

No. _____

In the Supreme Court of Texas

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 DEPARTMENT OF FAMILY
AND PROTECTIVE SERVICES; AND THE TEXAS DEPARTMENT OF
FAMILY AND PROTECTIVE SERVICES,

Relators.

On Petition for Writ of Mandamus
to the Third Court of Appeals, Austin

**RELATORS' EMERGENCY MOTION
FOR TEMPORARY RELIEF**

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

JUDD E. STONE II
Solicitor General
State Bar No. 24076720
Judd.Stone@oag.texas.gov

NATALIE D. THOMPSON
Assistant Solicitor General

Counsel for Relators

TO THE HONORABLE SUPREME COURT OF TEXAS:

Pursuant to Texas Rule of Appellate Procedure 52.10, Relators move for a temporary stay of the court of appeals' March 21, 2022, order "reinstating the temporary injunction . . . issued by the district court." MR.1209. The court of appeals "reinstated" a temporary injunction barring *all* DFPS investigations into certain types of possible child abuse—not just a DFPS investigation of Plaintiffs' actions. This is contrary to the well-established limitations on the courts' jurisdiction; an investigation, standing alone, is not a judicially cognizable injury. And no court has authority to issue a universal injunction to benefit unknown, unnamed persons not before it. Relators respectfully request that this Court stay the court of appeals' order pending resolution of their petition for a writ of mandamus.

BACKGROUND

Plaintiffs disagree with the Attorney General's interpretation of Texas Family Code section 261.001, which defines "child abuse." The Attorney General received an official request to analyze "whether the performance of certain medical and chemical procedures on children—several of which have the effect of sterilization—constitute child abuse." MR.423. In response, the Attorney General issued an opinion that expressly did "not address or apply to medically necessary procedures," *id.*, but concluded that medically unnecessary procedures that "result in sterilization" can constitute child abuse under Texas Family Code section 261.001 because they cause physical harm to the child. MR.427-430.

Plaintiffs sued the Governor, the Commissioner of the Texas Department of Family and Protective Services (DFPS), and DFPS—Relators—alleging *ultra vires*

and APA claims. Plaintiff Jane Doe, a DFPS employee, reported to DFPS that she may be violating state law as interpreted by the Attorney General by providing her child with hormone-altering medication and puberty blockers. MR.73, 398-400. That self-report triggered DFPS protocols requiring investigation. Plaintiffs sought not only an injunction prohibiting that investigation, but also “statewide” interim relief preventing all implementation of the Family Code as interpreted in the Attorney General’s opinion. MR.1.

The trial court obliged. It enjoined Relators not only from completing DFPS’s investigation into Ms. Doe’s self-report, but from investigating *any* allegations of child abuse based on “gender-affirming” medical procedures performed on a child. MR.102. Relators immediately appealed, which superseded the temporary injunction. MR.105. Plaintiffs sought “reinstatement” of the temporary injunction pursuant to Texas Rule of Appellate Procedure 29.3, MR.736-767, and the court of appeals granted their motion on March 21, MR.1207-1209.

ARGUMENT

In conjunction with a petition for writ of mandamus, a relator “may file a motion to stay any underlying proceedings or for any other temporary relief pending the court’s action on the petition.” Tex. R. App. P. 52.10(a). Such relief is warranted when the Court reaches “the tentative opinion that relator is entitled to the relief sought” and “the facts show that relator will be prejudiced in the absence of such relief.” *Republican Party of Tex. v. Dietz*, 924 S.W.2d 932, 932-33 (Tex. 1996) (per curiam).

These conditions are satisfied here, so the Court should grant a temporary stay. The court of appeals' March 21 order prohibits DFPS, on pain of contempt, from so much as investigating possible child abuse if the alleged abuse involves an amorphous category of medical procedures. MR.101; *see* MR.1207-09. The injunction arguably prohibits DFPS from investigating medical procedures that even Plaintiffs seemingly agree are not medically necessary, such as surgery that sterilizes a pre-pubescent child. *See* MR.14. And the injunction prohibits investigation of *anyone's* conduct, not just Plaintiffs'. MR.102; *see* MR.1207-09.

Courts lack authority to enjoin investigations, the very purpose of which is to determine whether a child is in danger of abuse. If Plaintiffs can obtain an injunction of an investigation based on their bare denial of wrongdoing, so can anyone else suspected of child abuse—and presumably everyone suspected of child abuse denies the allegations. That would put an untold number of Texas children in danger. The trial court lacked jurisdiction over Plaintiffs' lawsuit, which is plagued by their lack of standing and ripeness and is barred by sovereign immunity. *See* Pet. at 4-10. Indeed, Plaintiff Dr. Mooney does not even claim DFPS is investigating her, much less that it can or will take official action against her. *See* MR.3-4.

More than that, courts lack authority to issue injunctive relief on behalf of the world at large. *See* Pet. at 16-17. Yet that is what the court of appeals' order does—it prohibits DFPS from looking into this sort of alleged child abuse by *anyone*. MR.1207-09, 100-01. That is not only unlawful, but also poses significant risk to Texas children. *See* Pet. at 16-17. And because the court of appeals' order is functionally an injunction, it was issued without jurisdiction. *See* Pet. at 12-16.

Relators will be irreparably injured in the absence of a stay pending resolution of their petition. “[A]ny time a State is enjoined . . . from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers); see *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (per curiam). Prohibiting DFPS from so much as investigating possible child abuse goes beyond even that—it prevents the State from fulfilling its duty to protect Texas children. The injury is particularly egregious where the injunction reaches beyond the parties before the court to prevent investigation relating to the world at large. Relators have no adequate remedy on appeal. If DFPS cannot investigate possible child abuse, children may be harmed—perhaps irreversibly—in the interim. And any intrusion on the State’s ability to enforce the law, no matter its duration, is a harm that can never be undone after appeal.

PRAYER

The Court should temporarily stay the court of appeals' March 21, 2022, order pending resolution of the petition for a writ of mandamus.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

/s/ Judd E. Stone II
JUDD E. STONE II
Solicitor General
State Bar No. 24076720
Judd.Stone@oag.texas.gov

NATALIE D. THOMPSON
Assistant Solicitor General

Counsel for Relators

CERTIFICATE OF CONFERENCE

On March 23, 2022, my office conferred with Paul Castillo, counsel for the real parties in interest, who advised that the real parties in interest are opposed to the relief requested.

/s/ Judd E. Stone II
JUDD E. STONE II

CERTIFICATE OF SERVICE

On March 23, 2022, this document was served on Shelly L. Skeen, lead counsel for the real parties in interest, via sskeen@lambdalegal.org.

/s/ Judd E. Stone II
JUDD E. STONE II

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 966 words, excluding exempted text.

/s/ Judd E. Stone II
JUDD E. STONE II