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SUPREME COURT OF TEXAS
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No. 24-0385

In the Supreme Court of Texas

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS; STEPHANIE MUTH, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; AND THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,

Petitioners,

v.

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

Respondents.

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

PETITION FOR REVIEW

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Identity of Parties and Counsel

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Stephanie Muth, in her official capacity as Commissioner of the Texas Department of Family and Protective Services
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Statement of the Case

Nature of the Case:	On February 18, 2022, Attorney General Paxton concluded that certain irreversible medical procedures that are colloquially known as "gender affirming care"—which can render a child permanently sterile—could constitute child abuse within the meaning of the Texas Family Code. Tex. Att'y Gen. Op. No. KP-0401 (2022) ("AG's Opinion"). Although no one had accused Respondents of such abuse, Respondents immediately sued the Governor, the Department of Family and Protective Services ("DFPS"), and the DFPS Commissioner to enjoin them from investigating whether *any* such procedures could constitute abuse *anywhere* in the State. CR.3-70.
Trial Court:	201st Judicial District, Travis County Hon. Amy Clark Meachum presiding
Disposition in the Trial Court:	The trial court issued a temporary injunction, which applies not just to the investigation into the parties' self-reported actions, but also to *any* instance of reported medical abuse of a child involving "gender-affirming medical treatment." CR.235-36.
Parties in the Court of Appeals:	Petitioners are the appellants in the court of appeals. Real parties in interest, Respondents, are the appellees.
Disposition in the Court of Appeals:	In an opinion written by Justice Smith and joined by Chief Justice Byrne and Justice Triana, the court of appeals affirmed the district court's injunction as to DFPS and its Commissioner but reversed and rendered as to the Governor. (Tex. App.—Austin, Mar. 29, 2024, pet. filed).

Statement of Jurisdiction

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

Issues Presented

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

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

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

To the Honorable Supreme Court of Texas:

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

Nonetheless, on March 29, 2024, the court of appeals affirmed the trial court's injunction barring DFPS from investigating *any* possible child abuse involving puberty blockers—not just the investigation into plaintiffs. But investigations, standing alone, are not a judicially cognizable injury. A DFPS press release is not a rule under the APA—even if it still had practical effect after SB14. *See Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 443 (Tex. 1994). And no Texas court has authority to issue a universal injunction in favor of persons not before it. *See In re Abbott*, 645 S.W.3d 276, 280, 283 (Tex. 2022) (orig. proceeding). Because the Third Court ignored all of these fundamental principles (and more), the Court should grant the petition, reverse the lower court, and render judgment for Petitioners.

Statement of Facts

In mid-February 2022, the Attorney General issued a formal opinion concluding that, under the Texas Family Code, "'sex change' procedures and treatments...when performed on children, can legally constitute child abuse." AG's Opinion *1. The Governor forwarded that opinion to DFPS's Commissioner, urging

DFPS to "follow the law," which forbids "subject[ing] Texas children to a wide variety of elective procedures for gender transitioning."[1] DFPS stated its intention to follow this interpretation. CR.8.

After Jane Doe, a DFPS employee, informed her supervisor she provided her child, Mary Doe, hormone-altering medication and puberty blockers, she was placed on paid administrative leave pending investigation. 2RR.85-86, 89. In March 2022, the Does filed to stop this investigation and investigations of *any* allegations of child abuse involving medical procedures addressed in the AG's opinion. CR.3-70. Respondent Mooney is a psychologist who works with gender-dysphoric youth and "fears" the consequences of reporting patients for receiving procedures addressed in the AG's Opinion. *See* CR.26-28; 3RR.25. She did not, however, allege any defendant *has* authority to discipline her or has threatened to. See CR.62-70; 3RR.26.

On March 11, 2022, the trial court granted a universal injunction and enjoined Petitioners from—among a list of other things—investigating or prosecuting alleged child abuse the only grounds for which being the facilitation or provision of "gender-affirming" "care" or the fact that the minors believes that they are transgender, "transitioning," or receiving "gender-affirming" medical treatment. CR.233-36. Petitioners were also forbidden from imposing reporting requirements on persons aware of others facilitating or providing such treatments to minors. CR.236. Petitioners appealed. CR.226.

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

After the court of appeals reinstated the temporary injunction under Rule 29.3, *see Abbott v. Doe*, No.03-22-00126-CV, 2022 WL 837956 (Tex. App—Austin Mar. 21, 2022, order), this Court granted relief-in-part because "the court of appeals lacks authority to afford statewide relief to nonparties," *Abbott*, 645 S.W.3d at 280, 283. This Court clarified, "DFPS was not compelled by law to follow," the letter, or AG's Opinion. *Id.* at 281. And although a majority concluded Defendants did not carry the burden to vacate the injunction pending resolution of the appeal, *id.* at 284, it observed that "[t]he normal judicial role in this process is…not to act as overseer of DFPS's initial, executive-branch decision to investigate whether allegations of abuse may justify the pursuit of court orders," *id.* at 282. This Court then instructed the Third Court to also vacate its injunction against the Governor, explaining he does not have statutory authority to direct DFPS action in this context. *Id*. at 283-84.

In turning to the merits, the Third Court did the bare minimum required by this Court—if that. As instructed, the court vacated the temporary injunction of the Governor. *Abbott v. Doe*, 2024 WL 1340692, at *1. But it concluded all Respondents had standing: Doe because she was placed on administrative leave, *id.* at *11, 15; her daughter because discontinuing her gender dysphoria treatment allegedly risked depression and suicidality, *id.* at *11, 15; the Doe's collectively because the State allegedly did not assert the Doe's had no standing, *id.* at 15[2]; and Mooney because of a threatened loss of revenue, *id.* at *13. The court further opined that such injuries were ripe because facts do not matter: The claims brought by Respondents were

[2] Clearly wrong as standing is one of the first arguments in Petitioners' briefs below.

"purely legal" questions under the APA, and that Respondents were merely challenging a final rule. *Id.* at *8-9. The court also decided sovereign immunity was waived because DFPS's press statement constituted a rule under the APA, *id.* at *18, which exceeded Defendants statutory authority, *id.* With respect to the temporary injunction, the Court decided the trial court properly imposed it on Petitioners, except the Governor. *Id.* at *20-25. The Third Court also affirmed the statewide relief granted by the trial court in its temporary injunction—notwithstanding this Court's instruction it lacked authority to order relief for parties not before the court. *Id.* at *23-24. The court further concluded SB14, then in effect for 6 months, was irrelevant to its jurisdiction because "gender-affirming medical care is legally provided outside Texas." *Id.* at *11 n.16. The court didn't explain how such medical "care" is likely to be subject to a DFPS investigation for child abuse under the putative rule at issue here.

Summary of the Argument

I. This case is not now, nor has it ever been justiciable. An investigation alone causes no judicially cognizable injury, so the Doe Respondents lack standing. Mooney's injuries are more speculative because she does not even claim to have been investigated, and any consequences she faces are outside Petitioners' authority. The claims are also unripe and unlikely to ripen. Because a justiciable controversy requires a threat of *enforcement*, a claim based on an *investigation* is never ripe until a definitive decision is made. Here, that is unlikely *ever* to happen, because following SB14 and this Court's recent decision in *State v. Loe*, No. 23-0697, 2024 WL 3219030 (Tex. 2024), it is unlawful for anyone to give children the procedures addressed in

the AG's Opinion, period. Whether done in a manner constituting child abuse is irrelevant.

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

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

ARGUMENT

I. Respondents' Claims Are Non-Justiciable.

To start, this case should have been dismissed as non-justiciable for multiple reasons. Most notably, Plaintiffs lacked standing, and their challenges to DFPS's

understanding of what constitutes child abuse are unripe (and now, in the light of SB14, unlikely to ripen).

A. Respondents have no standing.

For standing, Respondents "must allege personal injury fairly traceable to the [Petitioner's] allegedly unlawful conduct and likely to be redressed by the requested relief." *Tex. Propane Gas Ass'n v. City of Houston*, 622 S.W.3d 791, 799 (Tex. 2021). "[P]arallel[ing]" the federal requirements, *id.*, Texas law requires plaintiffs' injuries to be "concrete, particularized, and actual or imminent." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013); *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). No plaintiff has shown such an injury based on mere investigation of whether the care being provided Mary Doe falls within the statutory definition of child abuse.

1. The Doe Respondents lack standing.

Below, the Doe Respondents argued (Appellee's Br. at 19-20) that DFPS's "rule" "violated the Doe Appellees' right to due process," including their "fundamental rights as parents," and "violated Mary Doe's right to equality under the law." But the bare existence of a law, without more, does not confer standing—no matter how aggrieved the Respondent may feel about the law's existence. *See, e.g.*, *Collins v. Yellen*, 141 S. Ct. 1761, 1779 (2021). "[P]laintiffs who want the courts to pass judgment on the legality of government action must seek relief against the particular government official or agency responsible for the challenged action." *Abbott*, 645 S.W.3d at 280. "Allegations of a subjective 'chill' are not an adequate substitute

for a claim of specific present objective harm or a threat of specific future harm" caused by an actual enforcement action. *Laird v. Tatum*, 408 U.S 1, 13-14 (1972).

To identify an injury-in-fact, the court "must consider [Respondents'] actual injury—not the labels [Respondents] put on" it. *E.T. v. Paxton*, 41 F.4th 709, 717 (5th Cir. 2022). The Doe Respondents below identified two government actions as sources of injury: (1) "unlawful investigations" (at 18) and (2) "prevent[ing] the Doe Parents from consenting to" medical procedures (at 21). The Third Court further identifies that stopping puberty blockers might cause depression and suicidality in Mary Doe, and that if she becomes suicidal, this may result in an investigation into neglect on the part of the Doe Parents. *Doe*, 2024 WL 1340692, at *9-10. None of these are concrete injuries given SB14, which prohibits the giving of puberty blockers to minors, was upheld as constitutional in *Loe*.[3]

a. To the extent the Doe Respondents' first putative injury-in-fact arises from the investigation, it does not suffice. Standing requires "an invasion of a *legally protected* interest." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (emphasis added); *cf. TransUnion LLC v. Ramirez*, 594 U.S. 413, 426 (2021). Respondents cannot legally stop DFPS from "investigat[ing] a report of child abuse or neglect." Tex. Fam. Code §261.301(a); *Laird*, 408 U.S. at 13-14. And while they have a right to defend

[3] Respondents asserted below (Appellee's Brief at 37-38) that "Doe's suspension and placement on administrative leave" and her "potential loss of employment" are injuries. But "standing is not dispensed in gross." *See Heckman v. Williamson County*, 369 S.W.3d 137, 153 (Tex. 2012). Since Doe has not sought to enjoin any adverse employment actions, *see* CR.235-36, any injury from such actions is irrelevant for standing purposes.

themselves if DFPS initiates a court action potentially affecting parental rights, *In re Abbott*, 645 S.W.3d at 282, DFPS has not brought that action, and no indication exists it is imminent.

The Doe Respondents intimate (Appellee's Brief at 25) that merely being investigated "chill[s] the exercise of [their] rights," but "[t]he normal judicial role in this process is to act as the gatekeeper against unlawful interference in the parent-child relationship, not to act as overseer of DFPS's initial, executive-branch decision to investigate whether allegations of abuse may justify the pursuit of court orders." *Id.* And although some government investigations might subjectively cause a chill, a "subjective chill" is not enough. *Laird*, 408 U.S. at 13-14; *cf. Clapper*, 568 U.S. at 402. A Respondent who relies on such a theory must still identify a concrete injury, which the Doe Respondents have not done. *See Clapper*, 568 U.S. at 402.

b. The Doe Respondents' second alleged injury—that DFPS's press release "prevent[s] the Doe Parents from consenting to" medical procedures (at 21)—cannot fill this gap. To start, DFPS's press release merely restates Texas law as explained in the AG Opinion, and thus doesn't represent a threat of enforcement sufficient to confer standing. *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 181 (5th Cir. 2020). This is particularly clear after SB14 and *Loe* because the procedures to which Doe wishes to consent are now entirely unlawful. *Compare* 2RR.87, 117, 131-34; 3RR.13, *with Loe*, 2024 WL 3219030 at *2 (quoting Tex. Health & Safety Code §161.702(3)). Therefore, even if preventing the Doe Parents from consenting to these procedures were an injury, enjoining the DFPS press release will do plaintiffs no good as they are barred from consenting to those procedures for another reason.

2. Mooney lacks standing to sue DFPS or the Commissioner.

For many of the same reasons, none of Mooney's alleged injuries—which depend on an unknown entity investigating her for reporting her patients—confer standing because they involve a series of contingencies that render them neither "concrete [and] particularized" nor "actual or imminent." *Clapper*, 568 U.S. at 409. *See supra* 4-5. Indeed, she has not even alleged any of the Petitioners are investigating her or contemplating an enforcement action against her.

But even if Mooney had identified an injury-in-fact, her injuries are not traceable to DFPS or the Commissioner and are not "likely" to be redressed by an order against these defendants. *Data Foundry v. City of Austin*, 620 S.W.3d 692, 696 (Tex. 2021). DFPS has not threatened to revoke Mooney's psychologist's license nor can it. Nor can DFPS criminally prosecute or take any other enforcement action against Mooney.

B. Respondents' claims are unripe.

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

U.S. 440 (1964); *Twitter, Inc. v. Paxton*, 56 F.4th 1170 (9th Cir. 2022); *Waco ISD* v. *Gibson*, 22 S.W.3d 849, 851-52 (Tex 2000). Here, until DFPS "has arrived at a definitive position," there is nothing for the Court to do. *Rea v. State*, 297 S.W.3d 379, 383-84 (Tex. App.—Austin 2009, no pet.).

Below, the Doe Respondents argued (Appellee's Brief at 42) their claims are prudentially ripe because "[t]his case presents a challenge," which is purely legal "to an underlying rule unlawfully adopted by DFPS and Abbott's Directive" and not "on the specifics of the resulting, improperly-initiated investigation into the Does." But without a redressable injury, a purely legal dispute requires an advisory opinion, which Texas courts cannot provide. *See Tex. Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993).

II. Sovereign Immunity Bars This Suit.

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

1. In support of their claims, Respondents begin with the waiver of sovereign immunity for challenges to a "rule" under the APA. CR.29. That theory fails. "Not every statement by an administrative agency is a rule" under the APA. *TEA v. Leeper*, 893 S.W.2d at 443. A "rule" is "a state agency statement of general applicability that: (i) implements, interprets, or prescribes law or policy; or (ii) describes the procedure or practice requirements of a state agency." Tex. Gov't Code §2001.003(6)(A).

Here, the purported "rule" is a spokesman's statement to a reporter. An agency spokesman must be able to "practically express its views to an informal conference," *Brinkley v. Tex. Lottery Comm'n*, 986 S.W.2d 764, 769 (Tex. App.—Austin 1999, no

pet.), but only "[t]he commissioner" may "oversee the development of rules," Tex. Hum. Res. Code §40.027(c)(3). Press statements do not "implement[], interpret[], or prescribe[] law or policy." Tex. Gov't Code §2001.003(6)(A)(i). Nor do they "describe[] the procedure or practice requirements of a state agency." *Id.* §2001.003(6)(A)(ii). Press statements therefore are not "rules."

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

2. Respondents also seek relief under the UDJA, CR.152, but "[t]he UDJA's sole feature that can impact trial-court jurisdiction to entertain a substantive claim is the statute's implied limited waiver of sovereign or governmental immunity that permits claims challenging the validity of *ordinances or statutes*." *Ex parte Springsteen*, 506 S.W.3d 789, 799 (Tex. App.—Austin 2016, pet. denied) (emphasis added); *see* Tex. Civ. Prac. & Rem. Code §37.006(b); *Tex. Parks & Wildlife Dep't v. Sawyer Tr.*, 354 S.W.3d 384, 388 (Tex. 2011). Respondents are not challenging an ordinance or statute, but instead a statutory interpretation. The UDJA's limited waiver of

sovereign immunity does not extend to such "bare statutory construction claims." *McLane Co. v. TABC*, 514 S.W.3d 871, 876 (Tex. App.—Austin 2017, pet. denied); *see Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 622 (Tex. 2011). Even if that were not the case, the claim against the Commissioner is not cognizable under the UDJA. *See Patel v. TDLR*, 469 S.W.3d 69, 76 (Tex. 2015) (permitting such suit only against the relevant government agency).

3. Respondents next tried to avoid sovereign immunity by suing the Commissioner under an *ultra vires* theory. CR.36. That too fails. "An *ultra vires* action requires [Respondents] to 'allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.'" *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017) (quoting *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009)). Respondents rely on the "without legal authority" theory, *see* CR.36-37,CR.153, alleging the Commissioner's statement "exceeds...the Commissioner's authority," CR.152, and violates "separation of powers" under the Texas Constitution by "redefining" the Legislature's statutory definition of child abuse, CR.153. But it is simply "[n]ot so" that a "legal mistake is an *ultra vires* act." *Hall*, 508 S.W.3d at 241. Also unavailing is Respondents' separation-of-powers theory. *See* CR.154-55. None of the various allegedly offending statements replace the statutory definition with a new one nor purport to do so. *See In re Abbott*, 645 S.W.3d at 280-81.

III. The Trial Court Erred in Issuing a Temporary Injunction.

The temporary injunction should be vacated for lack of jurisdiction—*see In re Abbott*, 601 S.W.3d 802, 805 (Tex. 2020) (orig. proceeding) (per curiam)—and

because Respondents have not met their heavy burden to obtain injunctive relief. Respondents' duty was to "plead and prove three specific elements: (1) a cause of action against the [Petitioner]; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Because an injunction "is executory, a continuing decree," longstanding principles of equity required the court of appeals to assess its enforceability at the time of that court's judgment—including whether "th[e] right has been modified by [a] competent authority"—namely, the Legislature. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421, 431-32 (1855). The court of appeals failed to do so.

A. Respondents have no probable right to injunctive relief.

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

2. Respondents are also not entitled to a temporary injunction as its four provisions, CR.235-36, are each unlawful.

First, the trial court enjoined Petitioners from "taking any actions against [Respondents] based on" the Governor's letter, DFPS's press statement, and the AG Opinion. CR.235-36. But DFPS has "pre-existing legal obligations" to investigate suspected abuse. *See In re Abbott*, 645 S.W.3d at 281. To the extent the first provision prohibits DFPS from investigating Respondents in any respect, this provision is overbroad in relation to Respondents' claims. Put differently, Respondents seem to agree DFPS can investigate and take action against "facilitating or providing gender-affirming care to transgender minors," CR.236, if DFPS independently believes the "care" constitutes "child abuse" under section 261.001(a). *See also In re Abbott*, 645 S.W.3d at 286 (Lehrmann, J., concurring). Given the documented existence of such phenomena as Munchausen by proxy, it is not hard to imagine how such circumstances could arise—even if there is a good-faith dispute regarding how often.

Second, the trial court prohibited Petitioners from even "investigating reports...against [Respondents] based solely on alleged child abuse…in facilitating or providing" the treatments Ms. Doe admits to providing. CR.236. This fails for the same reasons as the first.

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

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

The same principles apply to the temporary injunction. A court lacks power to "grant[] a remedy beyond what [i]s necessary to provide relief to [the Respondents]." *Lewis v. Casey*, 518 U.S. 343, 360 (1996); *see also Operation Rescue-Nat'l v. Planned Parenthood of Houston & Se. Tex., Inc.*, 975 S.W.2d 546, 568 (Tex. 1998). So the trial court could not properly "enjoin enforcement of [a challenged law] as to anyone other than the named [Respondents]." *In re Abbott*, 954 F.3d 772, 786 n.19 (5th Cir. 2020), *judgment vacated as moot sub nom. Planned Parenthood Ctr. for Choice v. Abbott*, 141 S. Ct. 1261 (2021); *accord McKenzie v. City of Chicago*, 118 F.3d 552, 555 (7th Cir. 1997).

The Third Court's reasoning to rule to the contrary, *Doe*, 2024 WL 1340692, at *22-24, is unavailing. The Third Court first asserts, *id.* at *23, that "[c]rafting a plaintiffs-only injunction that would permit relief without compromising the Doe Family's anonymity would likely not be possible." But that could have been said the last time the case was before the Court as well. The Court still found the Third Court's order improper. Similarly off base is the court's assertion that not granting statewide relief would result in similarly situated non-plaintiffs filing multiple identical suits. But this is not a class action. More fundamentally, such a raft of litigation is unlikely given that Texas's prohibition via SB14 on administering puberty blockers to minors is constitutional. *See Loe*, 2024 WL 3219030, at *2.

Fourth, the trial court enjoined enforcement actions DFPS has no responsibility to take in the first place: "prosecuting or referring for prosecution" and "imposing reporting requirements." CR.236. Petitioners understand those provisions to refer, respectively, to criminal prosecution and to the mandatory reporting requirements found in Texas Family Code section 261.101. But any criminal prosecution for child abuse would be brought by the appropriate district attorney, and reporting requirements are imposed by the Legislature, not by DFPS. *See* Tex. Fam. Code §261.1055. As a result, neither DFPS nor its Commissioner is the appropriate target of such an injunction. *State v. Zurawski*, No. 23-0629, 2024 WL 2787913, at *6-7 (Tex. May 31, 2024).

B. Respondents have not shown irreparable harm.

Respondents also failed to show irreparable harm. The injuries Respondents allege do not provide subject-matter jurisdiction, *see supra* 6-10, so they cannot support a temporary injunction. And a Respondent's burden to show irreparable injury is greater than what is necessary to meet the "constitutional minimum" necessary for standing. *Lujan*, 504 U.S. at 560; *see Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam). To obtain a preliminary injunction, allegations are insufficient; the Respondent must make "a clear showing" of irreparable harm. *Mazurek*, 520 U.S. at 972. For the same reasons Respondents failed to show a cognizable injury for standing purposes, Respondents showed no likelihood of irreparable harm—particularly after *Loe*. *See* 2024 WL 3219030 at *2.

Even if DFPS remains enjoined from investigating abuse during the pendency of this litigation, the Does' actions will not be immunized from scrutiny if the

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

Prayer

The Court should grant the petition.

Respectfully submitted.

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