

No. 03-22-00420-CV & No. 03-22-00587-CV

**In the Court of Appeals
for the Third District of Texas at Austin**

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.

PFLAG, INC., MIRABEL VOE, individually and as parent and next friend of ANTONIO VOE, a minor; WANDA ROE, individual and as parent and next friend of TOMMY ROE, a minor; ADAM BRIGGLE and AMBER BRIGGLE, individually and as parents and next friends of M.B., a minor,

Appellees,

On Appeal from the 201st Judicial District of Travis County, Texas
Cause No. D-1-GN-22-002569, Hon. Amy Clark Meachum

**AMICUS BRIEF OF CURRENT AND FORMER CHIEF PROSECUTORS,
ATTORNEYS GENERAL, AND LAW ENFORCEMENT LEADERS, AND
FORMER STATE AND FEDERAL JUDGES, U.S. ATTORNEYS, AND U.S.
DEPARTMENT OF JUSTICE OFFICIALS IN SUPPORT OF APPELLEES**

Counsel for Amici Curiae

REED SMITH LLP

R. Alan York (TX Bar No. 22167500)
811 Main St., Ste 1700
Houston, TX 77002
Omar J. Alaniz (TX Bar No. 24040402)
2850 N. Harwood St., Ste. 1500
Dallas, TX 75201
Telephone: (713) 469-3800
Facsimile: (713) 469-3899
Email: ayork@reedsmith.com
Email: oalaniz@reedsmith.com

BROWNSTEIN HYATT FARBER SCHRECK, LLP

Martha L. Fitzgerald
Amalia Y. Sax-Bolder
Craig M. Finger
410 Seventeenth Street, Suite 2200
Denver, CO 80202
Telephone: (303) 223-1100
Facsimile: (303) 223-1111
Email: mfitzgerald@bhfs.com
Email: asax-bolder@bhfs.com
Email: cfinger@bhfs.com

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
INTEREST OF AMICI CURIAE.....	1
SUMMARY OF ARGUMENT	3
BACKGROUND	4
ARGUMENT	6
I. By Specifically Targeting Transgender Children, their Families, and Medical Professionals — and Intruding on their Right to Seek and Provide Approved Medical Care — the Appellants’ Actions Undermine Community Trust and Threaten Public Safety	6
II. The Appellants’ Actions Will Increase the Risk of Violence and Abuse Against Transgender Children by Isolating Them from the Protection of the Criminal Legal System.....	12
CONCLUSION	15

TABLE OF AUTHORITIES

Page(s)

Statutes

TEX. FAM. CODE § 261.001(1)(A–D).....10

Other Authorities

American Academy of Pediatrics Policy Statement, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142(4) *Pediatrics* (Oct. 2018).....10

American Psychological Association, *Resolution on Supporting Sexual/Gender Diverse Children and Adolescents in Schools* (2020)10

Amy E. Green, Ph. D. et al., *Association of Gender-Affirming Hormone Therapy with Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth*, 70 *J. of Adolescent Health* 643 (2022).....7

Andrew Goldsmith, *Police Reform and the Problem of Trust*, 9 *Theoretical Criminology* 443 (2005)9

Andrew R. Flores, Ilan H. Meyer, Lynn Langton, and Jody L. Herman, *Gender Identity Disparities in Criminal Victimization*, 111 *American Journal of Public Health* 4 (2021)13

Attorney General Opinion No. KP-0401 (Feb. 18, 2022)5

Br. of *Amici Curiae* Am. Academy of Pediatrics, et al. Supp. App. Emerg. Mot. for TRO, *Doe v. Abbott*, No. 03-22-00126-CV (Tex. App. Mar. 18, 2022)5, 9

Building Community Trust: Key Principles and Promising Practices in Community Prosecution and Engagement, Fair and Just Prosecution, Mar. 2018.....8

Dawn Ennis, *Gender-Affirming Care Linked To Less Depression, Lower Suicide Risk For Trans Youth*, *Forbes* (Dec. 14, 2021).....7

Elizabeth Fussell, *The Deportation Threat Dynamic and Victimization of Latino Migrants: Wage Theft and Robbery*, 52 *Soc. Q.* 593 (2011).....14

Endocrine Society, <i>Gender Dysphoria/Gender Incongruence Guideline Resources</i> (Sept. 2017).....	10
Fabian Luis Fernandez, <i>Hands Up: A Systematized Review Of Policing Sex Workers In The U.S.</i> , Yale University School of Public Health Theses 1085 (2016).....	15
Governor Greg Abbott, <i>Letter to Commissioner Jaime Masters</i> (Feb. 22, 2022).....	4
Lucy Platt, et al., <i>Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies</i> , Plos Medicine (2018).....	15
Michelle M. Johns, et al., <i>Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017</i> , 68 Morbidity and Mortality Weekly Report 67 (Jan. 25, 2019).....	13
Min Xie & Eric P. Baumer, <i>Neighborhood immigrant concentration and violent crime reporting to the police: A multilevel analysis of data from the National Crime Victimization Survey</i> , 57 Criminology 237 (2019).....	14, 15
Nik Theodore, <i>Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement</i> , Policy Link, (2013)	14
Texas Pediatric Society, <i>AAP, Texas Pediatric Society Oppose Actions in Texas Threatening Health of Transgender Youth</i> (Feb. 24, 2022)	10
Thomas C. O'Brien & Tom R. Tyler, <i>Rebuilding Trust Between Police & Communities Through Procedural Justice & Reconciliation</i> , 5 Behav. Sci. & Pol'y 35 (2019)	9
Tom R. Tyler & Jeffrey Fagan, <i>Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?</i> , 6 Ohio St. J. Crim. L. 231 (2008).....	8, 9
Tom R. Tyler & Jonathan Jackson, <i>Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement</i> , 20 Psych., Pub. Pol'y & L. 78 (2013)	8

INTRODUCTION

Amici — current and former state and local chief prosecutors, Attorneys General, and law enforcement leaders, and former state and federal judges, U.S. Attorneys, and U.S. Department of Justice Officials¹ — file this brief in support of Appellees, who ask this Court to affirm the lower court’s entry of two temporary injunctions to suspend enforcement of the invalid and unlawful agency rule that targets for investigation and potentially even prosecution parents of transgender children, as well as medical and other professionals, based on efforts to seek, provide, or consent to recognized and approved gender-affirming medical care for children with gender dysphoria.

INTEREST OF AMICI CURIAE

Amici curiae are current and former chief prosecutors, Attorneys General and law enforcement leaders, and former state and federal court judges, U.S. Attorneys, and U.S. Department of Justice officials, all of whom are committed to protecting the integrity of the justice system, upholding the Constitution and rule of law, and promoting safer and healthier communities.²

Amici have decades of experience safeguarding public safety as well as the integrity of the American criminal justice and legal systems. They are united in the

¹ A list of *amici* is attached as Appendix A.

² No person was paid a fee for preparation of this brief, and no party to the case participated in drafting it.

conviction that a core tenet of the pursuit of justice is the furtherance of fair and equitable policies and practices that comport with constitutional law and protect the well-being of members of their community.

Drawing on their collective experiences, *amici* recognize that trust in the rule of law and the justice system is the foundation for keeping communities safe. When anyone — let alone an already vulnerable group of individuals — is excluded from the law’s protections, all members of our communities lose trust that the law is being applied uniformly and fairly. This loss of trust inhibits the ability of law enforcement and stakeholders in the justice system to promote public safety.

Appellants’ adoption of a new rule which potentially criminalizes medically necessary gender-affirming healthcare and labels this medical treatment as “child abuse” is of deep concern to *amici*. By singling out families with transgender children for government interference and opening the door to intrusions into the privacy of deeply personal medical care, while also triggering potential family separation and even prosecution based on clinically recommended treatment, Appellants have profoundly threatened both public trust and the well-being of these children and their loved ones. Policies such as these create troubling and destructive barriers between members of vulnerable communities and law enforcement and will only increase the risk of victimization, abuse, and violence these individuals face.

SUMMARY OF ARGUMENT

Appellants have interjected the government into the personal healthcare decisions of some of the state's most vulnerable youth, punishing parents who follow the medical guidance of qualified professionals in seeking care for their children. Appellants' new rule has no basis in public health and will inevitably lead to children not getting life-sustaining medical care. And if Appellants' actions are ultimately allowed to stand, the public will lose confidence that the law exists to safeguard society, and trust in legal authorities and government agencies will necessarily suffer.

The ripple effects of such a result will be enormous. Prosecutors and law enforcement leaders rely on the trust of their communities to promote public safety. When individuals lack confidence in legal authorities and view government agencies and officials, the lawyers who represent them, police, the courts, and the law as illegitimate, they are less likely to report crimes, cooperate as witnesses, and accept police and judicial authority. By using the law to selectively persecute transgender children and their families, Appellants create untold damage to the bonds of trust between our community and our entire governmental and law enforcement system that are fundamental to its operation.

The Appellants' targeting of transgender children and their families also isolates these particularly vulnerable individuals from the protection of the criminal

legal system. Transgender children are already more likely than their cisgender peers to be victims of violence and harassment. If transgender children and their families know that the police, teachers, and school officials can seek to file abuse reports against them simply for utilizing critical *medical* care, they will be significantly less likely to seek help or redress when they become the victims of crime. Their effective lack of access to law enforcement will only exacerbate the potential for violence and abuse.

BACKGROUND

At issue in this case is the Texas Department of Family and Protective Services' Rule ("DFPS Rule"), first initiated following a letter from the Texas Governor, directing the DFPS Commissioner to conduct a "prompt and thorough investigation" of any reported instances of gender-affirming care as potential child abuse. The letter required the DFPS to mandate reporting of minors who have or are receiving this treatment, as well as their parents, by "all licensed professionals who have direct contact with children" as well as "all members of the public." Governor Greg Abbott, *Letter to Commissioner Jaime Masters* (Feb. 22, 2022).³ The Governor's letter referenced an earlier opinion by the Texas Attorney General concluding that medically approved treatment for minors with gender dysphoria

³ <https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf>.

could constitute child abuse under state law. Attorney General Opinion No. KP-0401 (Feb. 18, 2022).⁴ The same day the Governor’s letter was released, DFPS announced that it would initiate investigations of potential child abuse consistent with the Attorney General’s opinion.

DFPS subsequently began investigating Mirabel Voe, Wanda Roe, and Adam and Amber Briggie, all parents of transgender adolescents, along with their families, based solely on the allegations that these adolescents were prescribed medical care for their diagnosed gender dysphoria. This unjustified government intrusion into these families’ most private affairs not only unfairly singled them out for humiliation and harassment, but it also put at risk the parents’ continued custody of their children and their right to pursue treatment for their children’s diagnosed conditions. Another Appellee in this litigation, PFLAG, which is an organization for LGBTQ+ individuals and their families, risks additional intrusive and illegal investigations into its members, many of whom have transgender children, causing fear that their child may be removed from their medically necessary care and that they may lose parental rights inherent in being investigated for child abuse. The Voe, Roe, and

⁴ Despite this sweeping pronouncement, the memorandum primarily focused on surgical procedures that could cause sterilization, such as forced castration and female genital mutilation, as the basis for its conclusion. *See id.* at 1, 9, available at <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2022/kp-0401.pdf>. However, surgical procedures are not recommended and are generally not allowed for transgender minors. *See* Br. of *Amici Curiae* Am. Academy of Pediatrics, et al. Supp. App. Emerg. Mot. for TRO at 13, *Doe v. Abbott*, No. 03-22-00126-CV (Tex. App. Mar. 18, 2022).

Briggle families, as well as PFLAG members and their children, all now live under the threat of criminal prosecution.

After a hearing on a motion for temporary injunctions, the lower court enjoined Appellants from investigating or taking any actions, including investigatory or adverse actions, against the plaintiff families and members of PFLAG for possible child abuse or neglect solely based on allegations that they have a minor child who is receiving gender-affirming care. At issue in this case is the validity and enforcement of the DFPS Rule statewide and, as the trial court noted in its orders imposing the temporary injunctions, the potential for criminal prosecution of families seeking gender-affirming care for their minor children.

ARGUMENT

I. By Specifically Targeting Transgender Children, their Families, and Medical Professionals — and Intruding on their Right to Seek and Provide Approved Medical Care — the Appellants’ Actions Undermine Community Trust and Threaten Public Safety

The DFPS Rule at issue in this case targets one of the most vulnerable populations in America — transgender youth. These practices interject the government into personal healthcare decisions and punish parents who follow the medical guidance of qualified professionals in seeking care for their children, threatening them with investigation and even prosecution as child abusers. This intrusion also ensnares the doctors, social workers, counselors, and other individuals who are entrusted with providing critical foundational support for these children,

forcing them to become mandatory reporters and subjecting them to their own adverse consequences. It also traps prosecutors and police officers, individuals charged with protecting the most vulnerable, by entangling them in potential criminal action triggered by child abuse reports from DFPS. All of these devastating actions occur under the auspices of the rule of law and turn what is often life-saving treatment for children into “child abuse.” See Dawn Ennis, *Gender-Affirming Care Linked To Less Depression, Lower Suicide Risk For Trans Youth*, Forbes (Dec. 14, 2021) (citing Amy E. Green, Ph. D. et al., *Association of Gender-Affirming Hormone Therapy with Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth*, 70 J. of Adolescent Health 643 (2022)).⁵

Appellants’ Rule targets transgender children and their families by subjecting them to intrusive questioning, invasion of their homes and private spaces, and interference with the confidentiality ordinarily shared between individuals and medical professionals. If the DFPS Rule is allowed to stand, many will legitimately question whether the law exists not to protect members of our community, but to harm them — and this inevitable conclusion will be felt most deeply by children who are already marginalized, along with their loving parents and professionals who have devoted their careers to serving those in need of care and support. This mandate

⁵ <https://www.forbes.com/sites/dawnstaceyennis/2021/12/14/gender-affirming-care-linked-to-less-depression-lower-suicide-risk-for-trans-youth/?sh=122ec0375d25>.

will erode trust and faith in government, and it will diminish our ability to keep people safe.

Prosecutors and law enforcement officials rely on community trust and faith in the integrity of our legal system to perform their jobs. When the integrity of the rule of law — and people’s belief in its even-handed application and enforcement — is undermined, it becomes more difficult for law enforcement officials and criminal justice leaders to maintain community trust and protect public safety. *See e.g., Tom R. Tyler & Jonathan Jackson, Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement*, 20 *Psych., Pub. Pol’y & L.* 78, 78–79 (2013); *Building Community Trust: Key Principles and Promising Practices in Community Prosecution and Engagement*, Fair and Just Prosecution, Mar. 2018, at 1 (“Trust between the community and the prosecutor’s office is essential to maintain the office’s legitimacy and credibility.”).⁶ When individuals lack confidence in legal authorities and view protective government agencies and officials, the lawyers who represent them, the police, the courts, and the law as illegitimate, they are less likely to report crimes, cooperate as witnesses, and accept police and judicial system authority. *See Tom R. Tyler & Jeffrey Fagan, Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their*

⁶ https://www.fairandjustprosecution.org/staging/wp-content/uploads/2018/03/FJP_Brief_CommunityProsecution.pdf.

Communities?, 6 Ohio St. J. Crim. L. 231, 263 (2008). Unfair, discriminatory, and arbitrary practices by government officials erode essential community confidence and trust in law enforcement and our justice system. See Andrew Goldsmith, *Police Reform and the Problem of Trust*, 9 Theoretical Criminology 443, 452–57 (2005); Thomas C. O’Brien & Tom R. Tyler, *Rebuilding Trust Between Police & Communities Through Procedural Justice & Reconciliation*, 5 Behav. Sci. & Pol’y 35 (2019).

By singling out transgender children and their families, seeking to monitor their private decisions, and characterizing their private medical treatment and care as abuse, the Appellants create untold damage to the critical bonds of trust between our community and our entire governmental and law enforcement system. Through this Rule, DFPS has made clear that, despite the fact that gender-affirming care is medically approved and often lifesaving, it will ignore medical advice and target parents of some of the most vulnerable children in our community. The DFPS rule has effectively expanded the definition of child abuse to include seeking gender-affirming treatment, which is recognized by the American Academy of Pediatrics and others as critical for transgender youth.⁷ Appellants have turned laws designed

⁷ While some have, sadly, chosen to stigmatize and dismiss care for transgender children, gender-affirming treatment is well-established and medically necessary for youth diagnosed with gender dysphoria to prevent depression, anxiety, self-harm, and suicide. See Br. of *Amici Curiae* Am. Academy of Pediatrics, et al. as *Amici Curiae* Supp. Supp. App. Emerg. Mot. for TRO, *supra*, at

to protect vulnerable children into tools to attack them. And to make matters worse, doctors, service providers for children, and the public at large are all now entangled in this dystopian landscape as mandated reporters of this distorted conception of “abuse.” Rather than focus on investigating parents who truly neglect and harm their children through physical or emotional violence, these Texas officials seek to use the law to prevent life-saving measures for vulnerable children.

When we allow elected officials to subvert the law’s protection and instead use it in oppressive ways — as is occurring here — we destroy any faith that the community may have in the government and its leaders. A community that believes the government is targeting loving families who are merely seeking medically approved healthcare for their children can have little faith that their government will

5; Br. of *Amici Curiae* Am. Prof. Soc. on the Abuse of Children, et al. Supp. App. Emerg. Mot. for TRO at 16, *Doe v. Abbott*, No. 03-22-00126-CV (Tex. App. Mar. 18, 2022). Gender-affirming medical care has been approved by several medical professional organizations, including the American Academy of Pediatrics, American Psychological Association, Endocrine Society, and the Texas Pediatric Society. American Academy of Pediatrics Policy Statement, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142(4) *Pediatrics* (Oct. 2018), <https://bit.ly/3HGMTwF>; American Psychological Association, *Resolution on Supporting Sexual/Gender Diverse Children and Adolescents in Schools* (2020), <https://bit.ly/3IPQb1Z>; Endocrine Society, *Gender Dysphoria/Gender Incongruence Guideline Resources* (Sept. 2017), <https://bit.ly/3vJtysq>; Texas Pediatric Society, *AAP, Texas Pediatric Society Oppose Actions in Texas Threatening Health of Transgender Youth* (Feb. 24, 2022), <https://bit.ly/3vI7tdy>. Just as it is inconceivable that parents seeking chemotherapy for a child diagnosed with cancer could face “child abuse” allegations and potential criminal prosecution, it should be equally unimaginable that parents and medical professionals seeking to treat a child with medically recognized gender-affirming care should be subject to the parade of horrors triggered by the DFPS Rule. Parents could realistically face the Hobson’s choice of providing their transgender children with medically necessary care and risking adverse consequences for doing so, or not seeking needed care and being accused of medical neglect under Texas law. *See* TEX. FAM. CODE § 261.001(1)(A–D). Such fundamental contradictions in the law necessarily erode trust in the legal system.

protect them, any more than it would believe that a government targeting certain religions or races would protect them. And once members of our community believe that the government is working to oppress and harm people through the rule of law, they lose all faith in the integrity of enforcement of a system of laws. When our laws — and the government we entrust to enforce them — lack credibility, people will start ignoring the law and instead act without regard to the guideposts of our justice system. Some might act as individual vigilante enforcers rather than call the police, and others may simply conclude that legal protections do not exist and feel free to prey on vulnerable individuals who look, think, or behave differently — just as the Texas government is doing here. No one benefits when this lawlessness threatens to replace the norms of our criminal legal system.

It is not only those implementing the Rule at issue — the Commissioner or DFPS — who will lose legitimacy with the public. Prosecutors and law enforcement leaders sworn to promote community safety and well-being will also lose moral authority. The public will likely infer that, when the highest elected officials in the State have identified certain actions as abusive, and triggered investigations as a result, police investigation and criminal prosecution will follow. If the public believes that the criminal legal system could use the law as a sword against the vulnerable, it will have little respect for the authority of prosecutors and law enforcement leaders. Members of the public will reasonably decline to cooperate in

police investigations, because they will be unsure that the criminal legal system has their best interests at heart. They will also be unwilling to report crimes. All of these consequences will erode public safety and trust in the rule of law.

Simply put, the DFPS Rule has the potential to undermine trust in every level of government and law enforcement both within and outside of Texas. Appellants have diminished the moral weight of the rule of law and called into question the ability of government actors to act as protectors, instead casting them as persecutors. *Amici* have significant concerns as to the long-term impact this will have on our legal system and public safety — and the adverse ripple effects that will inevitably be felt not simply in the state of Texas.

II. The Appellants' Actions Will Increase the Risk of Violence and Abuse Against Transgender Children by Isolating Them from the Protection of the Criminal Legal System

In addition to eroding community trust, the Appellants' targeting of transgender children and their families will isolate these already vulnerable individuals from the protection of the criminal legal system. Transgender people, including transgender teens, are already significantly more likely to be abused, harassed, and attacked than their cisgender peers. One study using data from the 2017-2018 National Crime Victimization Survey concluded that transgender people are over four times as likely to be subjected to personal violence than cisgender people, and households with transgender members are more than twice as likely to

be the victims of property crimes. Andrew R. Flores, Ilan H. Meyer, Lynn Langton, and Jody L. Herman, *Gender Identity Disparities in Criminal Victimization*, 111 *American Journal of Public Health* 4 (2021).⁸ Transgender high school students show similar vulnerability, and studies of the prevalence of violent victimization among them reveal substantially higher rates than found in cisgender students. Michelle M. Johns, et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017*, 68 *Morbidity and Mortality Weekly Report* 67 (Jan. 25, 2019).⁹ For example, 23.8 percent of transgender students interviewed had been forced to have sexual intercourse at some point, and 26.4 percent experienced physical dating violence. *Id.*

The Appellants' actions make it significantly more difficult for law enforcement to protect transgender children and their families from this abuse. If transgender children and their families know that the police, teachers, and school officials are an integral part of abuse reports that are filed against them as they seek critical medical care, they will be significantly less likely to seek help or redress when they become the victims of crime.

⁸ <https://escholarship.org/uc/item/7c3704zg#main>.

⁹ https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6348759/#__ffn_sectitle.

This same phenomenon occurs in other communities who constantly live under the threat of investigation, family separation, or criminal charges. Fearing deportation, many undocumented persons do not seek help from the police when they are victimized. Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Policy Link, (2013) at 3, 5–6 (study concluding that undocumented persons are significantly less likely to contact the police when victimized: “the increased involvement of police in immigration enforcement has significantly heightened the fears many Latinos have of the police . . . exacerbating their mistrust of law enforcement authorities”);¹⁰ Min Xie & Eric P. Baumer, *Neighborhood immigrant concentration and violent crime reporting to the police: A multilevel analysis of data from the National Crime Victimization Survey*, 57 *Criminology* 237, 249 (2019) (concluding that communities with a high concentration of recent immigrants are significantly less likely to report victimization to the police).¹¹ This understandable lack of cooperation has exacerbated the vulnerability of the undocumented, as they and their family members are increasingly selected as low-risk targets for criminal activity. See Elizabeth Fussell, *The Deportation Threat Dynamic and Victimization of Latino*

¹⁰ <https://perma.cc/XEE8-P42V>.

¹¹ <https://perma.cc/QS5R-K867>.

Migrants: Wage Theft and Robbery, 52 Soc. Q. 593, 610 (2011).¹² If this court fails to intervene, transgender children and their families could suffer the same consequences.

CONCLUSION

The DFPS Rule at issue in this case threatens the very core of our system of justice and threatens to erode the foundational trust in government that is integral to promoting public safety. Appellants' actions subvert the moral weight of the rule of law and replace it with deeply troubling judgments and unfounded assumptions grounded in bias. In so doing, they destroy community trust in the integrity of our laws, government institutions, and the legitimacy of those entities charged with protecting the most vulnerable. Instead of safeguarding transgender children, the DFPS Rule discourages them from seeking our protection and puts them at risk. *Amici* — individuals committed to public safety who have devoted decades to the

¹² Similarly, sex workers who are under threat of arrest and prosecution often decline to report abuse, thefts, or violent crimes to the police. Fabian Luis Fernandez, *Hands Up: A Systematized Review Of Policing Sex Workers In The U.S.*, Yale University School of Public Health Theses 1085 (2016), <https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=1084&context=ysphtdl>. Without the protection of law enforcement, sex workers are also substantially more likely to become victims of violence, including by clients and intimate partners. Lucy Platt, et al., *Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies*, Plos Medicine (2018), <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002680>.

service, protection, and well-being of others — cannot stand idly by as this occurs.

We therefore ask this Court to affirm the lower court’s award of injunctive relief.

Dated: April 10, 2023

Respectfully submitted,

By: /s/ R. Alan York

R. Alan York
(TX Bar No. 22167500)
Omar J. Alaniz
(TX Bar No. 24040402)

By: /s/ Amalia Y. Sax-Bolder

Amalia Sax-Bolder
Martha L. Fitzgerald
Craig M. Finger

REED SMITH LLP
811 Main St., Ste 1700
Houston, TX 77002
2850 N. Harwood St., Ste. 1500
Dallas, TX 75201
Telephone: (713) 469-3800
Facsimile: (713) 469-3899
Email: ayork@reedsmith.com
Email: oalaniz@reedsmith.com

**BROWNSTEIN HYATT FARBER
SCHRECK, LLP**
410 Seventeenth Street, Suite 2200
Denver, CO 80202
Telephone: (303) 223-1100
Facsimile: (303) 223-1111
Email: asax-bolder@bhfs.com
Email: mfitzgerald@bhfs.com
Email: cfinger@bhfs.com

Certificate of Compliance

This brief was prepared using Microsoft Word in Times New Roman font. The font size in the text is 14-point and the footnotes are 12-point. Based on a word count in Microsoft Word, this brief contains 3,582 words, excluding portions of the brief exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ R. Alan York

R. Alan York

Certificate of Service

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with the Texas Rules of Appellate Procedure on the 10th day of April, 2023 on each of the following persons listed below as indicated via the court's electronic filing system.

/s/ R. Alan York

R. Alan York

Counsel for Appellants

Ken Paxton
Brent Webster
Grant Forfman

Christopher Hilton
Courtney Corbello (lead counsel)
Johnathan Stone
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711
courtney.corbello@oag.texas.gov
Johnathan.Stone@oag.texas.gov

Counsel for Appellees

Paul D. Castillo
Shelly L. Skeen
Nicholas “Guilly” Guillory
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
3500 Oak Lawn Ave., Unit 500
Dallas, Texas 75219

Omar Gonzalez-Pagan
M. Currey Cook
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, New York 10005-3919

Karen L. Loewy
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
1776 K Street, N.W., 8th Floor
Washington, DC 20006-2304

Camilla B. Taylor
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
65 E. Wacker Place, Suite 2000
Chicago, IL 60601-7245

Brandt Thomas Roessler
BAKER BOTTS L.L.P.
30 Rockefeller Plaza
New York, New York 10112-4498

Brian Klosterboer
Andre Segura
Savannah Kumar
AMERICAN CIVIL
LIBERTIES
UNION FOUNDATION OF
TEXAS
5225 Katy Fwy., Suite 350
Houston, Texas 77007

Chase Strangio
James Esseks
Anjana Samant
Kath Xu
AMERICAN CIVIL
LIBERTIES
UNION FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004

Derek R. McDonald
Maddy R. Dwertman
David B. Goode
BAKER BOTTS L.L.P.
98 San Jacinto Boulevard,
Suite 1500
Austin, Texas 78701-4078

Ryan G. Kercher
Courtney Corbello
Assistant Attorney General
Office of the Attorney
General
P.O. Box 12548, Capitol
Station
Austin, Texas 78711-2548

APPENDIX A: LIST OF *AMICI*

Roy L. Austin, Jr.

Former Deputy Assistant Attorney General, Civil Rights Division, U.S.

Department of Justice

Former Deputy Assistant to President Obama for the Office of Urban Affairs,
Justice, and Opportunity (White House Domestic Policy Council)

Diana Becton

District Attorney, Contra Costa County, California

Wesley Bell

Prosecuting Attorney, St. Louis County, Missouri

Buta Biberaj

Commonwealth's Attorney, Loudoun County, Virginia

Richard Biehl

Former Chief, Dayton Police Department, Ohio

Shay Bilchik

Director Emeritus, Center for Juvenile Justice Reform, McCourt School of Public
Policy, Georgetown University

Former Associate Deputy Attorney General, U.S. Department of Justice

Former Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S.
Department of Justice

Former Chief Assistant State Attorney, Miami-Dade County, Florida

Sherry Boston

District Attorney, DeKalb County, Georgia

Chesa Boudin

Former District Attorney, City and County of San Francisco, California

RaShall Brackney, Ph.D.

Former Chief, Charlottesville Police Department, Virginia

Alvin Bragg

District Attorney, New York County (Manhattan), New York

Joseph Brann

Former Chief, Hayward Police Department, California

Former Director, Office of Community Oriented Policing Services, U.S.
Department of Justice

Aisha Braveboy

State's Attorney, Prince George's County, Maryland

Bobbe J. Bridge

Former Justice, Supreme Court, Washington

Jim Bueermann

Former Chief, Redlands Police Department, California

Former President, National Police Foundation

Chris Burbank

Former Chief, Salt Lake County, Utah

Director, Law Enforcement Strategy, Center for Policing Equity

Doug Chin

Former Lieutenant Governor, Hawaii

Former Attorney General, Hawaii

John Choi

County Attorney, Ramsey County (St. Paul), Minnesota

Jerry L. Clayton

Sheriff, Washtenaw County (Ann Arbor), Michigan

Dave Clegg

District Attorney, Ulster County, New York

Laura Conover

County Attorney, Pima County (Tucson), Arizona

Brendan Cox

Former Chief, Albany Police Department, New York

Kara Davis

District Attorney, Gilliam County, Oregon

Satana Deberry

District Attorney, Durham County, North Carolina

Parisa Dehghani-Tafti

Commonwealth's Attorney, Arlington County and the City of Falls Church, Virginia

Steve Descano

Commonwealth's Attorney, Fairfax County, Virginia

Michael Dougherty

District Attorney, 20th Judicial District (Boulder), Colorado

Mark Dupree

District Attorney, Wyandotte County (Kansas City), Kansas

Matt Ellis

District Attorney, Wasco County, Oregon

Ramin Fatehi

Commonwealth's Attorney, City of Norfolk, Virginia

Lisa Foster

Former Judge, Superior Court, California

Former Director, Office of Access to Justice, U.S. Department of Justice

Kimberly M. Foxx

State's Attorney, Cook County (Chicago), Illinois

William Royal Furgeson, Jr.

Former Judge, U.S. District Court, Western District of Texas

Gil Garcetti

Former District Attorney, Los Angeles County, California

Kimberly Gardner

Circuit Attorney, City of St. Louis, Missouri

Stan Garnett

Former District Attorney, 20th Judicial District (Boulder), Colorado

George Gascón

District Attorney, Los Angeles County, California

Former District Attorney, City and County of San Francisco, California

Former Chief, San Francisco Police Department, California

Former Chief, Mesa Police Department, Arizona

Sarah F. George

State's Attorney, Chittenden County (Burlington), Vermont

Nancy Gertner

Former Judge, U.S. District Court, District of Massachusetts

Sim Gill

District Attorney, Salt Lake County, Utah

Deborah Gonzalez

District Attorney, Western Judicial Circuit (Athens), Georgia

Eric Gonzalez

District Attorney, Kings County (Brooklyn), New York

Emily Jane Goodman

Former Justice, Supreme Court, New York

Kimberly Graham

County Attorney, Polk County (Des Moines), Iowa

Kristin Graziano

Sheriff, Charleston County, South Carolina

Barry Grissom

Former U.S Attorney, District of Kansas

David J. Hickton

Former U.S. Attorney, Western District of Pennsylvania

Jim Hingeley

Commonwealth's Attorney, Albemarle County, Virginia

Elizabeth K. Humphries

Commonwealth's Attorney, City of Fredericksburg, Virginia

Natasha Irving

District Attorney, 6th Prosecutorial District, Maine

Kathleen Jennings

Attorney General, Delaware

Steven Kirkland

Former Judge, 334th District Court, Harris County (Houston), Texas

Zach Klein

City Attorney, Columbus, Ohio

Justin F. Kollar

Former Prosecuting Attorney, County of Kaua'i, Hawaii

Lawrence S. Krasner

District Attorney, Philadelphia, Pennsylvania

Miriam Aroni Krinsky

Former Assistant U.S. Attorney, Criminal Appellate Chief, and General Crimes Chief, U.S. Attorney's Office for the Central District of California

Former Chair, Solicitor General's Advisory Group on Appellate Issues

William Lansdowne

Former Chief, San Diego Police Department, California

Former Chief, San Jose Police Department, California

Former Chief, Richmond Police Department, California

Rebecca Like

Prosecuting Attorney, County of Kaua'i, Hawaii

Karen Loeffler

Former U.S. Attorney, District of Alaska

Patricia A. Madrid

Former Attorney General, New Mexico

Leesa Manion

Prosecuting Attorney, King County (Seattle), Washington

Brian S. Mason

District Attorney, 17th Judicial District, Colorado

Howard Matz

Former Judge, U.S. District Court, Central District of California

Beth McCann

District Attorney, 2nd Judicial District (Denver), Colorado

Karen McDonald

Prosecuting Attorney, Oakland County, Michigan

Garry L. McFadden

Sheriff, Mecklenburg County (Charlotte), North Carolina

Charmaine McGuffey

Sheriff, Hamilton County, Ohio

Barbara McQuade

Former U.S. Attorney, Eastern District of Michigan

Christian D. Menefee

County Attorney, Harris County (Houston), Texas

Spencer Merriweather

District Attorney, Mecklenburg County (Charlotte), North Carolina

Mary Moriarty

County Attorney, Hennepin County (Minneapolis), Minnesota

Michol O'Connor

Former Justice, Court of Appeals for First Judicial District of Texas, Houston,
Texas

Former Assistant U.S. Attorney, Southern District of Texas

Jerome O'Neill

Former U.S. Attorney, District of Vermont

Former Assistant U.S. Attorney, District of Vermont

Jody Owens

District Attorney, Hinds County, Mississippi

Alonzo Payne

Former District Attorney, 12th Judicial District (San Luis), Colorado

Joseph Platania

Commonwealth's Attorney, City of Charlottesville, Virginia

Richard Pocker

Former U.S. Attorney, District of Nevada

Abdul D. Pridgen

Chief, San Leandro Police Department, California

Former Chief, Seaside Police Department, California

Ira Reiner

Former District Attorney, Los Angeles County, California

Former City Attorney, Los Angeles, California

Eric Rinehart

State's Attorney, Lake County, Illinois

Mimi Rocah

District Attorney, Westchester County, New York

Jeff Rosen

District Attorney, Santa Clara County, California

Ellen Rosenblum

Attorney General, Oregon

Marian Ryan

District Attorney, Middlesex County, Massachusetts

Jacqueline Sartoris

District Attorney, Cumberland County (Portland), Maine

Dan Satterberg

Former Prosecuting Attorney, King County (Seattle), Washington

Eli Savit

Prosecuting Attorney, Washtenaw County (Ann Arbor), Michigan

Shira A. Scheindlin

Former Judge, U.S. District Court, Southern District of New York

Mike Schmidt

District Attorney, Multnomah County (Portland), Oregon

Carol Siemon

Former Prosecuting Attorney, Ingham County (Lansing), Michigan

David Soares

District Attorney, Albany County, New York

Eric Sparr

District Attorney, Winnebago County, Wisconsin

Norm Stamper

Former Chief, Seattle Police Department, Washington

Darrel Stephens

Former Executive Director, Major City Chiefs Association

Former Chief, Charlotte-Mecklenburg Police Department, North Carolina

Jack Stollsteimer

District Attorney, Delaware County, Pennsylvania

David Sullivan

District Attorney, Northwestern District, Massachusetts

Shannon Taylor

Commonwealth's Attorney, Henrico County, Virginia

Carolyn Engel Temin

Former Judge, 1st Judicial District, Pennsylvania

Scott Thomson

Former Chief, Camden Police Department, New Jersey

Former President, Police Executive Research Forum

Steven Tompkins

Sheriff, Suffolk County (Boston), Massachusetts

Suzanne Valdez

District Attorney, Douglas County (Lawrence), Kansas

Matthew Van Houten

District Attorney, Tompkins County, New York

Joyce Vance

Former U.S. Attorney, Northern District of Alabama

Seth Waxman

Former Solicitor General, U.S. Department of Justice

William Wilmoth

Former U.S. Attorney, Northern District of West Virginia

Organizations

Law Enforcement Action Partnership (LEAP)

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Alan York

Bar No. 22167500

ayork@reedsmith.com

Envelope ID: 74478641

Filing Code Description: Brief Not Requesting Oral Argument

Filing Description: AMICUS BRIEF OF CURRENT AND FORMER CHIEF PROSECUTORS, ATTORNEYS GENERAL, AND LAW ENFORCEMENT LEADERS, AND FORMER STATE AND FEDERAL JUDGES, U.S. ATTORNEYS, AND U.S. DEPARTMENT OF JUSTICE OFFICIALS IN SUPPORT OF APPELLEES

Status as of 4/10/2023 1:41 PM CST

Associated Case Party: Jaime Masters

Name	BarNumber	Email	TimestampSubmitted	Status
Thomas Ray		thomas.ray@oag.texas.gov	4/10/2023 1:27:18 PM	SENT
Johnathan Stone		johnathan.stone@oag.texas.gov	4/10/2023 1:27:18 PM	SENT
Courtney Corbello		courtney.corbello@oag.texas.gov	4/10/2023 1:27:18 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Karlene Dunn Poll	24027297	Karlene@slatelaw.com	4/10/2023 1:27:18 PM	SENT
Meredith Parekh	24075953	mparekh@drtx.org	4/10/2023 1:27:18 PM	SENT
Alan York		ayork@reedsmith.com	4/10/2023 1:27:18 PM	SENT
Karen Wright		kwright@reedsmith.com	4/10/2023 1:27:18 PM	SENT
Christian Castile		ccastile@reedsmith.com	4/10/2023 1:27:18 PM	SENT
Craig Finger		cfinger@bhfs.com	4/10/2023 1:27:18 PM	SENT
Martha Fitzgerald		mfitzgerald@bhfs.com	4/10/2023 1:27:18 PM	SENT
Amalia Sax-Bolder		asax-bolder@bhfs.com	4/10/2023 1:27:18 PM	SENT
Omar JAlaniz		oalaniz@reedsmith.com	4/10/2023 1:27:18 PM	SENT

Associated Case Party: PFLAG, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
------	-----------	-------	--------------------	--------

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Alan York

Bar No. 22167500

ayork@reedsmith.com

Envelope ID: 74478641

Filing Code Description: Brief Not Requesting Oral Argument

Filing Description: AMICUS BRIEF OF CURRENT AND FORMER CHIEF PROSECUTORS, ATTORNEYS GENERAL, AND LAW ENFORCEMENT LEADERS, AND FORMER STATE AND FEDERAL JUDGES, U.S. ATTORNEYS, AND U.S. DEPARTMENT OF JUSTICE OFFICIALS IN SUPPORT OF APPELLEES

Status as of 4/10/2023 1:41 PM CST

Associated Case Party: PFLAG, Inc.

Michele Clanton-Lockhart		mclanton@lambdalegal.org	4/10/2023 1:27:18 PM	SENT
Paul Castillo		pcastillo@lambdalegal.org	4/10/2023 1:27:18 PM	SENT
Karen Loewy		kloewy@lambdalegal.org	4/10/2023 1:27:18 PM	SENT
Brian Klosterboer		bklosterboer@aclutx.org	4/10/2023 1:27:18 PM	SENT
Chase Strangio		cstrangio@aclu.org	4/10/2023 1:27:18 PM	SENT
Anjana Sanant		asamant@aclu.org	4/10/2023 1:27:18 PM	SENT
Savannah Kumar		skumar@aclutx.org	4/10/2023 1:27:18 PM	SENT
Brandt Roessler		brandt.roessler@bakerbotts.com	4/10/2023 1:27:18 PM	SENT
Derek McDonald		derek.mcdonald@bakerbotts.com	4/10/2023 1:27:18 PM	SENT
Christine Choi		cchoi@aclu.org	4/10/2023 1:27:18 PM	SENT
Shelly L.Skeen		sskeen@lambdalegal.org	4/10/2023 1:27:18 PM	SENT
Carolina Caicedo		ccaicedo@aclu.org	4/10/2023 1:27:18 PM	SENT
Maia Zelkind		mzelkind@lambdalegal.org	4/10/2023 1:27:18 PM	SENT
Omar Gonzalez-Pagan		ogonzalez-pagan@lambdalegal.org	4/10/2023 1:27:18 PM	SENT
Currey Cook		ccook@lambdalegal.org	4/10/2023 1:27:18 PM	SENT
Maddy Dwertman		maddy.dwertman@bakerbotts.com	4/10/2023 1:27:18 PM	SENT
Nischay Bhan		nischay.bhan@bakerbotts.com	4/10/2023 1:27:18 PM	SENT
Nicholas Palmieri		nick.palmieri@bakerbotts.com	4/10/2023 1:27:18 PM	SENT
John Ormiston		john.ormiston@bakerbotts.com	4/10/2023 1:27:18 PM	SENT
Susan Kennedy		Susan.Kennedy@bakerbotts.com	4/10/2023 1:27:18 PM	SENT
Chloe Kempf		ckempf@aclutx.org	4/10/2023 1:27:18 PM	SENT

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Alan York

Bar No. 22167500

ayork@reedsmith.com

Envelope ID: 74478641

Filing Code Description: Brief Not Requesting Oral Argument

Filing Description: AMICUS BRIEF OF CURRENT AND FORMER CHIEF PROSECUTORS, ATTORNEYS GENERAL, AND LAW ENFORCEMENT LEADERS, AND FORMER STATE AND FEDERAL JUDGES, U.S. ATTORNEYS, AND U.S. DEPARTMENT OF JUSTICE OFFICIALS IN SUPPORT OF APPELLEES

Status as of 4/10/2023 1:41 PM CST

Associated Case Party: PFLAG, Inc.

Adriana Piñon		apinon@aclutx.org	4/10/2023 1:27:18 PM	SENT
Hina Naveed		hnaveed@aclu.org	4/10/2023 1:27:18 PM	SENT
Elizabeth Gill		egill@aclunc.org	4/10/2023 1:27:18 PM	SENT