

No. 22-0229

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**IN THE SUPREME COURT OF TEXAS**

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In re 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

*Relators.*

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On Petition for Writ of Mandamus to the Court of Appeals for the Third Judicial  
District, Austin, Texas Cause No. 03-22-00126-CV

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

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## STATEMENT OF INTEREST OF AMICUS CURIAE

*Amici* are residents of Texas, including transgender youth and their family members, transgender young adults, and two nonprofit organizations that serve them, the Transgender Education Network of Texas (TENT) and Equality Texas. *Amici* families are presently relying on the injunction of the Governor's Directive (as defined below) to prevent irreparable harm to them through the loss of lifesaving, medically necessary healthcare. *Amici* know firsthand both the vital importance of accessing gender affirming care and the risks and harms of being forced to live with untreated gender dysphoria as a young person. But for the injunction currently in place, they would lose access to the medical care on which they rely, with the potential for irreversible detrimental health consequences, including a risk of death, or be forced to leave the state, effectively becoming refugees. And these families are but a handful of those served by Equality Texas and TENT who have already felt the enormous and devastating impact of the Governor's order.

Moreover, the Governor's Directive *by itself* has effectively silenced parents of transgender children from exercising their rights to participate in the democratic process. Equality Texas and TENT, working with other Texas LGBTQ+ groups, have established a network of support and resources for transgender, nonbinary and intersex students and their families. Advocacy to defeat harmful anti-transgender legislation and regulatory action has been a central tenet for both organizations.

With their limited staff,<sup>1</sup> Equality Texas and TENT have relied on families like the *amici* here in advocating for their rights under Article I Sections 8 and 27 of the Constitution of the State of Texas and the First Amendment of the United States Constitution. Since the February 22, 2022 release of the Governor’s Directive, however, TENT estimates it has lost 10–15% of the families who previously provided testimony to, or met one-on-one with members of, the state legislature, and who spoke publicly about the importance to Texas youth of gender-affirming care and inclusive legislative and regulatory policies. As a result of the Governor’s Directive, these families have either moved out of Texas or have decided they are now unwilling to continue engaging in public advocacy. Indeed, just this week, Ricardo Martinez, CEO of Equality Texas, was told by parents of one of the organization’s most active families—who have visited the State Capitol multiple times—that they are “tired of fighting this hard.” These parents, who are leaders in their community, are in the process of relocating to Oregon as soon as possible for their child’s physical and mental safety and health. *Amici* submit this brief in support of Appellees’ argument that the Court of Appeals properly issued its order to reinstate the injunction issued by the district court—which prevented Relators from implementing the Governor’s Directive—in order to protect parties and *amici*

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<sup>1</sup> Equality Texas currently has six staff members and three consultants to support its work for all members of the LGBTQ+ community in Texas. TENT currently has four staff members to support its work on behalf of all transgender, nonbinary and intersex citizens of Texas across the entire state.

against irreparable harm and to preserve the *status quo* under Rule 29.3 (as defined below).

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. 11.

**TO THE HONORABLE SUPREME COURT OF TEXAS:**

This Court recently recognized that “[t]he unique bond between parent and child is a blessing that is cherished by parents and essential to the child’s long-term well-being and development.” *In the Interest of G.X.H.*, 627 S.W.3d 288, 302 (Tex. 2021) (concur, J. Guzman). “The parent-child relationship is so important and so precious that the highest constitutional protection is afforded to the family decision-making process.” *Id.* “Indeed, the rights of parents to ‘the companionship, care, custody, and management’ of their children has been recognized as fundamental, foundational, and formative.” *Id.*

Relators seek to enforce an *ultra vires*, transphobic policy that violates the sacred rights of Texas parents and their transgender children. On February 22, 2022, Governor Greg Abbott issued a letter that purports to require the Texas Department of Family and Protective Services (“DFPS”) to “conduct a prompt and thorough investigation of any reported instances” of “gender-transitioning procedures” being performed on minors (including the “administration of puberty-blocking drugs or supraphysiologic doses of testosterone or estrogen”). In the letter, Governor Abbott, who has no medical background, singularly disregards the considered judgment of every major medical association and parents and doctors statewide, and grossly misclassifies the use of those procedures as “child abuse.” The letter also purports to require that the DFPS coordinate with other agencies in pursuing “criminal

penalties” against any parent allowing such procedures as well as against any professional or member of the “general public” that suspects but fails to report this “abuse” to appropriate authorities (together, the “Governor’s Directive”). Stunning in its scope, the Governor’s Directive does not cite to any evidence that the provision of such healthcare is actually child abuse, nor does it include any exception for emergency medical care.

The district court temporarily enjoined the Relators (including the DFPS and its Commissioner) from carrying out the Governor’s Directive pending the outcome of this litigation. Relators are enjoined from (among other things) “[i]nvestigating reports in the State of Texas against any and all persons based solely on alleged child abuse by persons, providers, or organizations in facilitating or providing gender-affirming care to transgender minors.”<sup>2</sup> MR.102. Relators appealed, and the Third Court of Appeals, Austin, reinstated the temporary injunction for the duration of the appeal (the “Order”) pursuant to Rule of Appellate Procedure 29.3 (TEX. R. APP. P. 29.3, “Rule 29.3”) “to maintain the status quo and prevent irreparable harm.” Order at 2.

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<sup>2</sup> In deciding whether the trial court has abused its discretion in denying or granting a temporary injunction request, the reviewing court “may neither substitute its judgment for that of the trial court nor consider the merits of the [underlying] lawsuit.” *Center for Econ. Justice v. Amer. Ins. Ass’n*, 39 S.W.3d 337, 344 (Tex. App. - Austin 2001, no pet.). It must “view the evidence in the light most favorable to the trial court’s order, indulging every reasonable inference” in favor of the decision, “and determine whether the order was so arbitrary as to exceed the bounds of reasonable discretion.” *Id.*

Relators now claim that DFPS enforcement of the Governor’s Directive “is not a judicially cognizable injury.” Relators’ Emergency Mot. for Temp. Relief at 1. *Amici* respectfully submit the present brief in opposition to Relators’ Emergency Motion for Temporary Relief.

*Amici* are Texan transgender youth harmed by the Governor’s Directive because they seek to obtain medically necessary gender-affirming care (“Transgender Youth”); family members seeking to provide gender-affirming care to a transgender loved one (“Affected Families”); two Texas non-profit organizations serving these families; and two young adult Texans who received gender confirming care as teens. All would be drastically, immediately, and irreparably harmed by the reinstatement of the Governor’s Directive, just like Plaintiffs, and in fact have already been harmed.<sup>3</sup> For the sake of their health, security, and freedom from criminalization, the *status quo* prior to the issuance of the Governor’s Directive must be maintained. The Court of Appeals properly exercised its discretion under Rule 29.3 to accomplish this, and its Order must be upheld. Moreover, it would be disastrous for this Court to issue a stay here, because Relators’ request would contravene the public interest by instantly exposing Texans

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<sup>3</sup> To protect *amici* from the severe consequences of enforcement of the Governor’s Directive, this Amicus Brief uses pseudonyms to maintain their anonymity to the extent requested by *amici*.

like *amici* to health risks as well as the penalties and severe consequences of the Governor's Directive.

## SUMMARY OF ARGUMENT

Texas Transgender Youth and their families have unique lived experience that they are sharing with this Court to show that the Governor’s Directive is not preventing extreme harm to children and families in Texas—the Governor’s Directive has already *caused* extreme harm and would continue to do so if reinstated. Relators falsely claim the executive order was entered to counter a harm: a harm that *does not exist*. In reality, Relators are not helping Transgender Youth by withholding medically necessary care while threatening their parents with criminal penalties and the forced separation of families. Rather, Relators are terrorizing and traumatizing Transgender Youth and their families, as well as misrepresenting the interests of the parties to this Court. The injunction was properly issued to prevent compounding irreparable harm to Plaintiffs, *Amici* Transgender Youth and Affected Family. As *amici* establish, providing gender-affirming care to transgender youth is most often a family’s thoroughly considered expression of love, support, and acceptance. It promotes the welfare, health, and happiness of transgender children, their families, and their communities. Simply put, the Governor’s Directive is wrong in spirit and on its face.

## ARGUMENT

### **I. The Court of Appeals Properly Exercised Its Discretion Under Rule 29.3 in Reinstating the Temporary Injunction During Appeal, and the Relators' Request for Emergency Relief Should Be Denied.**

“Under Rule 29.3, Texas intermediate appellate courts have inherent judicial power to preserve the parties’ rights during the pendency of an interlocutory appeal.”

*Abbott v. City of San Antonio*, 2021 Tex. App. LEXIS 7301 (Tex. App. - San Antonio 2021, no pet.). Rule 29.3 provides:

When an appeal from an interlocutory order is perfected, the appellate court may make any temporary orders necessary to preserve the parties’ rights until disposition of the appeal and may require appropriate security. But the appellate court must not suspend the trial court’s order if the appellant’s rights would be adequately protected by supersedeas or another order made under Rule 24.

“[T]he Texas Supreme Court confirmed that nothing prevents a party ‘from asking the court of appeals to protect it from irreparable harm,’” and “Rule 29.3 expressly contemplates that such relief is directly available in the court of appeals.” *San Antonio*, 2021 Tex. App. LEXIS 7301 at \*4 (citing *In re Geomet Recycling LLC*, 578 S.W.3d 82, 82 (Tex. 2019)).

Further, the Texas Supreme Court has determined that the “status quo” is “the last, actual, peaceable, non-contested status which preceded the pending controversy.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

**A. Implementing the Governor’s Directive Would Cause Irreparable Harm to Plaintiffs and *Amici* by Criminalizing and Stigmatizing Gender-Affirming Care for Youth.**

**1. The Governor’s Directive Has Jeopardized the Ability of *Amici* to Protect their Health and to Access Gender-Affirming Care, which Would Cause Irreparable Harm.**

*Amici* Transgender Youth, like Plaintiff Mary Doe, stand to lose their pre-Governor’s Directive access to gender-affirming care that is medically necessary and critical to their health and wellbeing. “**[E]very 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 (April 2021) (emphasis added).<sup>4</sup> See also *Brief of Amicus Curiae Texas Medical Association*, filed March 30, 2022, at pp. 11-15.

As M.W., the father of a transgender child, states, the Governor’s Directive “leaves you three choices—either I don’t care for my kid, I become a criminal, or I leave.” The child’s mother A.W. shared “it leaves us as a family in so much limbo...Nobody would choose to make their life or their child’s life more difficult. You do things to make your child’s life easier and that is what affirming care does.”

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<sup>4</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.

*Amici* L.S. and J.S. are parents of an 11-year-old transgender girl who is threatened with an immediate loss of medically necessary care due to the Governor’s Directive. Their daughter is at a pivotal age in regards to puberty and physical development, as she is approaching the Tanner 2 Stage of puberty, which leads to the development of secondary sex characteristics (*e.g.*, hair growth, voice changes). To prevent her from undergoing this non-reversible process, her team of doctors have been regularly monitoring her hormone levels to assess whether and when she should begin puberty blockers. However, since the Governor’s Directive was issued, her endocrinologist at Texas Children’s Hospital cancelled all of her appointments to review and discuss her bloodwork with no explanation, abandoning the family at a particularly critical time. Texas Children’s Hospital has since released a statement that they will no longer offer gender-affirming care.<sup>5</sup> The daughter is despondent, expressing that she would “rather die” than go through endogenous puberty and develop typically-male sex characteristics. Her parents are frantic: unable to sleep and suffering from tremendous anxiety. They are awaiting a clear statement from

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<sup>5</sup> See “Texas Children’s Hospital halts gender affirming therapies after Abbott order,” Brooke Migdon, TheHill.com, last accessed March 31, 2022, <https://thehill.com/changing-america/respect/equality/597144-texas-childrens-hospital-halts-gender-affirming-therapies/>.

this Court with the expectation that Texas Children's Hospital will allow their daughter to resume care.

T.S. is a mother to two children affected by the Governor's Directive. Mother T.S. beams, "I have amazing children who have taught us what it means to be human. What being human should be like and what it looks like." But T.S. shares that "our lives have been turned upside down out of pure fear, anxiety, rage, the unknown. It has completely consumed my daily life." Her husband has nightmares about DFPS coming to their home in disguise. "Now every little thing I do, [I think,] is someone going to use this to turn me in?" Their local school is hosting an LGBT event soon, and T.S.'s first thought was, "Oh, they are rounding up families. They are trying to get a list of names."

One of T.S.'s children is a middle school child who is waiting on bloodwork results to confirm that the child is near a particular stage of puberty and should begin taking puberty blockers. After the issuance of the Governor's Directive, T.S. emailed her child's doctor to ask what was happening. Initially, the doctor responded to T.S. that nothing was changing; but the next day, the doctor emailed T.S. again to say they had been advised that they can no longer prescribe medication or provide gender-affirming care. This has created a huge amount of uncertainty and stress for T.S., her child, and her family as to whether they will be able to find proper medical care for their child.

T.S. and her family are covered by insurance that only allows them to seek care in Texas—to receive gender-affirming care now, they would have to move and become insured in another state. If they are unable to do so, it would cost T.S.’s family \$18,000 out of pocket every six months to obtain puberty blockers out of state. T.S. is worried they will not be able to access the care her child needs to begin shortly and is deeply concerned her child might experience trauma related to puberty changes that conflict with her child’s gender: that missing this critical treatment window will mean her child will undergo physical changes that may not be reversible. It is also hugely stressful for T.S.’s child, who pleads, “Please don’t let me get hair on my face like daddy.” The urgency of obtaining this gender-affirming care for her child is horribly stressful to T.S. and keeps her up at night. She constantly wonders, “Where am I going to find our shot, if we need it next month?”

T.S. and her family are from Texas, and both sides of their extended family live in Texas. Nonetheless, their family has had to have difficult conversations about whether T.S. and her children will have to flee Texas while her husband, as sole income provider, remains. The family is struggling with impossible choices: “I don’t want to split our family up. But as parents, we will do whatever we have to do to make sure that our children are safe and have proper care.”

Since the Governor’s Directive, T.S. has attended every informational session she could find to educate herself on its scope. As wrenching as it was explain to her

children that they could be taken away from their parents and their home, T.S. knew she had to prepare them in case DFPS showed up at the children's school. "We had to sit down with both of our children and have that hard conversation, what's happening without putting too much fear in them...I did not want to have that conversation. I was forced to." Despite learning all she can and preparing her children, the Governor's Directive fills T.S.'s life. "I am doing everything I can to get through my daily tasks in life. I am constantly consumed with the what-ifs and the unknown of what's happening."

Ed Diaz is the parent of a 10-year-old transgender girl. At the recommendation of a child psychologist, Ed and his daughter began seeing a pediatric endocrinologist to understand what medical care may be available to his daughter and the timeline for such care. Due to her age and current stage of physical development, his daughter is mere months away from starting puberty blocking treatment. However, one of his daughter's doctors communicated uncertainty about whether they would need to "close up shop." Mr. Diaz knows that "not having access to gender-affirming care would be devastating... It is who she is. She doesn't have a choice even. This is her identity."

Like any parent, Mr. Diaz wants his child "to have the best possible life" and finds himself in the impossible situation of asking "how bad does it really have to get" before they must leave Texas to ensure she has proper medical care. Mr. Diaz

worries that he and his family “may have to flee [Texas] like political refugees.” Although he is trying his best to shield his young child from the stress of the Governor’s Directive, 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.” But leaving isn’t a simple solution for Mr. Diaz and his wife who both own small businesses in Texas. Mr. Diaz started his business 20 years ago and has established a great reputation in the community, but he says his entire livelihood depends on getting local client references. To move would require the family to completely reestablish their businesses and build a new client base from scratch. Further, to even consider relocating his family, Mr. Diaz would need to petition a court to modify an existing joint custody agreement through which he and his daughter’s biological mother co-parent their child. Despite the enormous financial and personal implications of uprooting their lives, separating his daughter from her biological mother, closing his small business, selling his home, and moving out of Texas, Mr. Diaz says he “won’t give up.” Mr. Diaz says his number one priority is to protect his daughter, but it is “hard to imagine how this could continue to get worse.”

**2. The Governor’s Directive Irreparably Harms *Amici* by Depriving Youth of the Ability to Have a Joyful—or Even Ordinary—Childhood.**

A.W. recalls her transgender child’s behavior before receiving gender-affirming care. Before receiving care, her transgender son insisted on dressing in

multiple layers and walked hunched over to hide his body. He did not swim for years because he could not bear for people to see his body. He was “depressed, used to hide from the world and not speak, would not even order for himself at a restaurant... He wanted to just disappear.” Once he received gender-affirming care, his self-confidence “sky-rocketed.” A.W. reflects that “affirming care was *the* best thing we did for him... Now he gives interviews and advocates for himself, even speaks at public events. Everything positive we are seeing from him is a result of the affirming care.” Her confident son now bravely says, “The fight is in Texas. I’m not leaving. I’m not running.” This confidence and joy in life would be lost if A.W.’s child’s medical care were criminalized.

Parents Erika and Aaron Richie have multiple children, two of whom are gender diverse. When faced with the idea of gender-affirming medical care for their first child, Mr. Richie initially found the idea of medical treatment extremely daunting, saying, “It was the hardest thing I’ve ever experienced in my life. It was a monumental decision to me.” But once the parents realized the immense benefits gender-affirming care afforded their son, they understood its necessity. Mrs. Richie explained that their eldest son’s transition “has turned out so much better than I could have hoped for. It has been nothing but positive for every aspect” of his life.

The family is extremely tight knit, prioritizing nightly family dinners, and regularly going on camping trips, attending concerts and simply spending time

together. Their oldest son cherishes “especially in times like these...being with the people I love and sharing a space where we can laugh, be joyful, let our guards down, and just *be*.” The couple’s children are third-generation Texans who have lived in their same childhood home for the past sixteen years, but despite these deep roots, the family is being forced to consider relocating because of the stress and fear the Governor’s Directive has caused in their family and because of their resolve “to do whatever it takes” to protect their children’s wellbeing.

### **3. The Governor’s Directive Has Caused Tremendous Stress, Anxiety, and Depression For *Amici* Because of the Real Threat It Will “Out” Transgender Youth And Break Up Their Families.**

Several *amici* have shared to some people in their community that they are Transgender Youth who are receiving gender-affirming care or Affected Family members providing gender-affirming care to a minor transgender loved one. The Governor’s Directive makes the mere sharing of an aspect of themselves perilous information. Under the Governor’s Directive, any number of potential mandatory reporters in the community, such as teachers, psychologists, and doctors, as well as family members and friends and other members of the “general public,” could—and apparently must—report *amici* and their families to the DFPS. Even a child who discloses to a classmate or friend that they are transgender could be putting themselves or parents at risk if the friend or classmate shares this information with their own parents, who decide to report to DFPS. In this way, the Governor’s

Directive also *forcibly* “outs” Transgender Youth without their consent, exposing them to the risk of discrimination and harassment.<sup>6</sup> *Amici* parents, like Plaintiffs Jane and John Doe, are now at risk of DFPS investigation that could jeopardize their rights to direct and maintain the custody and care of their children, and that would dangerously stigmatize them within their communities.

Recent years have proven beyond doubt that stigma and violence against transgender people is real in Texas. The impact of the Governor’s Directive must be understood in this context. The 87<sup>th</sup> Texas legislature saw, over four sessions, a total of 76 anti-LGBTQ+ bills, more than 50 of them specifically anti-transgender. This was a 300% increase over the prior legislative session. The effect on transgender youth and their families of those legislative attacks was readily apparent. In 2021, The Trevor Project, a national non-profit organization that provides a toll-free hotline for crisis intervention and suicide prevention for LGTBQ+ youth, reported that more than 50% of transgender and nonbinary youth had seriously considered suicide, and 75% had reported experiencing generalized anxiety.<sup>7</sup> Simultaneously, transgender Texans and their families saw a DFPS suicide hotline shut down and the

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<sup>6</sup> “In the US Transgender Survey of nearly 28,000 respondents, it was found that among those who were out as or perceived to be [transgender or gender diverse] between kindergarten and eighth grade, 54% were verbally harassed, 25% were physically assaulted, and 13% were sexually assaulted; 17% left school because of maltreatment.” American Academy of Pediatrics Policy Statement at 9.

<sup>7</sup> *National Survey on LGBTQ Youth Mental Health Survey 2020*, THE TREVOR PROJECT, <https://www.thetrevorproject.org/survey-2020> . Those who received gender-affirming care, and whose pronouns were respected, reported much better outcomes. *Id.*

deletion from the agency's own web site of resources for transgender youth considering self-harm or suicide: an inescapable and crystal clear message to Transgender Youth in Texas from their own government that their mental health is not important and their lives are not important.<sup>8</sup>

Throughout 2021 and into 2022, Equality Texas observed a significant increase in the number of incidents reported to them of verbal assaults, bullying and other altercations, both within and outside the classroom..

In this context, the Governor's Directive severely increased the amount of stress and anxiety Transgender Youth and their families are facing. In one month after the directive, TENT received 50 to 60 contacts—a five-fold increase—from concerned parents and other caregivers whose children had mentioned suicide. Since February 22, 2022, TENT has received reports that four trans youth have died of suicide and three trans women have been murdered in Texas. Andrea Segovia, Senior Policy and Field Advisor at TENT, spoke with one family who told her their suicidal middle-schooler had been dismissed by their therapist who was concerned about repercussions of the Governor's directive. The mother had to sleep on the floor in her child's bedroom every night to monitor the child and ensure they did not attempt suicide. TENT has also shared a story of a caretaker whose child has been

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<sup>8</sup> Allyson Waller, *State Agency Removed Online Resources for LGBTQ Youth After Complaints From a Republican Challenging Gov. Greg Abbott, Emails Show*, TEXAS TRIBUNE (Oct. 12, 2021 3:00 pm Central), <https://www.texastribune.org/2021/10/12/texas-lgbtq-resources-department-family-protective-services/>.

sick with 100+ degree fever, and had to make the difficult decision whether or not to take their transgender child to the hospital because the family is affirming and they worried they could be reported to DFPS.

A.A. is parent to a 12 year old transgender girl, E.A., who has known she is a girl since she was three. A.A. shared her child “didn’t sleep through the night from age 4 until she got her first [puberty] blocker... It gave her that much peace of mind, knowing that her body is not turning on her.” The family has been active in their daughter’s care, ensuring she has proper access to medical care and therapy, and very active in their community and school. A.A. “cried for days” after the Governor’s Directive was released, and recalls her daughter “came through the door sobbing” that day. E.A.’s sister has been “having nightmares that she or her sister will be taken away, or that her parents will disappear.” A.A. has had to speak with her children, as well as her children’s caretakers and babysitters, about what could happen in case of a DFPS investigation, and has had to provide caretakers with contact information for an attorney. A.A. has also requested letters from friends that state that they are good parents, but found that “just having to ask for that [was] demoralizing and dehumanizing.” A.A., E.A., and their family “desperately want to stay” in Texas, where they have built their lives and their home. At the same time, they fear for E.A.’s safety and loss of privacy under the Governor’s Directive, and

they know of trans women who have been murdered in the area where they live, causing them to “feel like [they] are living in a state of terror right now.”

A.A.’s family, is now organizing their finances to be prepared if they need to leave Texas due to the Governor’s Directive. If A.A. and her husband were to be investigated for child abuse under the Governor’s Directive, she is very concerned about the trauma to her children of such an investigation, “for the kids to have to go through that, it would be so traumatizing as to require significant care to recover from that.” A.A. expressed the hope “that, at a minimum, our government stops attacking our family and a marginalized community,” and for “every trans kid to know that they are loved.”

A. and M. are parents to a transgender child, and are very active in their church and community, both of which have lovingly welcomed them and their transgender child. Since the release of the Governor’s Directive, parents A. and M. have had to instruct their transgender child that they cannot talk about being transgender, and instruct their other child that they must not mention to teachers or other students that they have a transgender sibling. “That was very confusing because we have never once told our family to hide who they are.” Their youngest child “was terrified” and “cried hard during this conversation.”

A. notes that the process of DFPS reporting is extremely casual relative to how devastating its effects can be: it “is a five-minute, anonymous phone call,” and makes

for “an easy tool to use to harass people.” 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.

Most disturbing, says A., is that the Governor’s Directive “weaponizes community members who are there to help our children and protect our children—medical providers, schoolteachers, and clergy. It is hard to know who is going to be there to keep your child safe at the end of the day.” Even their child’s doctor told her that “he cannot put his family at risk” and “saw ramifications for himself if he fails to report” that A. is providing gender-affirming care to her child. He told her, “I can’t protect you from this.” A. also has considered switching her child’s therapist, but no one is accepting their case.

Heartbreakingly, A. and M.’s child has come to believe removal by DFPS is imminent: asking “*when I get put up for adoption, what does that mean?*” and is resigned in the fear that, “*no one would adopt me because I am trans.*” These conversations are devastating to the family, and A. and M. are actively considering moving out of Texas, the only place their child has ever lived. A. and M. only moved into their current home in the last year, and the cost of moving again so soon would

be a massive financial burden. Still, A. and M. have spoken with a realtor, and are shifting their funds to prepare for potential legal bills and relocation costs.

As a decorated veteran, M. cannot understand why his own government is now attacking his child. “I fought for this country and nearly died and to have my kid treated this way is probably—I imagine it’s what people felt like when they came home from Vietnam, when they came home and didn’t feel appreciated and felt lesser. It feels like that is what they are doing to my service.”

Rebekah and Chet Bryant are parents to 8-year-old transgender girl Sunny Bryant. At 8, Sunny is not yet concerned with the thought of future puberty, but it is well known in her school and community that Sunny is transgender. Sunny loves school and, like her sibling, is involved in a lot of sports and extracurriculars. Since the issuance of the Governor’s Directive, the Bryants have prepared laminated business cards for both of their children to keep in their backpacks. The cards say their child’s name, that they do not consent to speaking to DFPS, and direct DFPS agents to call the child’s lawyer. It is “heartbreaking” to Mrs. Bryant that her elementary-age children feel forced to bring these cards onto the playground with them in their pockets, expecting to be questioned at any moment. Mr. and Mrs. Bryant are trying to hide the worst of their stress from the children but Mrs. Bryant cannot sleep and has rapidly lost weight and suffered hair loss from the stress of the

Governor’s Directive. A DFPS finding of abuse would make her ineligible to teach and severely restrict her access to other children.

Ms. Segovia of TENT also has made clear that although the focus has been on traditional families, caregivers who do not fit into the stereotypical “nuclear family” mold are also harmed by the Directive. For instance, supportive family members such as aunts, or uncles who are not formal guardians are vulnerable to claims of “child abuse” if they indicate support for gender diversity among minor relatives. Further, the availability of foster placements willing to support and affirm the gender identities of transgender children is already limited and, Ms. Segovia fears, will become even more limited because foster parents fear being expelled or even prosecuted if they provide the welcoming, supportive environment required for the mental health and safety of the children placed in their care.

#### **4. Transgender Young Adults Are Living Proof of the Importance of Gender-Affirming Care for Youth**

*Amici* have seen firsthand how gender-affirming care can liberate their transgender family members from the pain of gender dysphoria.

Landon Richie, a young transgender man, suffered from gender dysphoria from a young age. Landon knew from his earliest memories that he wasn’t a girl and began expressing at the age of two that he wanted “to grow up and be a boy.” As Landon got older, he had trouble understanding why he felt this way, searching terms on Google like “girl who feels like a boy” to try to make sense of the

disconnect between his body and his identity. As he states, it was as if he was living in a body that was “not his, and that he wanted to escape from at every single minute,” and that constant dissonance was exceptionally “isolating.” Battling that feeling of gender dysphoria without access to the medical care available to alleviate it, he says, would have been “extremely detrimental and harmful” and would likely have culminated in him no longer feeling like he could continue living. Since receiving gender-affirming care, Landon has begun to feel “at home and at ease” in his body and has felt that a weight has been lifted both mentally and physically. In spite of this relief, he also feels something akin to “survivor’s guilt,” knowing that Transgender Youth in Texas are now at a greater risk of losing and being denied the same care that was so transformative for him. But Landon refuses to be chased out of his home state, saying, “it is as much about me staying with my community as it is to show that trans people exist in Texas and will continue to live here. Trans people are an integral part of the fabric of Texas.”

C.W., another young transgender man, is adamant that gender-affirming care is “life-saving medical care.” “I have a medical condition—dysphoria—and this [gender-affirming care] is a cure to something that can be diagnosed and is recognized by medical establishments.” C.W. himself was suicidal prior to receiving gender-affirming care, saying simply, “I needed it. I needed that care to live.” C.W.’s quality of life drastically and dramatically improved after receiving care, and

he felt instant relief. Before C.W. was able to transition, his parents would receive nearly daily calls from his school nurse saying that he was experiencing migraines, dizzy spells or tremors, which were all physical manifestations of his discomfort and the mental and physical toll of hiding who he is. While C.W.’s care was a long process, with waiting lists and administrative hoops to jump through, just knowing he was on the path made a huge difference and “led me to be able to actually plan for the future.” “I would imagine myself fully transitioned and I knew that I would be so happy when it happened. . . This the thing that kept me going.” As for his gender dysphoria, “now, it’s barely a thought” because “I know who I am and my body looks like what I want.” C.W. is sharing his struggle with the Court because he feels it is important for the Court to know that Transgender Youth in Texas are “fighting for [their] lives.” C.W. also wants to make clear that his parents seeking out care for him was an act of love and necessity, not child abuse: “My mom and dad did the right thing—they listened to the doctors, they did their research, they listened to the experts. They gave me the life-saving treatment. I want my parents to be celebrated for the amazing parents that they are—not to be investigated.”

**B. Implementing the Governor’s Directive Would Cause Irreparable Harm to Plaintiffs and *Amici* Due to the Threat of Criminal Liability**

If the emergency motion is granted, the DFPS would be authorized to immediately and irreparably begin child abuse investigations of *amici*, and to seek

criminal penalties against people in the orbit of *amici* who did not report them to DFPS. *See Tex. Educ. Agency v. Houston Indep. Sch. Dist.*, No. 03-20-00025-CV, 2020 Tex. App. LEXIS 10330, \*26–27 (Tex. App.—Austin 2020, pet. filed) (mem. op.) (finding irreparable harm element satisfied where “[a]bsent an injunction, the Commissioner would be able to immediately and irreparably remove the elected Board of Trustees and appoint a board of managers to govern the district” and “be able to immediately lower HISD’s accreditation status” and “continue the suspension of HISD’s search for a superintendent”).

Per settled case law, the threat of criminal liability under the Governor’s Directive alone is sufficient harm. *Fuentes v. Union De Pasteurizadores De Juarez Sociedad Anonima De Capital Variable*, 527 S.W.3d 492 (Tex. App.—El Paso 2017, no pet.) (holding that “the threat of civil and criminal action against [the party seeking the temporary injunction] constitutes irreparable harm”). What Texas families have lost and stand to lose under the Governor’s Directive is not conjecture.<sup>9</sup> The stigma of “child abuse” has already attached because of the need for families to explain to their contacts that there is a possibility they may be investigated, to ask for letters and references of their good character, and to hire legal counsel. These

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<sup>9</sup> *Cf. Al-Wahban v. Hamdan*, 2019 Tex. App. LEXIS 4849 at 3 (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).

Texas families already are dealing with the profound emotional and physiological fallout from hypervigilance, and the heartbreaking conversations they have had to have with their children about the realistic and terrifying possibility of forced family separation.

## **II. CONCLUSION AND PRAYER**

*Amici* respectfully request that this Court take into account the irreparable harm faced by transgender young people and their families into account and deny the Relators' requested emergency relief.

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