

No. 03-22-00126-CV

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**IN THE COURT OF APPEALS  
FOR THE THIRD DISTRICT OF TEXAS AT AUSTIN**

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GREG ABBOTT, in his Official Capacity as Governor of the State of Texas;  
JAIME MASTERS, in her Official Capacity as Commissioner of the Texas  
Department of Family and Protective Services; and the TEXAS DEPARTMENT  
OF FAMILY AND PROTECTIVE SERVICES

*Appellants,*

v.

JANE DOE, individually and as parent and next friend of MARY DOE, a minor;  
JOHN DOE, individually and as parent and next friend of MARY DOE, a minor;  
and DR. MEGAN MOONEY,

*Appellees.*

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On Appeal from the 353<sup>rd</sup> Judicial District of Travis County, Texas

Cause No. D-1-GN-22-000977, Hon. Amy Clark Meachum

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**BRIEF OF TRANSGENDER EDUCATION NETWORK OF TEXAS,  
AND 14 OTHERS AS *AMICI CURIAE* IN SUPPORT OF REAL PARTIES IN  
INTEREST JANE DOE, *ET AL.***

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## IDENTITY OF PARTIES, AMICI, AND COUNSEL

The parties and other *Amici* have accurately identified the parties, other *Amici*, and counsel.

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## STATEMENT OF INTEREST OF AMICUS CURIAE

*Amici* include thirteen Texan families raising transgender children, who know firsthand the vital importance of accessing gender-affirming healthcare and the life-threatening risks of living with untreated gender dysphoria as a young person. *Amici* families have demonstrated their love, support, and acceptance of their children by providing them with medically-necessary, doctor-recommended, gender-affirming healthcare. This ensures that their children are healthy, and are able to live out happy, normal childhoods. For merely doing what any parent would do, *Amici* families are now daily faced with the threat of a “child abuse” investigation by the Texas Department of Family and Protective Services (“DFPS”), and the stress, anguish, and stigma this imposes. In addition, the looming threat of investigation and enforcement, in many cases, has caused *Amici* family doctors to delay or deny their children treatment. Some families have coped by moving out of state, at least until they can count on the protection of the courts. These harms are immediate and irreparable.<sup>1</sup>

*Amici* also include two nonprofit organizations that serve Texas families with transgender children. Transgender Education Network of Texas (TENT) is dedicated to furthering gender-diverse equality in Texas through education and networking in

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<sup>1</sup> To protect *Amici* families from the severe consequences of DFPS enforcement, this brief uses pseudonyms to maintain anonymity to the extent they have requested.

both public and private forums. TENT works to halt discrimination through social, legislative, and corporate education, through a racial justice lens. Most of its staff are transgender, nonbinary, or have transgender or nonbinary children. Equality Texas engages, educates, and undertakes policy advocacy to secure full equality for LGBTQ+ Texans, including healthcare access. More than half of its staff is transgender or nonbinary. *Amici* families are only a small sample of the hundreds who are served by *Amici* organizations.

*Amici* join Appellees in requesting the Court to affirm the District Court's injunction. For the sake of their health, security, and liberty, the *status quo* prior to the issuance of the Rule must be maintained.

No party's counsel authored this brief in whole or in part, and no party's counsel made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici* or its counsel made a monetary contribution to this brief's preparation or submission. *See* Tex. R. App. P. Rule 11.

## SUMMARY OF ARGUMENT

*Amici* Texan families, along with two nonprofit organizations who serve them, just want what any parent wants for their children: a happy, healthy, normal childhood. As *Amici* establish, providing gender-affirming care to transgender youth, in consultation with healthcare professionals, is a family's thoroughly considered expression of love, support, and acceptance, and is the standard of care for treating gender dysphoria in adolescents. It promotes the welfare, health, and happiness of transgender children, their families, and their communities.

Yet *Amici* who provide this care for their children now face serious and drastic risks. These risks flow directly from DFPS's actions in continuing to investigate families consistent with an *ultra vires* and legally invalid edict by the Governor. On February 22, 2022, Governor Greg Abbott issued a letter (the "Governor's Directive" or "Directive") to DFPS that purports to adopt a definition of "child abuse" as including all "gender-transitioning procedures" being provided to minors. The Directive states to DFPS: "I hereby direct your agency to conduct a prompt and thorough investigation of any reported instances" of the provision of such healthcare. The Directive further states that "all licensed professionals who have direct contact with children" are subject to criminal penalties "for failure to report" the provision of such healthcare; and calls for other, unnamed "state agencies to investigate licensed facilities where such procedures may occur." In purporting to redefine

“child abuse” and directing DFPS to implement his definition, Governor Abbott usurped the authority of the Legislature—which had just that term rejected bills that would have redefined the statutory definition of “child abuse”<sup>2</sup>—and of DFPS itself.

Although the Texas Supreme Court subsequently held the Governor had no authority to direct DFPS to investigate affirming care as child abuse, *Doe v. Abbott*, No. 22-0229 (Tex. 2014) at 6 (“neither the Governor nor the Attorney General has statutory authority to directly control DFPS’s investigatory decision.”), nor to redefine the term “child abuse” in Texas law, *id.* at 5, DFPS nevertheless has proceeded to implement the Governor’s Directive. DFPS issued a “press statement [that] suggests that [it] may have considered itself bound by the Governor’s letter,” *id.* (the “DFPS Rule” or “Rule”), and—despite the Supreme Court of Texas’s clear pronouncement that the Directive has no legal authority—continues to conduct investigations pursuant to its Rule. Appellees’ Brief at 6.

The Governor’s Directive set anti-transgender hostility ablaze in the State of Texas, and DFPS’s enforcement of its Rule continues to fan the flames, with severe consequences for *Amici*. *Amici* organizations have reported a statewide wave of anti-transgender violence directed at them and the families they serve; several *Amici* families report experiences of bullying, threats, and abuse that they are powerless to stop because seeking help might only result in a DFPS investigation.

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<sup>2</sup> See Senate Bill 1646, House Bills 68 and 1399.

The Rule grossly stigmatizes and penalizes the loving provision of healthcare by parents with the label of “child abuse” and the threat of investigation. *Amici* families report that this has deprived them of their ability to provide their children with a normal, happy childhood and to ensure their children’s health through medical decision-making in consultation with their children and their children’s doctors. This is an invasion with constitutional implications for parents’ rights. Moreover, *Amici* families relate that the stress and anxiety of living every day with the Rule’s stigma, and knowing that DFPS could open an investigation merely for providing their children healthcare, harms their reputations and their career prospects, imposes barriers to their children’s schooling and participation in extra-curricular and church activities, and in some cases has required parents to seek healthcare themselves.

The Rule also disregards the considered judgment of every major medical association, and parents and doctors statewide, that the cited treatments are the standard of care for treating gender dysphoria in adolescents, and can be lifesaving. The threat of DFPS investigation has in several cases led to *Amici*’s family doctors delaying or outright refusing to provide healthcare. This in turns threatens children with potentially irreversible health consequences.

Some *Amici* families, unable to tolerate the Rule’s harms any further, have been unable to continue living in Texas, and have opted to move out of state, at least until the Rule is enjoined. More families have said they are considering this option.

These harms—to families’ safety, to children’s’ health and wellbeing, to parents’ constitutionally-protected rights, and even to families’ ability to remain in their Texas homes—are all immediate and irreparable. *Amici* join Appellees in requesting the Court to affirm the District Court’s injunction. *Amici* share their unique lived experiences with this Court to show how Appellants are not preventing harm to children and families in Texas—but rather are *causing* harm, and will continue to do so until enjoined.

## ARGUMENT

### I. The Irreparable Harm Standard

The trial court properly issued a temporary injunction in this case because the Appellees pled and proved (1) a cause of action; (2) a probable right to the relief sought; and (3) a “probable, imminent, and irreparable injury” during the pendency of the litigation. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). A court that finds all three temporary injunction factors met properly awards the injunction, and a reviewing court may not reverse the trial court’s temporary injunction order absent an abuse of discretion. *Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993).

*Amici* lend their voices on the issue of irreparable harm. “An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru*, 84

S.W.3d at 204. Texas courts have long recognized that “[t]he natural right existing between parents and their children is of constitutional dimensions,” and that “[t]his natural parental right has been characterized as ‘essential,’ ‘a basic civil right of man,’ and ‘far more precious than property rights.’” *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985) (citations omitted). In particular, the Due Process Clause protects the right of parents to make medical treatment decisions on behalf of their children. *See Parham v. JR.*, 442 U.S. 584, 602 (1979).

“[I]nfringe[ment] on the fundamental right of parents to make child rearing decisions” is “irremediable.” *In re C.J.C.*, 603 S.W.3d 804, 811 (Tex. 2020); *see generally Operation Rescue-Natl. v. Planned Parenthood of Houston and S.E. Texas, Inc.*, 937 S.W.2d 60, 77 (Tex. App.—Houston [14th Dist.] 1996), *aff’d as modified*, 975 S.W.2d 546 (Tex. 1998) (“Under Texas law, a violation of a constitutionally guaranteed right inflicts irreparable injury warranting injunctive relief.”); *see also De Leon v. Perry*, 975 F. Supp. 2d 632, 664 (W.D. Tex. 2014), *aff’d sub nom. De Leon v. Abbott*, 791 F.3d 619 (5th Cir. 2015) (reviewing cases) (“no amount of money can compensate the harm for the denial of [a litigant’s] constitutional rights”).

Additionally, children’s “injury resulting from the [parent’s] present inability to care for the child” is irreparable. *See Waites v. Sondock*, 561 S.W.2d 772, 775 (Tex. 1977). This is because “[a] child cannot be likened to a chattel that may be stored in a warehouse for preservation and safe-keeping. He is one of the most fragile

and easily damaged of all living creatures. His requirements must be met with dispatch if he is to survive or escape serious damage.” *Id.* at n.3 (quoting *Gunn v. Cavanaugh*, 391 S.W.2d 723, 726-27 (Tex. 1965)). Thus, this Court has specifically held that harms to children’s health and development from depriving them of medical care are irreparable. *Tex. HHS Comm’n v. Advocates for Patient Access, Inc.*, 399 S.W.3d 615, 630-31 (Tex. App.—Austin 2013).

Many *Amici* families, to avoid injuries of the type described above, have been forced to leave the state. This loss of ability to live in their home is also irreparable harm. *See Positive Feed, Inc. v. Wendt*, 01-96-00614-CV, 1998 WL 43321, at \*10 (Tex. App.—Hous. [1st Dist.] Feb. 5, 1998) (not designated for publication) (citing *Hayter v. Fern Lake Fishing Club*, 318 S.W.2d 912, 914 (Tex.Civ.App.—Beaumont 1958, no writ)); *see also Motheral v. Black*, 03-21-00671-CV, 2022 WL 1433960, at \*7 (Tex. App.—Austin May 6, 2022) (unpublished) (“Liberty interests include the right to establish a home”) (citation and punctuation omitted).

As detailed in this brief, the court below correctly held that the Rule imposes irreparable injury. As *Amici*’s experiences show, the Rule is presently causing irreparable—and drastic—harms to Texan families raising transgender children, and only an affirmance of the District Court’s injunction of the Rule can prevent them.

## **II. The Rule Inflicts Irreparable Harm on Texas Families with Transgender Children**

As a result of living under the constant fear of DFPS investigation, parents have watched their previously happy and joyful children withdraw from favorite extra-curricular, church, and social activities, and become anxious and guarded. As a result of the chill the Rule has inflicted on their children's doctors, families have seen their children sicken from a loss of access to healthcare. Families have also seen an increase in bullying and other forms of violence, which they are powerless to stop, because bullies can simply threaten to report them to DFPS, and seeking aid from their children's school or from law enforcement could invite the same result. Many families have plans to flee the state, or have fled, but dream of return. Other families have turned down job offers or opportunities to grow their family businesses because they might have to leave at a moment's notice.

Unless the injunction is affirmed, Texas families with transgender children will continually suffer these irreparable harms. An injunction is necessary to allow *Amici* families and others like them be able to care for their children's health, feel safe in their homes and schools, and return to the ordinary joys and cares of parenthood and family life in Texas.

The remainder of this brief details *Amici*'s experiences with these irreparable harms. The first section surveys how the Rule has affected all Texas families with transgender children, from the perspective of organizations serving them statewide.

The subsequent three sections detail experiences of *Amici* families in three areas: losing access to healthcare, living with the fear of investigation, and fleeing the state. Each of these sections opens with one or two detailed family narratives, and is followed by additional *Amici* family experiences.

### **A. Overview by *Amici* Organizations Serving Families**

*Amici* organizations serve hundreds of families with transgender children from all parts of the state. They report that these families’ stories of suffering under the Rule are both unique and sadly typical—having been repeated thousands of times<sup>3</sup> in families with transgender children, in every corner of the state. TENT and Equality Texas report that, as a consequence of the Rule, families throughout Texas have faced the loss of healthcare for their children, the stigma of being labeled child abusers, a wave of violence, and unceasing fear that the State may come at any time to try to investigate them or even tear their families apart.

#### *Loss of Healthcare*

TENT has seen how the Rule has led to the collapse of large parts of the healthcare system serving transgender young people in Texas. Andrea Segovia, TENT’s Senior Policy and Field Advisor, reports that this is because the Governor’s

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<sup>3</sup> The most recent estimate for the number of transgender youth aged 13-17 in Texas is 29,300, based on data from the Census, the Department of Justice, and the Centers for Disease Control. Herman et al., *How Many Adults and Youth Identify as Transgender in the United States?*, Williams Institute (June 2022) at 11. Available at <https://www.documentcloud.org/documents/22057788-williams-inst-trans-stats-2022>.

Rule has broken down trust between patient, doctor, and government: “A lot of times, parents ask ‘should we go to this doctors’ appointment?’ People are afraid of their own doctors. We tell them, ‘Only you are the parents, we can’t make a choice for you, let’s talk it through.’” In this atmosphere of fear, Ms. Segovia says, “we’re a listening ear; people call us because they have no one else to call.” In the month after the Governor acted, 120 families from across the state reached out to TENT for help and guidance. Almost half were from concerned parents and other caregivers whose children had mentioned suicide. TENT has had to divert much of its energy toward counselling families and setting up a professionals’ network that, where possible, will refer families to alternative healthcare providers. In total, since the Directive and Rule issued, TENT has had to respond to 60 requests for assistance from families with barriers to healthcare access. Ms. Segovia says, “We try to help people make connections and find resources. And they come back to us when that fails.” Even though TENT is a policy organization, not a social services provider, about a quarter of TENT’s staff is now devoted to this work, because, in the words of one parent, “Who’s gonna understand or have insight if not you?”

The effect on families is devastating when they are told that the healthcare they have obtained for their children, under the clinical judgment of their doctors, is now defined under the Rule as “child abuse.” The effect is especially profound on

young peoples’ access to puberty-blocking medications.<sup>4</sup> TENT has received multiple parent reports of doctors deciding to not follow their medical judgment as to when young people at the onset of puberty should begin medication, in the hopes that delaying for some time will somehow reduce their legal risk. Some doctors have also refused to prescribe puberty blockers altogether, and will only write hormone prescriptions. TENT is working with twenty families in the Houston area, and seven in San Antonio, who have been unable to obtain access to puberty blockers. In addition, TENT has also tried to help families whose pharmacies refuse to fill prescriptions for puberty blockers and hormone medications for young people, including seven in the Dallas area. TENT has also received requests for help from families with children who are not transgender, who report that healthcare providers’ fear of the consequence of a DFPS investigation, “criminal penalties,” or other enforcement by unnamed state agencies is so pervasive that it has had the unintended effect of denying families access to hormone blockers needed for reasons unrelated to gender dysphoria.

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<sup>4</sup> Puberty blocking medications, as distinct from hormone medications, are administered in order to delay the onset of puberty, with its associated physical changes “that can significantly increase gender dysphoria and psychological distress.” *AMA Brief* at 15. The effects of these medications are fully reversible—a patient who ceases to take them simply starts puberty—and thus they “provide patients with time to understand their gender identity while preserving the widest spectrum of potential treatments and outcomes.” *Id.* “Later in adolescence—and if the patient, their parents or guardians, and medical team all agree it is medically indicated—hormone therapy may be used to initiate puberty consistent with the patient’s gender identity.” *Id.* at 16.

TENT staff have spent significant time as a go-between because families are afraid to talk to health professionals, lest they be reported to DFPS. TENT staff negotiated with one facility so that an at-risk youth would not be left to sleep in a hallway at mental health facility, unadmitted to a ward, because the youth is transgender and the facility expressed fear that admitting them would be inviting penalties from the State. In another case, TENT stepped in after a mental health provider in Austin abruptly withdrew care of a suicidal transgender youth with a history of suicide attempts, citing fear of State enforcement. The child's parents spent several nights alternately sleeping on the bathroom floor and in the child's bedroom to monitor the child and ensure they did not attempt suicide. TENT was able to find the child a therapist. TENT assisted another parent who reported that their child's mental health required inpatient care, but that the parent was worried the hospital would be compelled to withhold the child's gender-affirming medications, and that while the child was hospitalized the parent would be arrested. TENT was able to identify an appropriate facility and work with it to develop a plan to for the child.

Like TENT, Equality Texas has also registered a notable increase in discrimination against transgender youth and their families seeking healthcare since the Directive and Rule issued. One transgender youth sought emergency psychiatric treatment at a hospital, and hospital staff reported the youth's mother to DFPS, which

later sent an agent to the family who told the mother that she was an “alleged perpetrator” of abuse. Parents also reported to Equality Texas that their children were turned away from healthcare practices in San Antonio, Houston, and Dallas, while pharmacies in Garland refused to fill the prescriptions that their doctors have written for their children, because the medications are needed to treat gender dysphoria.

### *A Wave of Violence*

The Directive and Rule have also unleashed a wave of violence directed at transgender people. By falsely equating the healthcare needs of transgender people with child abuse, the Directive and Rule associate transgender people with a widely-reviled crime. The impact on Equality Texas and the families it works with was immediate. Emails arrived threatening the staff’s physical safety, hate mail was pushed through the office’s front door mail slot, and people came to the office to yell, swear, and curse. After the Uvalde school shooting, a false rumor immediately began to circulate that the shooter was a transgender person, and Equality Texas received a report of that a transgender teen in El Paso was assaulted by people claiming to be retaliating for that terrible crime.

TENT has likewise received an influx of violent threats over e-mail, social media, and mail, including death threats to individual staff members. One letter included pictures of TENT’s Executive Director out in public and stated that next time he would have a bullet in his head. One staff member received an e-mail

threatening to “chop off your body parts and see how you like it.” TENT has had to undertake additional protection measures for the safety of its staff and their families.

Teachers, parents and students throughout the state have also reported to Equality Texas that schools have become increasingly hostile environments for transgender students. Some schools have been unwilling to permit students to say that they are LGBTQ+, use accurate pronouns, or even ensure their basic safety. Some schools have removed symbols of support for LGBTQ+ students. And unfortunately, this has led to increased reports of suicides and attempted suicides by transgender people experiencing discrimination—especially young people who are bullied in school. Equality Texas fears the start of a new school year this month will lead to more incidents.

#### *Families are Overwhelmed with Fear and Anxiety*

Equality Texas has needed to create an entire new program to respond to requests for information and assistance from families with transgender children. As stated by Ricardo Martinez, Equality Texas’s Chief Executive Officer: “We are on the front lines of having to navigate peoples’ despair. When parents are in panic, they turn to us for answers, for a shoulder to cry on, to discuss the impact on themselves and their families.” The organization has been overwhelmed with requests for help from families of transgender kids, their teachers, and other community members, and has had to hire a constituent services manager to address

emergencies, connect families who have transgender children with support and services they may need (regardless of where they are in Texas), track data and analyze trends, build relationships, and engage in rapid community response efforts. Previously, Equality Texas had focused solely on policy advocacy, leadership development, and public education, but it has found it necessary to redirect its resources toward addressing families' immediate needs.

In June, Equality Texas attended 42 Pride events throughout the state, from El Paso to the Rio Grande Valley to Texarkana to the Panhandle. At one, a mother reported her child had asked her point-blank if she was going to die. At another, a parent reported their child becoming withdrawn and anxious – a reversal of their typical happy-go-lucky behavior. At all of them, children and parents reported that life had become fearful, unsafe, and in many cases little more than a struggle to survive and to obtain the healthcare necessary to do so.

*Some Families Have Fled the State and More Will Follow Unless the District Court's Injunction is Affirmed*

The fear of DFPS investigation and its potential consequences, caused many Texan families with transgender children to flee Texas or to hide in the shadows. About fifteen to twenty percent of the families that TENT regularly worked with prior to this year have left the state, and TENT staff expect more to follow if the injunction is not affirmed. Likewise, Equality Texas relies on volunteers from the community it serves to participate in the democratic process—to testify at legislative

hearings, attend local government meetings, and so forth—and about a tenth of those families have left the state since the Directive and the Rule issued. No family who works with *Amici* organizations has been able to speak at public DFPS meetings, because of concerns that they will be targeted by DFPS for investigation. Equality Texas has had to recruit volunteers to relate families' experiences, since they are unable to safely do so themselves.

The staff at *Amici* organizations dream of a day when transgender children can live lives of safety and joy, where their greatest potential is fulfilled, and where they are not bullied but rather receive love and support from the entire community, in the same way that non-transgender children do. Each day that the Rule deprives Texas families of the ability to provide their children stability, safety, and healthcare, of and imposes on them the stigma of abusers, is a day that further traumatizes children and reduces the odds that they will survive and thrive into adulthood. *Amici* organizations know that blocking the Rule will go a long way toward reversing the increase in violence, discrimination, and health problems that it has caused among transgender children and their families, and allow them to return to the normal joys and experiences of childhood. But they fully expect these problems will continue, and worsen, if the injunction is not affirmed. Ms. Segovia of TENT concludes:

Texas' transgender young people are creative, and resilient, and I know the Governor can't make them disappear. But of the hard times we've faced, this is by far the hardest. Parents don't know how to protect their children, and we don't always have an answer, beyond that it's proven

that supporting your kid is the best way to ensure they survive. Everybody should have an opportunity to thrive, and here we are talking just about survival. Our lives have to be carved around the hate the Governor’s Directive and DFPS’s Rule have created for people and how far he has used his power to enforce it. We’ll never lose hope or give in, but I’ve never seen things like this before, and only the courts can step in and stop it.

### **B. The Rule is Harming the Health of *Amici* Families’ Children**

The Rule is harming the health of *Amici* family’s children through its chilling effect on their doctors, who in many cases have delayed or altogether denied the provision of healthcare in order to avoid the mandatory reporting requirements, “criminal penalties,” the investigations by unnamed state agencies, and the stigmatizing “child abuse” label cited by the Rule. As made clear by plaintiffs and other *Amici* filing briefs in this case, **“every major U.S. medical association recognizes that gender-affirming healthcare is medically necessary treatment for dysphoria.”** *Outlawing Trans Youth: State Legislatures and the Battle Over Gender-Affirming Healthcare for Minors*, 134 HARV. L. REV. 2163, 2165 (2021) (emphasis added).<sup>5</sup> Depriving children of healthcare access, causing them to suffer

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<sup>5</sup> Gender dysphoria “is a specific diagnosis given to those who experience impairment in peer and/or family relationships, school performance, or other aspects of their life as a consequence of the incongruence between their assigned sex and their gender identity.” *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, PEDIATRICS Vol. 142, No. 4, at 3 (October 2018) (“American Academy of Pediatrics Policy Statement”). “Gender-affirming care,” used to treat a diagnosis of gender dysphoria, includes therapy and counseling, and may include hormone treatments that depend on the individual’s age and stage of physical development. 134 HARV. L. REV. at 2166.

“regression and deterioration in their medical condition” is obviously irreparable harm. *Tex. HHS Comm'n*, 399 S.W.3d 630; *see also supra* at Section I.

Texas families, including Plaintiff Mary Doe and the *Amici* families who tell their stories in this section, have seen first-hand how the gender-affirming healthcare has helped their children grow into healthy adolescents, thrive inside and outside school, and experience happy childhoods. Due to the chilling effect of the Rule, some doctors have now ceased to provide this medically-necessary care. As a result of losing healthcare, *Amici* families’ children have experienced a variety of debilitating symptoms, including anxiety, depression, and thoughts of self-harm, and have struggled in school and in relationships with friends and family.

The P family’s story is typical of the experiences families face when the Rule serves to deprive their children of healthcare. Both V.P. and her fourteen-year-old transgender daughter A.P. were born and raised in Texas. A.P. is now a happy and active teenager and member of her church youth group in central Texas. She enjoys collecting Lego figurines, especially from Marvel, and playing Minecraft. Three years ago, A.P. started expressing her gender identity, presenting herself more femininely and using female pronouns. At the time, the family lived in a community that was not accepting of transgender people, and A.P. began to be bullied, and twice attempted suicide. As a result, the family moved to the more accepting community where they live today.

As a pre-teen, A.P. told V.P. that she “would not make it” through male puberty. When A.P. was thirteen, V.P. began obtaining treatment for A.P.’s gender dysphoria from physicians and a psychologist: A.P.’s doctors started her on a puberty blocker, so that she could decide when she is older, in consultation with her family and her physician, whether to begin hormones that would allow her a female puberty. When the Governor issued his Directive and DFPS adopted it as the Rule, A.P. was scheduled for a doctor’s appointment to discuss whether to begin taking those medications. The clinic where A.P.’s doctor works issued a press release stating that it was no longer prescribing gender-affirming care. V.P. immediately contacted A.P.’s doctors to ask what this would mean for A.P. None of them could say, as the doctors’ employers could not guarantee they would be able to continue to write prescriptions for gender affirming hormones or puberty blockers. When V.P. explained this to her daughter, A.P. hit a critical low. She started having gastrointestinal problems caused by anxiety, and started missing school. She didn’t feel safe returning, and was hospitalized for six days, paralyzed with anxiety that she could lose access to medical care, or that DFPS could come any time to break up her family. She was not able to finish out her eighth-grade school year in person. V.P. feels like the Governor and DFPS have stepped into the shoes of A.P.’s sixth-grade bullies and refuse to back down. She feels like there is nowhere in Texas where she can ensure her daughter is safe and well.

The experience of Katie L. and her son N is similar. Before coming out as transgender, N suffered from depression, anxiety, and untreated gender dysphoria. N is now treated by a therapist, a psychiatrist, and an endocrinologist. He began receiving testosterone in early 2021 as a freshman in high school. This medication helped him emerge into the confident and outspoken young person he is now; Katie L. explains the medication is a critical piece of treating N's gender dysphoria and keeping him healthy and hopeful for the future. But, just a year later, as a result of the Rule, N's doctors told Katie L. that N would not be able to get refills on his testosterone for an unknown period of time. This news was extremely stressful for the L family. N needs this medication to survive and Katie L. is sure that this medication saved her son: before starting testosterone, he was experiencing suicidal ideation that was spiraling and could have led to action that would have ended his life. As a result, Katie L. was forced to leave the state, although she seeks to return if the Rule is enjoined, as discussed further below.

Similarly, Erika and Aaron Richie have raised three third-generation Texan children, including their middle child, C.R., who is a non-binary sixteen-year-old. When the Governor's Directive came down, and DFPS adopted it in the Rule, C.R.'s doctors were supportive, telling the family that they will do what they can to maneuver around obstacles to accessing gender-affirming care. They were able to prescribe C.R. a six-month supply of testosterone, but the Richies live in fear that

they will not be able to do so again. The Richies resolved “to do whatever it takes” to protect C.R.’s wellbeing. They have had to talk to about contingency plans for leaving the state and discussed safety plans for attending Pride events.

**C. The Rule is Depriving Texas Children of their Previously Ordinary, Happy Childhoods; and their Parents of the Right to Provide Them**

Beyond creating barriers to children’s access to medical care, the Rule deprives Texas parents of the ability to provide their kids of ordinary, happy childhood and family life. Put more simply, the Rule traumatizes children. As reported by the *Amici* families who tell their stories in this section, their previously happy children have suffered from nightmares and anxiety attacks, have developed nervous tics, and have become afraid of going to church or to playgrounds or to extra-curricular activities, all due to the Rule’s threat of investigation and its consequences. And their parents are frustrated in preventing these harms, because they know that seeking help from school or other authorities could lead to the very consequences causing their fear. Depriving children of the ability to enjoy the simple joys of childhood, and parents of the ability to raise their children freely, is irreparable harm. *See, e.g., In re C.J.C.*, 603 S.W.3d at 811; *see also supra* Section I.

Additionally, absent an injunction, DFPS is required to investigate any family reported for purportedly providing gender-affirming medical care for their children, stigmatizing parents with the label of “child abuse” and causing incalculable stress

and anxiety from the looming threat of investigations and all they might portend—ultimately including removal of children and felony prosecution. This kind of looming State threat into parents’ ability to raise their children, and the integrity of families, constitutes irreparable harm, as this Court has repeatedly held. *See Motheral*, 2022 WL 1433960, at \*9 (affirming temporary injunction where “the Plaintiffs alleged that the . . . Defendants’ determination impacted the Plaintiffs’ fundamental liberty interest regarding their reputations and regarding the care of their family, including [the parent’s] right to provide for the safety of her children without government interference.”); *U. Interscholastic League v. Hatten*, 03-03-00691-CV, 2004 WL 792328, at \*2-\*4 (Tex. App.—Austin Apr. 15, 2004) (unpublished) (same where injuries to parents included the “stigmatizing effect” of the defendant state agency’s actions on Plaintiffs’ reputations, and their loss of “ability to make decisions about child rearing, education, and family relationships without government intrusion.”). *See also, e.g., Fuentes v. Union De Pasteurizadores De Juarez Sociedad Anonima De Capital Variable*, 527 S.W.3d 492 (Tex. App.—El Paso 2017, no pet.) (“the threat of civil and criminal action against [the party seeking the temporary injunction] constitutes irreparable harm”); *supra* at Section I.

The stories of three families—D and J, and their children C and T; the B family; and A and M and their children—are exemplary of the distress and anguish

that the Rule is causing transgender children and their parents through imposing an ever-present fear of investigation and its potential consequences, and the stigmatizing label of “child abuse.”

D and J are raising three teenagers: including T, a transgender boy; and C, a non-binary child. C is outgoing and is into robotics and programming. T, an artist, is relatively reserved and enjoys video games. In January 2020, C began asking for books that had gender nonconforming protagonists. Around this same time, T started creating transgender original characters in different artistic mediums. C also grew their hair out. One of C’s peers started to bully them in school; but the silver lining was that this led to C coming out, followed shortly thereafter by T. Since then, both C and T agree that their best day ever was wearing swimsuits to the beach that fit their gender. They have also sought healthcare related to gender dysphoria: C was prescribed puberty blockers, and expects to eventually begin estrogen treatment. T recently started testosterone. C and T’s doctors have told D and J that that these treatments are medically necessary to combat the increased risks of anxiety, depression, and self-harm that gender dysphoria may cause. Since C and T began taking medication, D and J have seen that they have become happier and healthier.

The Directive and ultimately the Rule put the family’s progress into reverse. D and J had recently filed a complaint with the school system about C’s bully. C, ever the optimist, thought that a learning unit on non-binary gender identity would

help because people just don't know what the term means. The school approved it. After the Directive and Rule issued, the school rescinded its approval, citing the Directive as the reason. D and J now fear advocating for their children because speaking out could draw attention to them and result in an investigation.

D is a therapist, has a state license to practice in Texas, and works with children. A child abuse investigation would be devastating to her professional life, but they cannot leave Texas because this would destroy D's practice, and J has a small business in addition to another job. It keeps D up at night. She constantly has an upset stomach, waiting on the next piece of news. Her fear has altered what she feels comfortable saying on social media. It has also influenced her own practice, as it has chilled her ability to treat clients and train staff on evidence-based, medical standards of care. She is also less likely to be open with colleagues or patients about her personal experiences with gender identity issues, and patients are less likely to ask for support.

The B family has suffered similarly. R.B. and C.B. have two children, including S.B., a 9-year-old transgender girl. The family bonds and finds joy through their shared love of sports. Both children play soccer, basketball, softball, and tennis. Every Sunday, the kids watch their parents play in an LGBTQ+ softball league. S.B. is also an avid reader, going to the library every couple of days to replenish her supply of unread books. S.B. loves school and feels affirmed by her peers and

teachers, as well as the family's circle of supportive neighbors and her parents' co-workers.

R.B. and C.B. knew that their daughter S.B. was transgender by age four. When they first moved to Texas, they visited an endocrinologist to learn about gender-affirming care. After consulting with the endocrinologist and S.B.'s pediatrician, R.B. and C.B. decided that S.B. should be given the option to start taking puberty-blocking medications at the beginning of puberty.

When the Directive and the Rule were issued, R.B. and C.B. were terrified because they have been so public about their support for S.B. To protect their family, they had their name removed from their house and their social media profiles taken off the internet. They came up with a safety plan for marching in their local Pride parade this year in case danger arose. They prepared laminated business cards for both children to keep in their backpacks, stating their child's name and that they do not consent to speaking to DFPS, and directing DFPS agents to call the children's lawyer. It is "heartbreaking" to R.B. that her elementary-age children need to bring these cards onto the playground with them in their pockets, expecting to be questioned at any moment.

The whole family has suffered from anxiety because of the Rule. S.B. has developed anxious tics; before she speaks, she gets nervous, and clears her throat multiple times. Her parents started the process of getting S.B. a psychiatrist, but

ended up placed on a waiting list with a 10-week wait, as there are few mental healthcare professionals still willing to treat transgender children, with many families traveling considerable distance to see a provider. R.B. and C.B. are trying to hide the worst of their stress from the children, but R.B. cannot sleep and has rapidly lost weight and suffered hair loss. S.B.'s younger brother has noticed the family's insecurity and recently had a traumatic nightmare that S.B. was in a boat that kept getting bigger and he could not get to S.B. Then the boat started sinking. It has been several weeks and the nightmare is still bothering him.

A. and M. are parents of two children, the younger of whom, aged nine, is transgender and nonbinary, and uses they/them pronouns. The family is very active in their church and community, both of which have lovingly welcomed the whole family. Since the release of the Governor's Directive and DFPS's adoption of the Rule, A. and M. have had to instruct their youngest child that they cannot talk about being transgender; and their eldest that she must not mention to teachers or other students that she has a transgender sibling. "That was very confusing because we have never once told our family to hide who they are," said M. Their youngest child "was terrified" and "cried hard during this conversation." The child has since expressed fear of being investigated by DFPS and put up for adoption, sharing the heartbreaking worry that "nobody would adopt me because I am trans." They have

also expressed fear about sharing their transgender identity with new people at school, because they do not know who might want to hurt them.

Despite their precautions, since February, “the amount of vitriol has increased substantially” toward A. and M.’s family, according to M. Both parents have faced threats and harassment. After M. stated online that he has a transgender child, he received about 20-30 online threats saying things like, “I can’t wait to report you.” A. has received text messages from strangers who found her phone number online, threatening to report her. M. has lost income opportunities at work when he disclosed having a transgender child to potential business contacts.

The Directive and Rule have also impacted A. and M.’s family’s ability to participate in religious and social activities. The family normally celebrates Pride month, but this year they chose not to attend many Pride events out of fear for their safety. The family’s church was forced to make the painful decision to remove Pride notices after another nearby church’s Pride event for children was infiltrated with people who took photos of the children and their families and threatened on Facebook to post identifying information in order to expose them to further harassment (this is known as “doxing”) and to report the families to DFPS. Their church had to rethink a security plan to protect their congregation, and even put instruction cards in the pews on how to react to an active shooter.

Most other *Amici* families report similar fears. T.S. is the mother of two children, including a middle-school aged transgender daughter. Her child's doctors have said the right time to start puberty blockers will most likely be within the coming months. T.S.'s child has pleaded, "Please don't let me grow hair on my face like Daddy." T.S. also fears DFPS will come to her children's school, making each day's fate unknown. T.S. spoke to her children about what would happen if DFPS did. She told them their rights, and exactly what to do if this happens. Having this conversation with both children, especially her youngest, instilled a lot of fear around being taken away from family. T.S. has also suffered herself because of the Directive and Rule. She is looking for work, but she has not taken a position, knowing that she might have to quit and move out of Texas. She and her family also have discussed the possibility of splitting up the family so that T.S.'s transgender child can remain safe and seek care out-of-state, while her husband stays in Texas to avoid disruption to his career and to their other child's life and education. T.S. has shared that her anxiety has become unmanageable and she is currently seeking care from her doctor for it.

Similarly, Ed Diaz is the parent of an 11-year-old transgender girl, who has blossomed as an adolescent after coming out as transgender. "She's now so much more confident in herself, so I have zero doubt we're doing the right thing as a

family,” says Mr. Diaz. Mr. Diaz says his daughter knows that “not having access to gender-affirming care would be devastating.” He explains:

It is who she is. She doesn't have a choice even. This is her identity. It's surreal that they could just prohibit us from being good parents. It just pulls the rug out from under you.

Although he is trying his best to shield his young child from the stress of the Directive and the Rule, Mr. Diaz had to have a conversation with her about it, and his daughter was “very sad to think about leaving her friends and her home.”

Melody Gomez is a parent to three gender diverse children who have each begun to flourish after receiving gender-affirming care: S.N., age 23; M.G., age 16; and J.G., age 9. Recently, when J.G. introduced themselves with their pronouns to a parent at school, the parent responded, “that's not a real thing, honey, you're a boy.” Melody was furious at the parent but felt she could not defend her child out of fear that the parent would retaliate. Melody also works in the school system and has heard teachers and administrators express fears that their jobs will be at risk if they are supportive of transgender children in their schools. In contrast, administrators who have anti-transgender viewpoints have become more emboldened to speak out.

As a result of the Rule, a number of *Amici* families have also had to cut back on their participation in the democratic process and the exercise of their right to free speech. P and G are parents of two children, including X, an eight-year-old transgender girl. Over the past two years, P had gone to the Capitol several times to

speak at hearings and join in protests, in a successful effort to block bills that would prevent her child from having access to healthcare. After the Directive and Rule were issued, a friend with whom she advocated in Austin had DFPS show up at her door. P now fears that the same will happen to her. The burden of being a target has been insurmountably heavy at times. P's doctors had to increase her antidepressant and thyroid medication doses in direct response to this stress of worrying that her family will be next. P and G fear DFPS knocking on their door and starting an investigation, which could even lead to taking their children. Yet they also wish to shield X from the fear they experience, so that she can live a carefree life, like any other eight-year-old girl. So they have provided X with a letter to keep with her, stating to DFPS officials that X refuses to speak with them, and they cannot take her picture, and instead they must contact her parents or her attorney; but they have only given her age-appropriate instructions about what to do with the letter, explaining it is meant to protect her from any strangers who want to ask her questions about her or her family, because some of these strangers do not understand transgender people. They also now vet anyone they speak to and continue their policy advocacy only on the condition of anonymity.

Similarly, Lisa and Jeffrey Stanton have an 11-year-old transgender daughter, M.S., who is passionate about speaking up for her community and has even won awards for her bravery and activism for LGBTQ+ rights. They are anxious that the

Directive and Rule put them at risk of being reported to DFPS at any moment for speaking publicly about their support for the trans community and celebrating their daughter. So, they have decided to stop participating in advocacy and public events. Their caution is based on experience: the Stantons were once in the past anonymously reported to DFPS for “transgendering” (*sic*) M.S., and at the time DFPS quite properly found the report “priority none” without opening a case; but now they fear that under its Rule DFPS no longer has the discretion to designate another baseless complaint as “priority none,” and is required to open an investigation. Lisa described that she just wants her daughter to be a kid, and “wants a summer where the least interesting thing about her is being transgender.” They have also created a plan to rely on out-of-state family if they need to flee the state to obtain medically necessary care for their daughter. They have had preliminary discussions regarding employment with out of state employers to ensure that they can support their family even if they have to move out of Texas. They describe navigating medical care, including their quarterly appointments to monitor their daughter for the start of puberty, as living on a rollercoaster, with every new whisper of an update being another cause for anxiety.

**D. The Rule Has Forced Some Families to Flee the State, and Unless the Injunction is Affirmed Others Will Need to Follow**

Many families are unable to tolerate the Rule’s ongoing threat of family separation and risks to their children’s health. Some, including the *Amici* whose

voices are heard in this section, have left Texas to avoid the possibility of investigation and its consequences, or the loss of healthcare and resulting illness. These families long to return, if the serious threats to their safety and wellbeing can be blocked by an injunction of the Rule. Other families are preparing to leave if the Rule is not enjoined.

The loss of the ability to live in one's home is irreparable harm. *Wendt*, 1998 WL 43321, at \*10; *see also Motheral*, 2022 WL 1433960, at \*7.

. So, too, is the immeasurable financial loss suffered by some of the *Amici*, whose family businesses have had to turn away opportunities so that the family may be ready to depart at a moment's notice. *See Al-Wahban v. Hamdan*, 2019 Tex. App. LEXIS 4849, at \*8 (Tex. App.—Waco 2019, no pet.) (holding appellees' "evidence constitute[d] more than a fear, apprehension, or speculation of a claimed injury" where appellee established that appellee's purported damages, which were premised on his status as a shareholder of appellants' business, would be affected if appellants shut down the business; as such, a temporary injunction that "merely seeks to maintain the status quo" was appropriate).

Katie L., whose story was introduced *supra* section B, is the mother of a transgender fifteen-year-old son, N. The family, including Katie L., her husband, N, and N's five-year-old brother, have always lived in Houston, within 10 minutes of N's father A. The blended family enjoys a wonderful co-parenting relationship, and

N lives and moves through the two households seamlessly. N is also exceptionally close to his paternal grandmother, with whom he shares a deep connection. She is “his person” after years of “*Abuela* sleepovers,” spent watching movies, gardening, and riding bikes.

N first came out as transgender at school to peers and adults, using his chosen name there for several months before coming out to his parents. Katie L. is grateful that he was given the opportunity to navigate his coming out on his own time, with acceptance from school administrators, rather than being immediately required to come out to her before he was ready. When he did come out to her, Katie L. felt relief to have a shared vocabulary to understand N. Together, Katie L. and N would later travel to Austin, where Katie L. testified before the Texas state legislature about the effects of proposed legislation on transgender youth, and the benefits of helping transgender young people to affirm their gender identity and to live as their true selves. Katie L. proudly remembers the confidence N displayed that day as he gathered with other transgender kids and allies to protest the harmful legislation.

As a result of the Rule, Katie L. fears for her son’s future and safety. She has had to start taking antidepressants, for the first time in her life. She has become anxious that friends and family might feel obliged to report her family for loving and supporting her son. Also as a result of the Rule, N stopped participating in karate,

his favorite activity, because he didn't want to bring a spotlight on his dojo. The entire family is careful about how they interact with people they don't know.

Katie L. also started looking for housing out of state the day the Governor issued his Directive, to ensure that N would stay safe and continue to have access to the lifesaving healthcare he needs. Leaving Texas, the only home N has ever known, and his large, loving extended family, was not a rash decision. The injunctions issued by the trial court and this Court earlier in this case persuaded Katie L. and N it was safe enough to stay and see the end of the school year through. When the Supreme Court lifted this Court's injunction as to the non-plaintiffs, they knew they had to leave. A and *Abuela* drove a U-Haul truck over the state line to the closest "safe state" for families of transgender kids they could find.

The harm from each day Katie L. and her children are kept out of Texas is mostly immeasurable: a father missing his son's last years of high school, a little brother being separated from his big brother, Katie L. unable to assist with the care of her parents or disabled brother in Houston, and N's first love story interrupted. But it is also financial: \$10,000 for the move, the cost of airline tickets to keep a family connected, and increased household and medical costs.

Despite the irreversible damage that has been done, Katie L. would come home again if the Rule were removed, because she wants her family whole. While it

is her duty to keep her son safe and to make sure he has access to health care, she eagerly awaits the day the Rule is enjoined so she and her family can return to Texas.

The experiences of many other *Amici* families are similar. K.K., who was also born and raised in Texas, is a mother of two, including a transgender daughter. After the Governor issued the Directive and DFPS adopted the Rule, K.K.'s daughter asked her if she was going to die. K.K. shared this was the moment she knew they had to leave Texas. Her daughter is now ten, and the family expects she will need to begin puberty blockers sometime soon. Fearing that their daughter will not be able to receive that care in Texas, or that they will be investigated by DFPS if they do give her care when appropriate, the family has now left the state. K.K. was adamant about staying in Texas and fighting for transgender youth across the state—that is, “until they try to take the kids away...and then that happened too.” K.K. and her husband had planned on living in Texas for their whole lives. They both have extended family in Texas. But K.K. now does not even feel safe visiting these family members, because she fears DFPS will take K.K. away. She would, at least, feel comfortable visiting Texas, were an injunction in place. This would allow K.K. and her children to maintain contact and relationships with the extended family still in Texas.

Camille Rey, a sixth generation Texan, has family roots in Texas that are older than the state itself. A school in San Antonio, where she is from, is named after her

uncle. Early last year, after anti-transgender bills were introduced in the Texas Legislature and started to gain publicity, her transgender son L.R., who was then seven, began suffering from painful stomachaches, headaches, and nausea. L.R.'s school called Ms. Rey and told her that L.R.'s personality had completely changed—the kid who once made his peers laugh and finished all his schoolwork was now withdrawn and distracted. He finally admitted to pretending to be happy at home so that she would not worry.

The growing anti-transgender climate within the State's government made Ms. Rey feel that she could not guarantee her son's continued health and wellbeing in Texas, and late last year she made the difficult decision to relocate out of state. The move took a tremendous emotional toll on her family, and nearly doubled their mortgage, but it proved worth it: the Rule confirmed Ms. Rey's worst fears, and she is now unwilling to risk even bringing L.R. to Texas to visit with her family. She worries her child would be deprived of the healthcare that has allowed him to love himself again, or that DFPS could even try to take him into custody. Ms. Rey awaits the day when she can safely bring her family back to Texas to visit family and remain connected to their roots. She hopes that, if she could assure the integrity of her family and her son's continued safety and access to healthcare, she could even move back to Texas. She dreams that once again her children could be raised within their

extended family and the community that has nurtured and been nurtured by her and her family for so many generations.

### CONCLUSION AND PRAYER

*Amici* are but a few of the of examples of Texas families who are suffering harms to their health, to their childhoods, to their ability to parent, and even to their ability to reside in their home state—all due to the loss of healthcare and the regime of fear that the Rule has imposed. *Amici* respectfully request that this Court take into account the irreparable harm faced by transgender young people and their families, and affirm the trial court’s entry of a temporary injunction.

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I certify that this brief contains 9,020 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

*/s/ J. Richard Hammett*

J. Richard Hammett

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 25, 2022, a true and correct copy of the foregoing document was served via Eservice on the following counsel of record:

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*/s/ J. Richard Hammett*

\_\_\_\_\_

J. Richard Hammett

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Karen Wagner on behalf of J. Hammett

Bar No. 24001054

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Envelope ID: 67654114

Status as of 8/25/2022 2:23 PM CST

Associated Case Party: Ronald Beal

Name	BarNumber	Email	TimestampSubmitted	Status
Ronald Beal		ron_beal@baylor.edu	8/25/2022 1:56:36 PM	SENT

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Status as of 8/25/2022 2:23 PM CST

Associated Case Party: Greg Abbott

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Courtney Corbello		courtney.corbello@oag.texas.gov	8/25/2022 1:56:36 PM	SENT

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Envelope ID: 67654114

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Associated Case Party: Transgender Education Network of Texas

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