* take possession of children without a court order under certain circumstances. *See* Tex. Fam. Code § 262.104. Moreover, DFPS can still *interfere* with the parent-child relationship and violate Plaintiffs' rights in ways other than removing a child from the home, including by subjecting them to unlawful investigations, as already recognized by the Court.

Defendants also raise arguments properly reserved for the merits of this case when they claim that "PBHTs, endocrine drugs, are not approved by the FDA for use on children with gender dysphoria," Plea at 24, and "Texas law already prohibits . . . allowing, permitting or encouraging a child to use a controlled substance (*e.g.*, testosterone)," *id.* at 18. Plaintiffs' experts testified at the preliminary injunction hearing about the safety and efficacy of PBHTs and their use as part of the established course of care for gender dysphoria. *See, e.g.*, 2 RR 108:1-4, 110:1-4. Defendants' mention of testosterone as a controlled substance fails to acknowledge that the Texas Controlled Substances Act authorizes the prescription of controlled substances for a "valid medical purpose in the course of professional practice." Tex. Health & Safety Code § 481.129(c). At most, Defendants' mention of testosterone as a controlled substance raises a fact issue about how DFPS treats allegations involving the prescription of other medical treatments. All of Defendants' factual contentions highlight issues properly reserved for discovery, and none establishes a lack of jurisdiction.

As Defendants themselves have stated, they filed this Plea as a means to delay and obstruct this case from moving forward. *See* Defendants' Motion to Stay, at 1-2 (stating that, if the Court did not grant Defendants' motion to stay, Defendants would "file a plea to the jurisdiction, be

heard on the plea, and subsequently appeal that decision causing an automatic stay of the case"). Defendants' Plea is nothing more than procedural gamesmanship.

Because Defendants have failed to present a legitimate jurisdictional challenge and because the factual questions Defendants have attempted to raise are so intertwined with their jurisdictional arguments, this Court should defer ruling on their Plea at this time. In the alternative, if the Court rules on Defendants' Plea, it should deny the Plea in its entirety, for the reasons stated below.

II. Plaintiffs did not abandon any of the causes of action in their Petition.

Defendants' contention that Plaintiffs abandoned any of their claims at the temporary injunction hearing is meritless, as it is clear from the Petition and this Court's orders that Plaintiffs sought injunctive relief only for their APA claims without abandoning any other claim. Plaintiffs' exclusive focus during the hearing on those APA claims, which explicitly incorporate Plaintiffs' substantive constitutional claims, *see*, *e.g.*, Pet. at 54-58, ¶¶ 223-35, can in no way be understood as an abandonment of any other claim.

Indeed, in order to establish the abandonment of any claim, Defendants would need to show the existence of a "stipulation," which is an agreement, admission, or concession made in a judicial proceeding by the parties or their attorneys. *Laredo Med. Grp. v. Jaimes*, 227 S.W.3d 170, 174 (Tex. App.—San Antonio 2007, pet. denied) (citing *Shepherd v. Ledford*, 962 S.W.2d 28, 33 (Tex. 1998)). If a stipulation is ambiguous or unclear, it should be disregarded by the trial court. *Id.*; *Mann v. Fender*, 587 S.W.2d 188, 202 (Tex. Civ. App.—Waco 1979, writ ref'd n.r.e.). In construing a stipulation, a court must determine the intent of the parties from the language used in the entire agreement, examining the surrounding circumstances, including the state of the pleadings, the allegations made therein, and the attitude of the parties with respect to the issue. *Laredo*, 227 S.W.3d at 174.

Defendants can point to no such stipulation and Plaintiffs' intent to pursue all the claims set forth in the Petition is abundantly clear, both on the face of the operative pleadings and throughout Plaintiffs' conduct of this litigation. As Plaintiffs' claims other than those arising under the APA, including those for declaratory and permanent injunctive relief, were not at issue at the temporary injunction stage, *see* Pet. at 71-75, ¶¶ 283-96, no negative inference about those claims can be drawn from arguments made at the hearing. Plaintiffs have never amended their Petition or entered any agreement to remove their non-APA claims. To the contrary, after the hearing, the Parties entered an agreed scheduling order, which specifically provides for discovery, a trial date, and a deadline to amend the Parties' pleadings *in the future*, on or before January 23, 2023. *See* Joint Motion to Enter Scheduling Order. Neither a pleading amendment, nor any written stipulation purporting to abandon claims or to narrow the issues at trial, has ever been filed with the Court.

There is simply no basis to suggest that Plaintiffs abandoned any of their claims at the temporary injunction hearing. Defendants misleadingly pick quotes from the record that do not give rise to any possible abandonment of claims. And, even if Defendants were somehow correct, their contentions at most demonstrate ambiguity, which the Court must construe in favor of non-abandonment.

III. Plaintiffs allege a redressable injury in fact to confer standing.

Defendants incorrectly contend that Plaintiffs lack standing "because the DFPS investigations, and the purported rule authorizing them, do not, in and of themselves, interfere with, impair or threaten the legal rights of Plaintiffs." Plea at 15. They also mischaracterize Plaintiffs' injuries as limited solely to "being the subject of DFPS investigations, or their fear that they might become the subject of a DFPS investigation." *Id.* But Plaintiffs' allegations must be read as pleaded. *See Davis v. Burnam*, 137 S.W.3d 325, 331 (Tex. App.—Austin 2004, no pet.). Furthermore, Defendants offer no evidence to dispute, much less negate, the existence of the

specific harms Plaintiffs allege in their Petition and establish through their declarations and testimony. Instead, Defendants make the *legal* argument that the harms inherent in unlawful DFPS investigations are not cognizable injuries sufficient to confer standing. That argument fails.

All Plaintiffs have standing[9] because they "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 485 (Tex. 2018) (citation omitted). Unlawful investigations constitute a legally cognizable harm, and Defendants' unauthorized expansion of statutory terms, unlawful rulemaking, and subsequent enforcement have caused—and absent injunctive relief will continue to cause—Plaintiffs significant, ongoing, and irreparable harm beyond the process or results of any investigation.[10]

Unequal treatment and deprivation of individual rights are judicially cognizable injuries. *See, e.g.*, *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993) ("The 'injury in fact' in an equal protection case . . . is the denial of equal treatment resulting from the imposition of the barrier," not the ultimate outcome). By categorically redefining child abuse to include the provision of medical treatment for gender dysphoria to adolescents, Defendants violated Plaintiffs' right to due process, Pet. at 67-68, ¶¶ 272-74, deprived Plaintiff parents of their fundamental rights to consent to medical care for their children, Pet. at

[9] Defendants do not challenge PFLAG's associational standing. As this Court already ruled, PFLAG plainly meets the test for associational standing: (1) PFLAG's members, including the Plaintiff families, have standing to sue in their own right; (2) the interests PFLAG seeks to protect are germane to its organizational purpose; and (3) neither the claims PFLAG asserts nor the relief it seeks requires the participation of its individual members in the lawsuit. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 447 (Tex. 1993); *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

[10] When multiple plaintiffs seek similar relief, the Court need only find one plaintiff to have standing. *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 6 (Tex. 2011).

68-69, ¶¶ 275-78, and violated the minor Plaintiffs' right to equality under the law, Pet. at 69-71, ¶¶ 279-82.

Under Texas law, "[i]t is axiomatic that parents enjoy a fundamental right to the care, custody, and control of their children. . . . This right includes the right of parents to give, withhold, and withdraw consent to medical treatment for their children." *T.L. v. Cook Children's Med. Ctr.*, 607 S.W.3d 9, 43 (Tex. App.—Fort Worth 2020, pet. denied). Texas law recognizes that "parents are presumed to be appropriate decision-makers, giving parents the right to consent to their [child's] medical care." *Miller ex rel. Miller v. HCA, Inc.*, 118 S.W.3d 758, 766 (Tex. 2003). Parents have not only a natural right, but a "'high duty' to recognize symptoms of illness and to seek and follow medical advice" for their child. *Parham v. J.R.*, 442 U.S. 584, 602-04 (1979); *see also* Tex. Fam. Code § 151.001(a)(3) (parents have the right and duty "to support the child, including providing the child with . . . medical and dental care").

Additionally, under the Texas Constitution, all persons "have equal rights," Tex. Const. art. 1, § 3, and "[e]quality under the law shall not be denied or abridged because of sex." *Id.*, art. 1, § 3a. The United States Supreme Court has explained that "discrimination based on . . . transgender status necessarily entails discrimination based on sex." *Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731, 1747 (2020); *cf. Tarrant Cnty. Coll. Dist. v. Sims*, 621 S.W.3d 323, 329 (Tex. App.—Dallas 2021, no pet.) ("[W]e must follow *Bostock* and read the [Texas Commission on Human Rights Act's] prohibition on discrimination 'because of . . . sex' as prohibiting discrimination based on an individual's status as a . . . transgender person.").[11]

[11] Defendants argue that "neither the Governor's letter nor the DFPS statement mentions transgender youth, much less suggests that they should be treated differently than non-transgender youth," and that "the distinction made is not based on transgender status, but rather on the age of the individual and/or the individual's medical diagnosis." Plea at 24. Such argument is unavailing because, even if true, treatment for gender dysphoria is only sought by transgender individuals. *See Brandt by & through Brandt v. Rutledge*, 47 F.4th 661, 670 (8th Cir. 2022) ("The biological sex of the minor patient is the basis on which

Defendants' actions prevent Plaintiff parents from consenting to medically necessary care, abridging their fundamental rights and duties as parents and preventing the minor Plaintiffs from accessing medically necessary care based solely on their identity as transgender adolescents. *See* Pet. at 68-71, ¶¶ 275-82. Plaintiffs have plainly alleged—and Defendants do not dispute—that Antonio Voe, Tommy Roe, M.B., Whitley Poe, and M.S. were diagnosed with gender dysphoria, and that their respective doctors recommended medical care to treat their gender dysphoria. *See* Pet. at 36, ¶ 119; Pet. at 41, ¶ 155; Pet. at 47, ¶ 195; Pet., Ex. 1 at 1, ¶ 6; Pet., Ex. 2 at 3-4, ¶ 18; Pet., Ex. 5 at 2-3, ¶¶ 14-17; Pet., Ex. 6 at 2-3, ¶ 13. Medical treatment for adolescents with gender dysphoria is well-established and medically necessary. *See* 2 RR 83:12-25, 92:103, 93:8-16, 106:7-13, 107:20-108:18, 109:14-110:10; *see also* Pet. at 18-25, ¶¶ 46-75 (describing medical standards). And the withholding or interruption of this medically necessary care can cause "increased risk for anxiety, depression, and suicide." 2 RR 110:11-111:1. Defendants' deeming the provision of gender affirming care as constituting child abuse singles out the medically necessary care that *only* transgender youth access and subjects those youth and their parents to mandatory child abuse investigations. Defendants' actions thus violate the Plaintiff parents' fundamental rights to care for their children, and infringe on the minor Plaintiffs' constitutional right to equality. *See Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976) ("The natural right which exists between parents and their children is one of constitutional dimensions.")

Moreover, the DFPS Rule subjects Plaintiff families to a DFPS investigation whether or not they consent to specific medical care for their adolescent child. *See* Pet. at 68, ¶ 274; *see also*

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the law distinguishes between those who may receive certain types of medical care and those who may not"); *Kadel v. Folwell*, No. 1:19CV272, 2022 WL 3226731, at *20 (M.D.N.C. Aug. 10, 2022) ("Discrimination against individuals suffering from gender dysphoria is also discrimination based on sex and transgender status"); *Toomey v. Arizona*, No. CV1900035TUCRMLAB, 2019 WL 7172144, at *6 (D. Ariz. Dec. 23, 2019).

In re Abbott, 645 S.W.3d at 287 n.3 ("By essentially equating treatments that are medically accepted and those that are not, the OAG Opinion raises the specter of abuse every time a bare allegation is made that a minor is receiving treatment of any kind for gender dysphoria.") (Lehrmann, J., concurring). By seeking treatment for their children's gender dysphoria, Plaintiff parents automatically risk being subject to DFPS investigations for child abuse under Abbott's Directive and the DFPS Rule. Paradoxically, parents who refuse to provide medically necessary care for their children's gender dysphoria could cause their children significant harm and be subject to a DFPS investigation for neglect. *See* Tex. Fam. Code § 261.001(4)(A)(ii)(b) (defining "neglect" to include "failing to seek, obtain, or follow through with medical care for a child, . . . with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child").

Defendants assert that the DFPS Rule "does no more than permit DFPS to conduct investigations." Plea at 15. This framing misses the point. Plaintiffs do not challenge DFPS's general investigative authority, but rather an attempted re-definition of the statutory meaning of "child abuse" and a novel DFPS Rule that unlawfully and dramatically expanded DFPS's authority to interfere with the private medical decisions of families. The Abbott Directive and the DFPS Rule *assume* there is abuse warranting an investigation when the only allegation is that a family is providing well-established medical care to their transgender adolescent child. Neither the Texas Constitution, nor the laws and regulations applicable to DFPS, authorize such far-reaching and unprecedented government intrusion.

Defendants' effort to portray DFPS investigations into the provision of medically recommended gender-affirming care as the routine agency business of searching out abuse cannot conceal the extraordinary nature of categorically equating medically recognized care for gender

dysphoria with child abuse. Defendants have not pointed to any other instance where DFPS has assumed unbridled authority to ignore established standards of medical care and automatically investigate treatments prescribed by medical professionals as child abuse. This Court has repeatedly found that "gender-affirming care was not investigated as child abuse by DFPS until after February 22." Voe Injunction at 3; PFLAG Injunction at 3. As Plaintiffs allege in their Petition, Defendants' actions "unlawfully discriminate against transgender youth by deeming the medically necessary care for the treatment of their gender dysphoria as presumptively abuse because they are transgender when the same treatment is permitted for non-transgender youth." Pet. at 71, ¶ 282.

Defendants rely on *Gates v. Texas Department of Family & Protective Services*, 2013 WL 4487534 (Tex. App.—Austin Aug. 15, 2013, pet. denied) (mem. op.), to support their broad assertion that "DFPS *investigations* do not interfere with, impair, or threaten the legal rights or privileges of alleged perpetrators." Plea at 15 (emphasis in original). This reliance is misplaced. The plaintiff in *Gates* challenged the process and outcome of a particular *legally authorized* DFPS investigation. *Gates*, 2013 WL 4487534, at *4. By contrast, Plaintiffs here do not allege that DFPS's *specific* authorized action in any *particular* case has "legally affected" their relationship with their children, but rather that the existence of a *categorical* Rule requiring unauthorized, unwarranted, and unlawful investigations has uniformly harmed *all Plaintiffs*.

With respect to Plaintiffs' APA claim, the APA provides a cause of action for declaratory judgment if a "rule *or its threatened application* interferes with or impairs, or threatens to interfere with or impair, a legal right." Tex. Gov't Code § 2001.038(a) (emphasis added). That is precisely what Plaintiffs have alleged—namely, that DFPS's unlawful adoption of an improper rule, which is an "agency statement of general applicability" under Tex. Gov't Code § 2001.003(6)(A), has

caused or threatens to cause them harm and interfere with their legal rights. Defendants yet again misrepresent the nature of this claim, Plea at 14, but Defendants do not and cannot identify even a single instance of Plaintiffs' counsel claiming Plaintiffs were not required to show harm. On the contrary, Plaintiffs pleaded multiple harms, including, but not limited to, interference "with Plaintiff Parents' fundamental parental rights and other equality and due process guarantees of the Texas Constitution." Pet. at 57, ¶ 230. And, this Court already found based on Plaintiffs' testimony and evidence that, absent temporary injunctive relief, Plaintiffs will suffer immediate and irreparable harm. *See supra* p. 5 (quoting Voe and PFLAG Injunctions).

Lastly, Plaintiffs' injuries—as pleaded in their Petition—are traceable to "the challenged actions of the defendant[s]." *Lindig v. Pleasant Hill Rocky Cmty. Club*, No. 03-17-00388-CV, 2018 WL 3447719, at *2 (Tex. App.—Austin July 8, 2018, no pet.) (mem. op). Before Abbott's Directive and the DFPS Rule, the minor Plaintiffs did not face losing medically necessary care, and the Plaintiff families did not face family separation or the consequences of a child abuse investigation based solely on an *invalid* directive and rule. In the same vein, Plaintiffs' injuries are redressable because they flow directly from Defendants' wrongful conduct. Thus, "there is a substantial likelihood" that declaring Abbott's Directive and the DFPS Rule invalid, *ultra vires*, and unconstitutional, and enjoining DFPS from enforcing them, will remedy Plaintiffs' injuries. *Id.*

IV. Plaintiffs' claims are ripe.

Defendants' ripeness arguments provide yet another example of their gamesmanship. Defendants raised these precise claims in their Response to Plaintiffs' Application for a Temporary Injunction, Defendants' TI Response at 6-7, and this Court rejected them. In granting temporary relief to the Plaintiffs on their APA claims, this Court considered and rejected those arguments as to the Voe and Roe families and members of PFLAG, *see* Voe Injunction at 2 (Voe and Roe "state

a valid cause of action against Commissioner Masters and DFPS and have a probable right to the declaratory and permanent injunctive relief they seek"); PFLAG Injunction at 2 (same, as to all Plaintiffs), and particularly as to the Briggle family. PFLAG Injunction at 2 ("the Briggle Plaintiffs claims[] are ripe").

Each Plaintiff alleges concrete injuries stemming from Defendants' unilateral and unlawful re-definition of "child abuse" to include the medically necessary course of care their transgender adolescents have been recommended by their doctors, and from Defendants' implementation of that DFPS Rule. Plaintiffs' claims do not in any way turn on the process or outcome of any individual investigation, but rather on the unlawfulness of the Directive and Rule prompting any such investigation in the first place. Because Plaintiffs have suffered significant concrete injuries arising from Defendants' actions, and will likely suffer more, Plaintiffs' claims are constitutionally ripe.

"Ripeness . . . , like standing, emphasizes the need for a concrete injury" to determine "when [an] action may be brought," *Patterson v. Planned Parenthood of Hous. & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998), and it considers "whether, at the time a lawsuit is filed, the facts are sufficiently developed 'so that an injury has occurred or is likely to occur, rather than being contingent or remote.'" *Patel v. Tex. Dep't of Licensing & Regul.,* 469 S.W.3d 69, 78 (Tex. 2015) (citation omitted). "A claimant is not required to show that the injury has already occurred." *City of Waco v. Tex. Nat. Res. Conservation Comm'n,* 83 S.W.3d 169, 175 (Tex. App.—Austin 2002, pet. denied), *as modified on denial of reh'g* (June 21, 2002). Instead, plaintiffs may challenge governmental action if the threatened harm is "imminent, direct, and immediate, and not merely remote, conjectural, or hypothetical." *Rea v. State*, 297 S.W.3d 379, 383 (Tex. App.—Austin 2009, no pet.). Claims are ripe when an agency "has arrived at a definitive position on the issue." *Id.*

Where challenged action involves a "pure question of law" rather than "factual contingencies that have not yet come to pass," plaintiffs' claims are ripe. *Trinity Settlement Servs., LLC v. Tex. State Sec. Bd.*, 417 S.W.3d 494, 506 (Tex. App.—Austin 2013, pet. denied).

Here, Plaintiffs' claims are ripe because Defendants arrived at a definitive position—as described in the Abbott Directive and DFPS Rule—that has imposed and threatens to impose direct and immediate injuries on Plaintiffs. There is nothing "contingent or remote" about those harms. *Patel*, 469 S.W.3d at 78. Plaintiffs' injuries include the violation of Plaintiff parents' fundamental rights to care for their children, the threat to essential medical care, the violation of the equality rights of minor Plaintiffs, and more. Indeed, this Court and the Third Court of Appeals already found that temporary injunctive relief was necessary to protect Plaintiffs from imminent and irreparable harm. *See supra* p. 5 (quoting Voe Injunction and PFLAG Injunction); *Masters*, 2022 WL 4359561, at *1.

Defendants first incorrectly argue that Plaintiffs' claims are not yet ripe "because DFPS has not made an initial determination that [the Plaintiff Parents] engaged in child abuse," and therefore Defendants have "not arrived at a definitive position." Plea at 13-14. This argument continues to mischaracterize Plaintiffs' actual claims. Plaintiffs do not challenge any individualized determinations about whether a particular parent has engaged in child abuse; they challenge the Abbott Directive and DFPS Rule's re-definition of child abuse and mandated investigations pursuant thereto as *ultra vires*, violative of the APA, beyond Defendants' constitutional authority, and as infringing of their constitutional rights. The Abbott Directive and DFPS Rule themselves are the "definitive position" at issue, and their lawfulness is a question of

law. Because Defendants have taken *concrete* steps to implement the Abbott Directive and DFPS Rule, Plaintiffs' claims are unquestionably ripe for adjudication.[12]

As in *Patel*, Defendants have taken concrete actions to operationalize the Abbott Directive and implement the DFPS Rule, directly causing Plaintiffs harm and threatening more imminent and irreparable harm absent injunctive relief. And, like the plaintiff in *Texas Alcoholic Beverage Commission v. Amusement & Music Operators of Texas, Inc.*, 997 S.W.2d 651, 656 (Tex. App.—Austin 1999, pet. dism'd w.o.j.), Plaintiffs challenge DFPS's definitive position on an issue directly affecting them and exposing them to civil and criminal liability. Plaintiffs need not wait for DFPS to make initial or even ultimate determinations that Plaintiffs engaged in child abuse or seek court intervention before challenging the lawfulness of Defendants' actions. *Tex. Mut. Ins. Co. v. Tex. Dep't of Ins., Div. of Workers' Comp.*, 214 S.W.3d 613, 622 (Tex. App.—Austin 2006, no pet.) ("[T]he purpose of [APA] section 2001.038 is to obtain a final declaration of a rule's validity before the rule is applied."); *State Bd. of Ins. v. Deffebach*, 631 S.W.2d 794, 797 (Tex. App—Austin 1982, writ ref'd n.r.e.) ("One is not required to wait until [a challenged] rule is attempted to be enforced against him before he may resort to declaratory relief."); *Tex. Alcoholic*

[12] Plaintiffs' claims are also prudentially ripe. "[R]ipeness is both a question of timing, that is, when one may sue" and "a question of discretion, whether the court *should* hear the suit and not whether it *can* hear the suit." *Atmos Energy Corp. v. Abbott*, 127 S.W.3d 852, 858 (Tex. App.—Austin 2004, no pet.) (internal citation omitted). Prudential ripeness considerations include: "(1) the fitness of the issues for judicial decision; and (2) the hardship occasioned to a party by the court's denying judicial review." *Id.* Here, both weigh in favor of ripeness. First, the issues in this case are fit for determination because no further factual development is required. Plaintiffs' claims seeking declaratory relief are purely legal in nature and thus are prudentially ripe. *See City of Waco*, 83 S.W.3d at 177 (reversing dismissal of UDJA claims for ripeness where claims involved purely legal questions). Second, the hardship prong is easily satisfied. Indeed, Plaintiffs' claims are prudentially ripe for the same reasons they are constitutionally ripe: Plaintiffs allege numerous actual and imminent harms flowing from Defendants' conduct, and Plaintiffs would therefore be forced to bear hardships flowing from such conduct if their claims were dismissed on ripeness grounds.

Beverage Comm'n, 997 S.W.2d at 656 (APA challenge to invalid rules was ripe without proof of individual prosecution).

Defendants' second argument fares no better. Suggesting that Plaintiffs' claims are not ripe "because no court order has been obtained that impacts their parent-child relationship," Plea at 13, and that their claims are premature "if governmental proceedings which will impact the parties' respective rights remain pending," *id.* at 11, Defendants *yet again* misconstrue the nature of Plaintiffs' claims. This case seeks a declaration that the Abbott Directive and DFPS Rule are in violation of the APA, *ultra vires*, and unconstitutional. Such claims are ripe when "a real and substantial controversy exists involving a genuine conflict of tangible interest and not merely a theoretical dispute." *S.O. v. Univ. of Texas*, No. 03-16-00726-CV, 2017 WL 2628072, at *3 (Tex. App.—Austin June 15, 2017) (mem. op.). Resolving this case does not turn on the specifics of the resulting, improperly initiated investigations into Plaintiffs and other PFLAG members. Rather, it involves predicate, threshold issues about whether Defendants' actions are lawful.

Defendants rely on ripeness cases in which litigants challenged the way a governmental process was conducted or the ultimate outcome of an investigation. *See* Plea at 11. But none of those cases challenged the authority to conduct the underlying process itself. Plaintiffs' claims are ripe for the same reasons as those held to be ripe in *S.O. See S.O.*, 2017 WL 2628072, at *3. In that case, S.O. sought a declaration that University officials were engaging in *ultra vires* actions and were violating her constitutional rights to due process and equal protection. In reversing the trial court's dismissal, the Court of Appeals noted that S.O.'s claims challenged the authority of the University to conduct the inquiry at all, not the end result of the inquiry:

> S.O. complains not simply of the actual revocation of her degree, should that occur, but the fact that the University has put the status of her degree in question and is requiring her to defend it in a proceeding that she alleges the University officials are not

> authorized to conduct. Thus, S.O.'s pleadings seek a declaration that the University officials' conduct is *ultra vires*, not a declaration that under the facts and circumstances presented revocation is not warranted. The nature of the controversy, therefore, is whether the University officials' act of conducting a disciplinary proceeding to consider revoking S.O.'s degree is *ultra vires*, regardless of its outcome. *This controversy is neither hypothetical, contingent, nor remote.*

2017 WL 2628072, at *3 (footnote omitted) (emphasis added). This is the essence of Plaintiffs' claims as well. Regardless of the outcome or conclusion of any unwarranted DFPS investigation, Plaintiffs' claims are ripe.[13]

V. The Roe and Briggle claims are not moot.

Defendants assert that the Roe and Briggle claims are moot because DFPS closed their investigations with a finding that child abuse was "ruled out." Plea at 7-9. But this Court already properly concluded that the Briggles' claims are ripe, and therefore not moot, despite the closure of the original investigation into allegations that they provide M.B. with medical care for his gender dysphoria—an investigation that never should have happened in the first place. *See* PFLAG Injunction at 3.

[13] For these same reasons, Defendants' reliance on *Rea*, 297 S.W.3d 379, and *Gates*, 2013 WL 4487534, also misses the mark. Neither case challenged the unlawfulness of being subject to investigation in and of itself. Rea's claims challenged the process followed in the course of a *lawful* investigation, not the underlying authority of the Texas Medical Board to conduct the investigation or administrative proceedings themselves. 297 S.W.3d at 381-82. And, as noted *supra*, *Gates* similarly involved a challenge to the process and outcome of a *legally authorized* investigation. Defendants seize upon language in *Gates*, quoting *Croft v. Westmoreland Cnty. Children & Youth Servs.*, 103 F.3d 1123, 1125-26 (3d Cir. 1997), suggesting that a child abuse investigation itself does not infringe constitutional rights. *See* Plea at 12. But Defendants conveniently ignore that such principle only applies when there is a *lawful* basis for the investigation in the first place. *See Croft*, 103 F.3d at 1126 (state has no interest in interfering in parent-child relationship without a "reasonable and articulable" basis for conducting the investigation (citing *Lehr v. Robertson*, 463 U.S. 248, 254–56 (1983) (liberty interests in preserving family unit "are sufficiently vital to merit constitutional protection in appropriate cases")); *Myers v. Morris*, 810 F.2d 1437, 1462–63 (8th Cir. 1987) (parental liberty interest in maintaining family integrity may be infringed only where there is a "reasonable suspicion" abuse may have occurred). Reports of abuse pursuant to the Abbott Directive and DFPS Rule have no such reasonable basis.

On the morning of the hearing on Plaintiffs' request for a temporary restraining order, the Briggles learned that DFPS had ruled out the allegations of abuse against them and was closing their investigation. 2 RR 240:7-8. On August 8, 2022, DFPS similarly ruled out the allegations of abuse against Wanda Roe and closed out the Roe investigation. *See* Plea, Ex. I (Defendants' August 15, 2022 Advisory). Absent injunctive and permanent relief, however, the Briggle and Roe families continue to face irreparable harm from the DFPS rule, including the disruption and inability to follow the medical care recommended by each of M.B.'s and Tommy Roe's medical providers, as well as other harms identified by the Court. *See* Voe Injunction at 3-4; PFLAG Injunction at 3-4. As Defendant witness Marta Talbert testified, allegations involving gender-affirming care have been "categorically treated as Priority 2 by DFPS," which prevents them from being closed upon receipt and requires an investigation. 2 RR 232:1-233:5, 265:6-10. Thus, so long as the DFPS Rule remains in effect, M.B.'s and Tommy Roe's doctors and anyone else who supports M.B.'s and Tommy Roe's medical care in the future could be accused of abuse and subject to automatic investigation, including Wanda Roe or the Briggles themselves in the event there are allegations that their children's doctors have prescribed changes to their course of gender affirming care. *See* Ex. B (Excerpts from CPS Handbook), § 2244.1 (requiring interviews of an alleged victim of a Priority 2 report within 72 hours). The fact that investigations have been initiated against the Briggles and Wanda Roe also make them ineligible for an "abbreviated rule out" of other allegations in the future. *See* Ex. B, § 2291.1.

This Court issued the temporary injunction as to the Briggles with full knowledge that the first investigation had been closed. In so doing, this Court recognized that the DFPS Rule "interferes with or impairs—or threatens to interfere with or impair—the legal rights and privileges of the Briggle Plaintiffs, as well as the other Plaintiffs in this case." PFLAG Injunction

at 3. Similarly, the Third Court of Appeals reinstated the temporary injunction as to the Roes with full knowledge that the first investigation had been closed. *Masters*, 2022 WL 4359561, at *1. In so doing, the Third Court of Appeals recognized that Wanda Roe continues to face a threat of interference with her legal rights and privileges posed by the DFPS Rule, notwithstanding the closure of the initial investigation.

Defendants now assert that "DFPS rules and policy provide that it will not investigate Roe and Briggle again for providing PBHT to their respective children absent some additional allegation(s)." Plea at 9. But this is a disputed issue of fact properly reserved for discovery, since the very DFPS policies Defendants cite do not preclude the future investigation of the Briggles or Roes. Rather, those policies merely provide that DFPS "*may* close" a subsequent report when a prior case was closed with a ruled out finding. *See* Plea at 9 (citing 40 Tex. Admin. Code § 707.489(b)(2)(A), *id.* at § 707.489(c)(1)(A)) (emphasis added). As long as the DFPS Rule remains in effect, there is no guarantee that DFPS will not investigate these families again or investigate other "alleged perpetrators," such as doctors, therapists, or teachers, who interact with their children.[14] Therefore, the Roes' and Briggles' claims are not moot.

VI. The separation of powers doctrine does not bar Plaintiffs' claims.

Defendants next argue that Plaintiffs' claims are barred by the separation of powers doctrine. This argument is meritless and misapprehends both the nature of the separation of powers doctrine and the relief Plaintiffs seek.

[14] This situation is distinct from *Texas State Board of Veterinary Medical Examiners v. Jefferson*, No. 03-14-00774-CV, 2016 WL 768778 (Tex. App.—Austin Feb. 26, 2016, no pet.) (mem. op.). There, an administrative law judge with the Board of Veterinary Medical Examiners dismissed a complaint with prejudice, which had a binding and preclusive effect on the agency. *Id.* at *6. That decision strictly prohibited the agency from instituting new disciplinary proceedings against the plaintiff involving the dispute at issue before the court. *Id.* But here, DFPS's "rule out" letters do not have a preclusive or binding effect, nor do they address or resolve all of the harms to the Roe and Briggle families that stem from the challenged Directive and Rule.

Defendants' separation of powers argument traces its roots to the "political question" doctrine. Under that doctrine, "controversies which revolve around *policy choices* and *value determinations* constitutionally *committed for resolution to the halls of Congress or the confines of the Executive Branch*" are excluded, as nonjusticiable political questions, from judicial review. *Van Dorn Preston v. M1 Support Servs., L.P.*, 642 S.W.3d 452, 455 n. 1 (Tex. 2022), reh'g denied (Apr. 1, 2022) (quoting *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986)) (emphases added). Put more simply, "[t]he political question doctrine insulates decisions constitutionally committed to the other branches from judicial second-guessing." *Id*. at 458 (footnote omitted).

"Determination of the existence of a political question requires a 'discriminating inquiry into the precise facts and posture' of the case." *Id*. at 459–60. Specifically, it entails careful review of key factors provided by the United States Supreme Court, most critically: (1) "whether there is 'a textually demonstrable constitutional commitment of the issue to a coordinate political department'" and (2) "'a lack of judicially discoverable and manageable standards for resolving it.'" *Id*. at 455 (citation omitted).

Key to properly exercising the political question doctrine is to recognize that the doctrine "'is one of 'political questions,' not one of 'political cases[;]'" that is to say, "'[t]he courts cannot reject as 'no law suit' a *bona fide controversy* as to whether some action *denominated 'political' exceeds constitutional authority*." *Am. K-9 Detection Services, LLC v. Freeman*, 556 S.W.3d 246, 253 (Tex. 2018) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)) (emphasis added). Thus, whether the political question doctrine bars jurisdiction, "depends not at all on whether an issue is political—few statutory and constitutional issues are not at least in some sense political—but rather on whether an issue is committed to another branch of government and therefore outside the

judiciary's authority to address." *Id*. (emphasis added). If a specific issue is not committed to the exclusive purview of another branch of government, it does not raise a political question. *Id.*

Despite Defendants' claim, Plaintiffs do not ask this Court to "usurp the investigative authority and decision-making exclusively within the executive branch's authority." *See* Plea at 17. Indeed, Plaintiffs do not challenge that the authority to investigate *bona fide* child abuse allegations lies in the province of the executive branch. Nor do Plaintiffs claim that DFPS is disallowed from engaging in valid investigations of instances of child abuse. What Plaintiffs *do* complain of is that the Governor, DFPS, and Commissioner Masters have engaged in *ultra vires* conduct by unilaterally altering the applicable definition of child abuse, usurping the purview of the legislative branch, in violation of both the procedural and substantive requirements of the APA, the Texas Constitution.

The *Baker* factors demonstrate why Defendants' arguments fail. The two most important factors under that test—*i.e.*, "whether there is 'a textually demonstrable constitutional commitment of the issue to a coordinate political department'" and whether there is "'a lack of judicially discoverable and manageable standards for resolving [the question]'"—both favor Plaintiffs' position.

First, the precise question Plaintiffs ask—namely, whether the executive branch violated the Constitution when it unilaterally changed the law without the Legislature's input—is not one that is "solely" the province of the executive to decide. There is no "textually demonstrable constitutional commitment of the issue [*i.e.*, whether the executive branch violated the constitution]" to the executive branch. *See Van Dorn Preston*, 642 S.W.3d at 455 (citing *Baker*, 369 U.S. at 217)). To the contrary, if the executive branch was responsible for policing its own overreach of constitutional authority, the separation of powers doctrine would be gutted.

As to the second factor, the Court must consider whether the judiciary lacks "judicially discoverable and manageable standards for resolving" the issue. This factor also militates overwhelmingly in Plaintiffs' favor. After all, under the long-standing precedent of both the Texas and United States Supreme Courts, the judiciary *alone* is solely qualified to determine and resolve the Constitutional excesses of the other branches. *See W. Orange-Cove Consol. I.S.D. v. Alanis*, 107 S.W.3d 558, 563 n. 11 (Tex. 2003) ("The final authority to determine adherence to the Constitution resides with the Judiciary."); *see generally Marbury v. Madison*, 5 U.S. 137, 176-78 (1803).

Here, Plaintiffs seek for the Court to exercise its well-recognized power to determine whether Defendants' actions—something ostensibly denominated "political" by Defendants—exceed their constitutional authority. *Am. K-9 Detection Servs.*, 556 S.W.3d at 253. That is not a "political question," no matter how the Defendants seek to redefine what relief Plaintiffs seek and what actions Plaintiffs ask the Court to correct.

VII. Sovereign immunity does not bar Plaintiffs' claims.

Defendants have already argued multiple times that Plaintiffs' APA and *ultra vires* claims are barred by sovereign immunity. *See, e.g.*, Defendants' TI Response at 10-12. Defendants advance those same arguments here. *See* Plea at 18-22. The Court should not reconsider arguments it already rejected under the APA when it issued the Voe Injunction and PFLAG Injunction, and Defendants' bare assertion that Plaintiffs' other claims are barred because "they failed to plead a viable claim," Plea at 23, must be construed in Plaintiffs' favor at this stage of pleading.

It is well-established that (1) the APA grants original jurisdiction that waives sovereign immunity for suits alleging that a "rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff[,]" Tex. Gov't Code § 2001.038(a); *see also Tex. Dep't of Ins. v. Tex. Ass'n of Health Plans*, 598 S.W.3d 417, 421 (Tex.

App.—Austin 2020, no pet.); (2) ultra vires claims are not barred by immunity, *City of El Paso v. Heinrich*, 284 S.W.3d 366, 370 (Tex. 2009); and (3) constitutional claims are not barred by immunity, *Klumb v. Houston Mun. Employees Pension Sys.*, 458 S.W.3d 1, 13 (Tex. 2015). All of Plaintiffs' claims, therefore, are not barred by sovereign immunity.

a. The Commissioner is not immune from Plaintiffs' APA claim.

Defendants do not dispute that the APA contains an express waiver of sovereign immunity. Instead, Defendants contend the Commissioner enjoys immunity from Plaintiffs' APA claim because there is no agency "rule" subject to APA review.[15] *See* Plea at 18-20. But this Court already correctly found that "*Commissioner Masters and DFPS implemented a new rule* expanding the definition of 'child abuse' to presumptively treat the provision of gender-affirming medical care, including puberty blocks and hormone therapy, as necessitating an investigation. . . . The DFPS Rule was given the effect of a new law or new agency rule, despite no new legislation, regulation, or even agency policy." Voe Injunction at 2; PFLAG Injunction at 2. The issue of whether the DFPS Rule constitutes a "rule" within the meaning of the APA should not be relitigated at this time because there has been no further development of the record since the temporary injunction hearing.

The DFPS statement and its subsequent implementation plainly qualify as a "rule" under the APA. A rule "means 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). Courts have repeatedly acknowledged that statements by an agency that "advise third parties regarding applicable legal requirements" may constitute rules under the APA. *John Gannon, Inc. v. Tex. Dep't of Transp.*, No. 03-18-00696-CV,

[15] Defendants' Plea does not expressly assert that DFPS is immune from Plaintiffs' APA claims.

2020 WL 6018646, at *5 (Tex. App.—Austin Oct. 9, 2020, pet. denied); *see also Tex. Alcoholic Beverage Comm'n*, 997 S.W.2d at 657; *El Paso Hosp. Dist. v. Tex. Health & Human Servs. Comm'n*, 247 S.W.3d 709, 714 (Tex. 2008).

Defendants assert that the DFPS Rule is just a "press statement," that did not "implement[], interpret[], or prescribe[] a *new* law or policy." Plea at 18-19. But Plaintiffs do not merely challenge an agency spokesperson's informal views or the restatement of existing law. Rather, Plaintiffs challenge the announcement and implementation of a *new* DFPS enforcement policy. According to DFPS itself, there were "no pending investigations of child abuse involving the procedures described in [the Paxton] opinion" before Abbott's Directive; yet, going forward, DPFS *will* investigate reports of procedures outlined in Abbott's Directive as child abuse. Ex. A at 1 ¶ 2. DFPS's announcement that it would comply with Abbott's Directive and "investigate[]" any reports of the procedures outlined in the directives without regard to medical necessity, *id.*, plainly describes *new* DFPS procedures concerning the investigation of gender-affirming care.

Defendants insist that the DFPS Rule does not reflect new policy because it was implemented in reliance on the Attorney General Paxton's interpretation of existing law. *See* Plea at 18-20. But the APA does not exempt state agencies from the formal rulemaking process as long as they invoke an attorney general opinion. The Family Code plainly requires DFPS to follow rulemaking procedures when adopting standards regarding the investigation of suspected child abuse. *See, e.g.*, Tex. Fam. Code § 261.301(d) ("The executive commissioner shall *by rule* assign priorities and prescribe investigative procedures for investigations . . . .") (emphasis added); *id.* at § 261.310(a) ("The executive commissioner shall *by rule* develop and adopt standards for persons who investigate suspected child abuse or neglect at the state or local level.") (emphasis added). Those procedures were not followed before the Commissioner announced that DFPS would—and

did—investigate reports of gender-affirming care as "child abuse." Moreover, the Attorney General's opinion is non-binding, *Tex. Ass'n of Acupuncture & Oriental Med. v. Tex. Bd. of Chiropractic Examiners*, 524 S.W.3d 734, 745 n.6 (Tex. App.—Austin 2017, no pet.), and Plaintiffs are entitled to challenge the DFPS Rule's adoption of that opinion as violative of both DFPS's enabling statute and Plaintiffs' constitutional rights. Regardless of whether the Commissioner announced and implemented the DFPS Rule in response to the Attorney General opinion and the Abbott Directive, she was required to comply with the procedural and substantive requirements of the APA.

Furthermore, the DFPS Rule is (1) generally applicable to all investigations involving medical care for adolescent gender dysphoria and (2) binding. After DFPS announced it would follow Abbott's Directive, DFPS instructed investigators to treat reports of gender-affirming care differently from other abuse allegations. *See* Ex. C (Agenda for Leadership Meeting 2.24.2022), ¶ 2B; 2 RR 136:2-16, 137:21-138:2. This dramatic shift in agency standards applies to and affects the rights of a class of persons—parents of transgender children—as well as healthcare providers and members of the general public. *See, e.g.*, *El Paso Cnty. Hosp. Dist.*, 247 S.W.3d at 714 (holding statement of Health and Human Services Commission was generally applicable because it applied to "all hospitals"); *Combs v. Entm't Publications, Inc.*, 292 S.W.3d 712, 718, 721-22 (Tex. App.—Austin 2009, no pet.) (holding Comptroller's statements constituted "rule" under APA because it applied to all persons and entities similarly situated). The new rule is also binding—DFPS now *requires* investigation into gender-affirming care, without exception, and it cannot be designated a lower level of priority. *See* 2 RR 137:21-138:2.

Defendants argue, in the alternative, that the DFPS Rule falls within the APA's "internal management exception." *See* Plea at 20-21. However, this exception applies only to "statement[s]

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). The DFPS Rule unquestionably affects private rights and procedures. The DFPS Rule provides that DFPS *will* implement Abbott's Directive and investigate allegations of gender-affirming care as "child abuse" according to the new definition formulated by the Paxton Opinion, without regard to medical necessity, based *solely* on an allegation that medical treatment is provided. Moreover, Defendants' own cited authority acknowledges that the APA's "internal management" exception does *not* apply where there is "some attempt by the agency to enforce its statement against a private person." *Brinkley v. Tex. Lottery Comm'n*, 986 S.W.2d 764, 770 (Tex. App.—Austin 1999, no pet.). Once, as here, an agency attempts or threatens to enforce the statement against a private party, "an affected person may challenge . . . the validity or applicability of the agency statement on whatever grounds may be applicable." *Id.*

Defendants' contrary argument that "an investigation does not affect private rights" is wrong as a matter of both law and fact. Plea at 20-21. All parents in Texas have the right to be free from DFPS investigation outside the mandate the Legislature extended to DFPS to investigate child abuse, in recognition that unlawful investigations are themselves harmful. *See supra* pp. 15-19. Defendants ignore that the DFPS Rule impedes parents' ability to seek medically necessary care for their transgender adolescents (abridging their fundamental rights and duties as parents) and prevents transgender adolescents from accessing medically necessary care (abridging their fundamental right to equal protection under the law). *See supra* pp. 15-19. This case thus stands in sharp contrast to Defendants' cases where the challenged agency rules were not binding and did not affect private rights. *See Slay v. Tex. Comm'n on Env'l Quality*, 351 S.W.3d 532, 546 (Tex. App.—Austin 2011, pet. denied) (citing evidence that "TCEQ commissioners were not *bound* to

follow [new policy] when exercising their legislatively conferred discretion to impose penalties") (emphasis in original); *Tex. Dep't of Pub. Safety v. Salazar*, 304 S.W.3d 896, 905 (Tex. App.—Austin 2009, no pet.) (policy regarding appearance of licenses had no effect on litigants because vertical licenses remained valid).

Because the DPFS Rule satisfies all elements of a "rule" under the APA and the internal management exception does not apply, sovereign immunity is waived as to Defendants' APA claim against the Commissioner.

b. Plaintiffs have pleaded viable *ultra vires* claims, which are not barred by sovereign immunity.

"[A]n action to determine or protect a private party's rights against a state official who has acted without legal or statutory authority is not a suit against the State that sovereign immunity bars." *Heinrich*, 284 S.W.3d at 368 (quoting *Fed. Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 404 (Tex. 1997)). State action is without legal authority if it exceeds the bounds of authority granted to the actor or conflicts with the law itself. *Matzen v. McLane*, No. 20-0523, --- S.W.3d ---, 2021 WL 5977218, at *4 (Tex. Dec. 17, 2021). Because Plaintiffs have pleaded viable *ultra vires* claims against the Governor and Commissioner Masters, Pet. at 58-63, ¶¶ 236-55, those claims are not barred by sovereign immunity.

1. Governor Abbott.

In issuing the Abbott Directive, the Governor acted without statutory or legal authority. As the Texas Supreme Court explained, the Governor lacks "statutory authority to directly control DFPS's investigatory decisions." *Abbott*, 645 S.W.3d at 281. To try to escape this conclusion, Defendants claim that the Governor did nothing more "send a letter to DFPS." Plea at 21. But the Governor did not merely "express [his] views on DFPS's decisions and . . . seek, within the law, to influence those decisions." *Abbott*, 645 S.W.3d at 281. Instead, in plain violation of his statutory

authority, he sought to directly control DFPS's investigatory decisions. *See* Plea, Ex. D, p. 1, ¶ 1 ("*I hereby direct* your agency to conduct a prompt and thorough investigation of any reported instances of these abusive procedures in the State of Texas.") (emphasis added).

In so doing, the Governor acted without legal authority. Under the Texas Constitution, the Governor neither makes the law, nor possesses the authority to suspend the law. *See* Tex. Const. art. 1, § 28. Child abuse is defined by statute in the Texas Family Code, as is DFPS's investigatory authority. *See* Tex. Fam. Code §§ 261.001 (defining child abuse), 261.301 (outlining DFPS's investigatory authority). The Governor cannot change this law. The Governor only administers the law pursuant to the general grant to "cause the laws to be faithfully executed." Tex. Const. art. 4, § 10. Disregarding these explicit constraints on his authority and in accordance with his promise to achieve what the Texas Legislature did not, the Governor—by declaring that the provision of gender-affirming care to minors "constitutes" child abuse and by directing DFPS to conduct "prompt and thorough investigation[s]" thereof—exceeded his legal authority.

The Governor also exceeded his legal authority by directing, under threat of legal prosecution, "all licensed professionals who have direct contact with children" as well as "members of the general public" to report instances of minors receiving gender-affirming care. *See* Plea, Ex. D, p. 1, ¶ 1. The Legislature alone can establish new criminal offenses and associated penalties. *See* Tex. Const. art. 2, § 1; *Martinez v. State*, 323 S.W.3d 493, 501 (Tex. Crim. App. 2010) ("Our Legislature, which 'declares the public policy of the state,' holds the exclusive power to make law."); *Diaz v. State*, 68 S.W.3d 680, 685 (Tex. App.—El Paso 2000, pet. denied) (explaining that the "power to make, alter, and repeal laws" lies with the state legislature and is "plenary"). Here, the Legislature considered several bills to broaden the definition of child abuse but declined to do so. *See* Senate Bill 1646, House Bills 68 and 1399. By establishing a new

definition of "child abuse" under Texas Family Code Section 261.001, the Governor did what the Legislature did not: establish a new criminal offense.

Lastly, Defendants contend that, even if the Governor acted *ultra vires*, those actions did not cause Plaintiffs' injuries. *See* Plea at 21. But even a cursory review of Plaintiffs' Petition and the record reveals that Plaintiffs' injuries are fairly traceable to the *Governor's ultra vires* and unconstitutional directives. Abbott's Directive triggered a sea-change in DFPS policy. Before Abbott's Directive, DFPS had never investigated medically necessary treatment of adolescents with gender dysphoria, standing alone, as suspected child abuse. *See* Ex. A at 1 ¶ 2; Pet. at 9, ¶ 21; 2 RR 228:13-17, 266:4-8. But immediately after the Directive, DFPS launched new investigations based solely on reports of medically necessary treatment to transgender adolescents. *See* Pet. at 8-10, ¶¶ 20, 23, 27; 2 RR 40:16-22, 147:15-148:5, 148:24-149:19. Plaintiffs also allege that Abbott's Directive violated their constitutional rights to due process, deprived the Plaintiff Parents of their parental rights, and violated the guarantee of equal rights and equality under the law. Pet. at 67-71, ¶¶ 272-82. Plaintiffs thus seek relief tailored to the Governor's unlawful act and resulting harm—a declaration that the Abbott Directive is ultra vires and unconstitutional. Pet. at 77, ¶ 298(e). Thus, Plaintiffs' declaratory judgment claim that the Governor acted *ultra vires* is not barred by immunity.

2. Commissioner Masters

Like the Governor, the Commissioner exceeded her legal and statutory authority, which is circumscribed and limited to those powers granted by the Legislature. The Commissioner's statutory powers include the ability to "adopt rules and policies for the operation of and the provision of services by the department," Tex. Hum. Res. Code § 40.027(e), but the Legislature tempered this power by requiring DFPS to abide by the APA, *see id.* at § 40.006(a). No other enumerated power exempts the Commissioner from following APA procedures, permits her to

create new agency rules by fiat, or enables her to immediately refashion laws and policies in response to gubernatorial directive. *See id.* at § 40.027(a)-(d). By enacting a new investigatory rule pursuant to Abbott's Directive and promptly enforcing that rule without following procedural and substantive APA requirements, the Commissioner acted without legal or statutory authority. This Court, in fact, already found that "[t]he DFPS Rule was adopted without following the necessary procedures under the APA, is contrary to DFPS's enabling statute, is beyond the authority provided to the Commissioner and DFPS, and is otherwise contrary to law, as alleged in Plaintiffs' Petition." Voe Injunction at 2-3; PFLAG Injunction at 2-3.

Defendants' contrary argument that the Commissioner's actions were statutorily authorized conflicts with this Court's prior findings and lacks any merit. The Family Code requires DFPS to investigate reports of child abuse and neglect. Tex. Fam. Code § 261.301(a). But it does not permit, much less require, DFPS to investigate "a parent's reliance on a professional medical doctor for medically accepted treatment" as child abuse. *Abbott*, 645 S.W.3d at 287 n.3 ("By essentially equating treatments that are medically accepted and those that are not, the OAG Opinion raises the specter of abuse every time a bare allegation is made that a minor is receiving treatment of any kind for gender dysphoria.") (Lehrmann, J., concurring). Rather, DFPS policy acknowledges that caseworkers are not qualified to decide whether medical issues qualify as child abuse or neglect. *See* Ex. B, § 2232.1. Thus, it is unsurprising that Defendants have identified no other circumstances under which DPFS automatically investigates an entire category of prescribed medical treatments to determine whether a child's course of treatment constitutes abuse.

Furthermore, Plaintiffs do not challenge a mere exercise of discretion.[16] The DFPS Rule

[16] Neither *Hall v. McRaven*, 508 S.W.3d 232 (Tex. 2017), nor *Schroeder v. Escalera Ranch Owners' Ass'n, Inc.*, 646 S.W.3d 329, 335 (Tex. 2022), supports Defendants' position. Irrespective of whether the Commissioner made a "legal mistake" when she "agreed with the Governor's and Attorney General's interpretation of the law," Plea at 22, she acted without legal and statutory by implementing a new agency

improperly *narrows* DFPS's exercise of discretion and creates a presumption of abuse for conduct that previously was not investigated as child abuse. While DFPS investigations may involve discretionary determinations about whether a particular report of potential abuse warrants investigation, the law *requires* DFPS to adopt rules governing those investigations under the APA, Tex. Hum. Res. Code § 40.006(a). Here, the Commissioner and DFPS deviated from this required practice, improperly circumvented the APA, and, as a result, exceeded their rulemaking authority.

c. Sovereign immunity does not bar Plaintiffs' constitutional claims.

"Sovereign immunity does not bar a suit to vindicate constitutional rights." *Klumb*, 458 S.W.3d at 13. It thus follows that a trial court may grant a governmental entity's plea to the jurisdiction asserting immunity *only* where a "plaintiff's constitutional claim is facially invalid" and the pleading defects cannot be cured by amendment. *City of Houston v. Johnson*, 353 S.W.3d 499, 504-05 (Tex. App.—Houston [14th Dist.] 2011, pet. denied). Here, Plaintiffs' constitutional claims—as pleaded in their Petition— are facially valid and, therefore, not barred by immunity.

1. Separation of Powers

Plaintiffs have pleaded viable separation of powers claims against both the Governor and the Commissioner. Plaintiffs allege that, in issuing the Abbott Directive, the Governor violated the separation of powers established by Article II of the Texas Constitution[17] by (1) unlawfully instructing DFPS to implement and enforce an overbroad interpretation of "child abuse" in contravention of the plain meaning of Texas Family Code § 261.001 and despite the state

rule without complying with the APA. When an official acts outside the scope of their discretion and in conflict with the law, as did the Commissioner here, the suit is not barred by sovereign immunity. *Heinrich*, 284 S.W.3d at 370.

[17] Unlike the U.S. Constitution, the Texas Constitution contains an express Separation of Powers provision. Texas courts have "given weight to this distinction," noting that the textual difference "suggests that Texas would more aggressively enforce separation of powers between its governmental branches than would the federal government." *Ex parte Perry*, 483 S.W.3d 884, 894 (Tex. Crim. App. 2016) (quotations and citations omitted).

Legislature's recent decision not to adopt such a definition, and (2) criminalizing conduct by adding a new definition of "child abuse" under Texas Family Code § 261.001. *See* Pet. at 64-67, ¶¶ 256-71. Plaintiffs further allege that such conduct violates state constitutional separation of powers because the power to make, alter and repeal laws, including the power to define crimes and prescribe penalties, lies with the state Legislature. *See id.*; *see also supra* pp. 36-37.

Defendants claim that "the separation of powers doctrine does not bar the Governor from writing to an agency head that the agency should follow the law as set forth in an Attorney General opinion." Plea at 23. But, as previously explained, the Governor did not merely express his views on DFPS's decisions; he sought to directly control them. *See supra* pp. 35-36.

Defendants' related contention that the Governor and the Commissioner did not redefine the law when they purportedly interpreted and enforced the "existing definition of abuse provided in the Family Code" would render the legislative process a nullity. Plea at 23. If such conduct were permissible, the Governor and the Commissioner could simply "interpret" existing law to enact legislative policy previously rejected by the Legislature. The Texas Constitution does not vest either the Governor or the Commissioner with such authority.

2. Equal Protection

Plaintiffs have pleaded viable equal protection claims against all Defendants. Plaintiffs allege that: (1) the Abbott Directive and DFPS Rule classify based on both transgender status and sex: (2) the Abbott Directive and DFPS Rule and implementation thereof unlawfully discriminate against transgender youth by deeming the medically necessary care for the treatment of their gender dysphoria presumptively abusive because they are transgender when the same treatment is permitted for transgender youth; (3) the Abbott Directive and DFPS Rule single out for prohibition only medical treatment for gender dysphoria; and (4) the Abbott Directive, DFPS Rule, and

implementation thereof subject transgender youth and their families alone to immense harms. Pet. at 69-71, ¶¶ 279-82.

Defendants do not—and cannot—dispute that sex and transgender status are protected classes that support an equal protection challenge. Instead, they claim that there can be no equal protection violation because the Abbott Directive and DFPS Statement do not expressly use the word "transgender" and any distinction they have drawn is based on age and medical status rather than transgender status. *See* Plea at 24. But the viability of an equal protection claim does not turn on whether Defendants referenced a protected class by name. As noted *supra*, n. 11, courts have regularly recognized that discrimination against people with gender dysphoria is a proxy for discrimination based on sex and transgender status. The Abbott Directive and DFPS Rule treat the provision of gender-affirming care *to transgender adolescents alone* as presumptively grounds for a child abuse investigation. Because the minor Plaintiffs have sufficiently alleged that they have been denied equality under the law on the basis of their membership in protected class, their equal protection claims are not barred by immunity.

3. Void for Vagueness

Plaintiffs have pleaded viable due process vagueness claims against the Governor and Commissioner. Plaintiffs allege that the Abbott Directive and DFPS Rule adopting, implementing, and enforcing an overbroad interpretation of "child abuse" under the Texas Family Code fail to provide parents of transgender youth with fair notice of how their efforts to provide for the medical needs of their children will be assessed, what standards apply, and how to avoid criminal penalty. *See* Pet. at 67-68, ¶¶ 272-74. Defendants observe that the Paxton Opinion "states that it did not address medically necessary treatment." Plea at 25. But the subjects of Plaintiffs' challenge—the Abbott Directive and DFPS Statement—require investigation of "gender-transitioning procedures" without regard to medical necessity. Plea, Ex. D at p. 1, ¶¶ 1, 3; Ex. A at p. 1 ¶ 2. And

DFPS's conclusory assertion that it has "ruled out all investigations upon a showing of sufficient evidence that the child's treatment provider deems the provision of PBHT to them to be medically necessary," Plea at 25, is precisely the type of disputed fact that must be tested in discovery and, in any event, has nothing to do with whether the Directive and Rule are unconstitutionally vague. Defendants' argument thus fails.

4. Substantive Due Process

Plaintiffs have also pleaded a viable substantive due process claim. Plaintiffs allege that (1) Plaintiff Parents' right to care for their children is a fundamental liberty interest, (2) that Defendants have violated that fundamental liberty interest by deeming the provision of medically necessary care to their children to be child abuse, and (3) that this infringement is not justified by any legitimate state interest, let alone a compelling state interest. Pet. at 68-69, ¶¶ 275-78. Defendants are wrong that *unlawful* DFPS investigations do not interfere with parental rights. *See supra* pp. 16-19. And the Texas Supreme Court has *not* "considered and rejected" Plaintiffs' substantive due process claim, as Defendants assert. *Abbott*, 645 S.W.3d at 283 (deciding mandamus petition "[w]ithout commenting on the merits of any party's claims or defenses); *see also id.* at 284-85 (emphasizing that the Court's "narrow decision" did not affect the merits of plaintiffs' underlying claims) (Lehrmann, J., concurring).

d. Defendants' UDJA argument is unavailing.

Defendants' UDJA argument is a red herring. *See* Plea at 26; Defendants' TI Response at 12 (reciting identical argument). Plaintiffs do not rely on the UDJA's limited immunity waiver to establish jurisdiction for their claims. Rather, jurisdiction is established because the APA expressly waives immunity for Defendants, Plaintiffs' *ultra vires* claims fall within a well-established exception to sovereign immunity, and sovereign immunity does not bar constitutional claims. Because Plaintiffs' claims fall either within a statutory immunity waiver or an exception to the

doctrine of sovereign immunity, the fact that the UDJA itself does not *also* waive immunity is irrelevant.

CONCLUSION AND PRAYER

For the foregoing reasons, Plaintiffs respectfully request that the Court defer ruling on Defendants' Plea to the Jurisdiction. If the Court rules, Plaintiffs request that Defendants' Plea to the Jurisdiction be DENIED in its entirety. Plaintiffs also request any further relief to which they are justly entitled.

Date: November 16, 2022

Respectfully submitted,

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****Pro hac vice granted or pending***

CERTIFICATE OF SERVICE

I hereby certify that, on November 16, 2022, all counsel of record who are deemed to have consented to electronic service are being served with a copy of Plaintiffs' Response to Defendants' Plea to the Jurisdiction via the Court's CM/ECF system.

/s/ Maddy R. Dwertman
Maddy R. Dwertman

EXHIBIT A

Statement on Governor's Letter/AG Opinion

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.

EXHIBIT B

Texas Department of
Family and Protective Services

Child Protective Services Handbook

2200 Basic Investigation Process

2210 General Provisions

CPS September 2017

Ongoing Child Safety Assessment

The caseworker must assess child safety throughout the investigation.

Staff At Any Time

The caseworker may staff an investigation with the supervisor or program director at any time.

Definition of Parent

As used in policy, the term parent generally refers to a person legally responsible for the child.

Reporter Confidentiality

The caseworker must not reveal the identity of the reporter except to law enforcement or other entities charged with investigating abuse and neglect.

DFPS Rules 40 TAC §700.203

Texas Family Code §261.101(d)

CPS Actions When Danger to a Child is Present

If danger to a child is present at any point during an investigation, the caseworker must staff with the supervisor and take one of the actions described in 3200 CPS Actions When Danger to a Child is Present.

CPS Actions When a Child or Principal Cannot Be Located

If a child or principal cannot be located at any point during an investigation and this prevents the caseworker from gathering enough information or taking action to ensure child safety, the caseworker must staff with the supervisor and follow the actions described in 3100 When a Child Who is With His or Her Family Cannot be Located.

Uncooperative Principal

- Is a type of case handled by a local CAC according to the local CAC's working protocols.
- A child fatality in which there are surviving children in the deceased child's household or under the supervision of a caregiver involved in the child fatality.

Before making any contact with the child, DFPS must attempt to contact the CAC to jointly determine the multidisciplinary team's response and whether a forensic interview of the child is appropriate.

If DFPS cannot reach the CAC before the timeframe in which DFPS must make contact with the child, DFPS must document all efforts to contact the CAC. After making contact with the child to ensure child safety, DFPS must continue to make efforts to contact the CAC to determine the multidisciplinary team's response and whether a forensic interview of the child is appropriate based on the child's age and development, and the CAC's working protocol.

If the county is not served by a local CAC, DFPS may refer the case to a center in an adjacent county to initiate a response by the multidisciplinary team and schedule a forensic interview, if appropriate.

Texas Family Code §264.4061

2232 Making a Referral to the Forensic Assessment Center Network

CPS October 2021

DFPS is required by statute to contract with Texas medical schools and hospitals that comprise the Forensic Assessment Center Network (FACN). FACN includes physicians who specialize in child abuse and neglect. The goal of the network is to make medical professionals with expertise in child abuse and neglect more readily available to advise caseworkers in cases with complicated medical issues.

The network provides all of the following:

- Case consultation.
- Forensic assessment (including medical evaluations).
- Training about issues surrounding child abuse and neglect.
- The following types of testimony for court proceedings:
  - In cases where FACN physically evaluated a child, the FACN physician may testify as a medical witness.
  - In cases where FACN only reviews records, the FACN physician may testify as an expert witness.

DFPS staff in the following divisions have access to the FACN:

- Child Protective Investigations (CPI)
- Alternative Response (AR)
- Conservatorship (CVS)
- Family-Based Safety Services (FBSS)

While CPI and AR primarily use the FACN as a resource, all programs have access and can use the FACN.

When FACN Reports Abuse or Neglect

If an FACN health care practitioner makes a report of abuse or neglect of a child, that health care practitioner cannot be used to also conduct a forensic assessment on the same child. The caseworker may still interview the original health care practitioner as a principal or collateral.

If an FACN health care practitioner makes a report, this does not disqualify other FACN health care practitioners from conducting the forensic assessment.

For definition of *health care practitioner*, see the CPS Handbook's Definitions of Terms.

2232.1 When and When Not to Make a Referral to FACN

CPS October 2021

Caseworkers may make a referral to FACN when they need additional clarification on abuse or neglect cases to address child safety decisions or to ask general ongoing medical questions. A caseworker does not need approval from any of the following people to request an FACN consult:

- The child's parent.
- The attorney representing the child or parent.

- The child's primary care physician or other health care practitioner.

When CPI Must Make a Referral to FACN

Caseworkers must make a referral to FACN in the following circumstances:

- There does not appear to be any reasonable explanation for a child's injury or the explanation is not consistent with the injury.
- A child requires an in-person forensic assessment examination.
- The caseworker needs assistance to determine whether abuse or neglect occurred.
- There is a difference of opinion between a medical professional and DFPS regarding whether abuse or neglect occurred, or about the seriousness of an injury or condition, and clarification is needed.
- There is evidence of medical child abuse (also known as Munchausen syndrome).
- The caseworker has a question about abuse or neglect that a medical professional may be able to clarify.
- A child younger than 11 years old has a sexually transmitted disease (STD), and there is not a preponderance of evidence that abuse led to the STD. See 2360 Medical Vulnerability.
- Near-fatality cases when the treating physician is not a child abuse pediatrician.

Using FACN in this way is not the same as a specialty consultation. See 2232.2 Specialty Consultations.

Making the Referral to FACN

Emergency

The caseworker must immediately contact the FACN by phone (1-888-TX4-FACN). This contact is available 24 hours a day and seven days a week for acute cases. See the FACN Resource Guide .

Non-Emergency

If the caseworker and supervisor decide to make a referral to FACN for a non-acute case, the caseworker must enter the basic referral information into the FACN system (www.facntx.org) or by phone (1-888-TX4-FACN) within two business days during regular business hours.

When FACN Indicates Abuse or Neglect

The FACN physicians' input must be taken into consideration in determining abuse or neglect of a child.

If FACN indicates that abuse or neglect occurred, the caseworker must immediately meet with the supervisor and program director to ensure the appropriate safety intervention is taken to keep the child safe.

When there are differing opinions between medical professionals as to whether abuse or neglect occurred, the caseworker must do the following:

- First, establish safety of the child.
- After establishing the safety of the child, staff with the caseworker's chain of command and legal to determine next steps.

See FACN Resource Guide .

When Not to Make a Referral to FACN

A caseworker must not refer a child in DFPS conservatorship to FACN for standard medical care, including direct examinations or medication services.

Caseworkers generally do not need to make a referral to FACN when both of the following criteria are met:

- The child has already been seen by a local physician who is certified as a child abuse and neglect specialist.
- There are no additional questions or concerns.

2232.2 Specialty Consultations

CPS October 2021

FACN can recommend a specialty consultation, but FACN may not make a referral for the specialty consultations. If FACN recommends a specialty consultation, DFPS obtains the information from the child's

If a parent refuses to give consent for the caseworker to enter, and exigent circumstances do not exist to enter or remove the child, the caseworker may obtain a court order in aid of an investigation. To obtain a court order, the caseworker must show in the supporting affidavit that there is good cause to gain access to the home.

Texas Family Code §§261.303 , 261.3031 , 261.3032

2244 Interviews With Children

2244.1 Time Frames for Interviewing Children

CPS August 2017

The caseworker must interview each alleged victim face-to-face (as appropriate for the victim's age and development) within the following time frames.

Priority 1 Reports

The caseworker must interview or attempt to interview all alleged victims:

- immediately, if circumstances indicate possible substantial bodily harm or death; or
- within 24 hours of the intake date and time, for all other cases.

Priority 2 Reports

If the report does not go through the screening process, the caseworker must interview or attempt to interview all alleged victims within 72 hours of intake date and time.

If the report does go through the screening process, the caseworker must interview or attempt to interview all alleged victims within 72 hours of stage progression to investigation.

Texas Family Code §261.301(d)

Delays in Interviewing Children

If the caseworker cannot contact alleged victims within the prescribed time frames, the caseworker must immediately develop and implement a follow up plan, with the supervisor's approval, and document it in IMPACT.

If contact within these time frames would compromise child safety, or law enforcement requests a delay in interviewing the alleged victims or parent, the caseworker must:

- get supervisor approval to delay the initial contact; and
- document the reason for delay.

2244.2 Interviewing Other Children in the Home

CPS August 2017

The caseworker must gather the names and conditions of all other children in an alleged victim's home as part of the investigation. The caseworker must interview the children if the caseworker believes they have relevant information about the allegations or known danger to a child.

Texas Family Code §261.302(c)

If a case containing a child under age 3 receives a disposition of *Reason to Believe* but is not being sent for services (Family Preservation or Conservatorship), a caseworker does not need to make a referral, as it will be generated by the system.

In all other cases containing a child under age 3, where services will be provided, the worker must refer to ECI when appropriate.

2290 Submitting Investigations

2291 Submitting an Investigation for Closure

CPS October 2020

The caseworker completes all required tasks and documentation, then consults with the supervisor before submitting an investigation for closure.

2291.1 Abbreviated Ruled Out

CPS October 2020

The caseworker can recommend closing the case as an abbreviated investigation with the disposition of *Ruled Out*. The *Abbreviated Ruled-Out* recommendation is used only if all the following apply:

- The investigation does not include an alleged victim age 5 or younger.
- The investigation does not involve a child fatality.
- No previous investigations or alternative response cases involve any principal in the investigation.
- DFPS has not received, during the current investigation, more reports of abuse or neglect of any alleged victim in the investigation. A new report does not count, for the purpose of this bullet point, if it involves only incidents and allegations that are already under investigation.
- The reporter is not anonymous. If the reporter is anonymous, see 2310 Administrative Closure.

The caseworker does the following if submitting the investigation as an *Abbreviated Ruled Out*:

- Does not complete the Risk Assessment tool.
- Submits the investigation for closure no later than 45 calendar days from the date of the intake.

The caseworker must complete the following minimum tasks before submitting the investigation as an *Abbreviated Ruled Out*:

- Interviews and examine all alleged victims.
- Completes all initial tasks. See 2230 Investigation Tasks.
- Completes the Safety Assessment tool.
- Interviews at least one parent of each alleged victim, though the caseworker shall attempt to notify both parents, following policy 2244.5 Notifying a Parent That a Child Has Been Interviewed.
- Conducts any required home visit.
- Documents all contacts, case actions, and meetings with the supervisor. See 2220 Documentation.
- Determines that both of the following apply:
- There is enough information to rule out all allegations.

- The child will be safe without further investigation, response, services, or help.

A family whose case is submitted for an abbreviated rule out is not eligible to receive family-based safety services or substitute care services.

Texas Family Code §261.3017

DFPS Rules, 40 TAC §707.489(c)

2291.2 Administrative Closure

CPS October 2020

The caseworker may submit an investigation for closure with a recommended action of *administrative closure* if the information gathered and information in the intake indicate that there are no longer grounds for a CPI investigation. See 2310 Administrative Closure.

When submitting a case for administrative closure:

- The caseworker documents all contacts, case actions, and determinations, and all meetings with the supervisor. See 2220 Documentation.
- The program director reads the investigation and approves or denies the request for closing the case
- If approved for administrative closure, the program director documents his or her approval in a contact narrative.
- The supervisor submits the case for closure to the program director.
- The program director reviews the documentation and closes the investigation stage in IMPACT

See 2293 Notifying Clients of Investigation Findings for the time frames for providing notification of findings when an investigation is administratively closed.

2291.3 Unable to Complete, Family Moved/Cannot Locate

CPS October 2020

If the overall disposition for the investigation is *Unable to Complete* and the recommended action is *Close – Family Moved/Cannot Locate*, the caseworker does the following:

- Completes as many of the tasks listed in 2291.1 Abbreviated Ruled Out as possible.
- Conducts a diligent search for the family.
- Places the family on the Child Safety Check Alert List (CSCAL) if he or she cannot locate the family.
- Submits the case for closure with the recommended action of *Close – Family Moved/Cannot Locate*.

See:

2281.4 Unable to Complete.

3100 When a Child Who is With His or Her Family Cannot Be Located.

3110 Conducting a Diligent Search and Placing the Family on the Child Safety Check Alert List (CSCAL).

2291.4 All Other Recommended Actions

CPS October 2020

EXHIBIT C

Agenda for Leadership Meeting 2.24.2022

1. Random Moment Time Studies
   A. Meet our RMTS Coordinator for the Region, Monica Perez
   B. RMTS Communication Expectations- we must respond to Monica when she is reaching out. The worker will be the first contact and then she will within a few hours be following up with the supervisor and then a few hours with the PD and up the chain. Every RMTS that we complete is equivalent to $40k for our agency.
2. Specific Cases
   A. When you get a case that involves the specific allegation we talked about you need to immediately send an email to your PD, your PA, Lisa Guyton, and Gabina DeHoyoz for tracking and to possibly schedule a staffing. We want to be involved to help guide staff and provide assistance as we know these can be difficult.
   B. Any communication you have regarding these cases needs to be done in a Teams meeting, telephone call, or face to face. Do not send text messages or emails in regards to these specific cases.
   C. Our General Counsel for the agency is going to be working on disposition guidelines. We will be working closely with her in the beginning on dispositioning these specific cases.
   D. PA meeting discussion- specific workers? Worker V?
3. Worker V
   A. The audit has been approved and I am hopeful our Worker V position will be posted in the next week. If you have ideas how we can utilize this position in our region please let your PD and PA know.
4. Master Investigator Assistance
   A. Good News in April we will be getting 30 MI's deployed to our region to assist us in case resolution.
   B. They will be paired one on one with our high workloads.
   C. They will be in our region for approximately 3 months.
   D. PD's, PA's and I will meet weekly to discuss progress being made.
   E. Weekly meetings will start in March for planning.
   F. This is a great opportunity for us to really get our region back in a good place. We need to really take full advantage of it.

Automated Certificate of eService

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Melissa De Pagter on behalf of Maddy Dwertman
Bar No. 24092371
melissa.depagter@bakerbotts.com
Envelope ID: 70253992
Status as of 11/22/2022 12:45 PM CST

Associated Case Party: GREG ABBOTT THE GOVERNOR OF THE STATE OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Courtney Corbello	24097533	courtney.corbello@oag.texas.gov	11/16/2022 7:28:10 PM	SENT
Thomas Ray		thomas.ray@oag.texas.gov	11/16/2022 7:28:10 PM	SENT
Johnathan Stone		johnathan.stone@oag.texas.gov	11/16/2022 7:28:10 PM	SENT

Case Contacts

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Maddy Dwertman		maddy.dwertman@bakerbotts.com	11/16/2022 7:28:10 PM	SENT
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Status as of 11/22/2022 12:45 PM CST

Associated Case Party: PFLAGI NC

Karen Loewy		kloewy@lambdalegal.org	11/16/2022 7:28:10 PM	SENT
Elizabeth Gill		egill@aclunc.org	11/16/2022 7:28:10 PM	SENT
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James Esseks		jesseks@aclu.org	11/16/2022 7:28:10 PM	SENT

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