NO. CC-22-02427-B

XIMENA LOPEZ, M.D., *Plaintiff*,	**IN THE COUNTY COURT AT LAW**
v.	**NO. 2**
CHILDREN'S MEDICAL CENTER AT DALLAS, *Defendant*.	**DALLAS COUNTY, TEXAS**

THE STATE OF TEXAS' ORIGINAL PETITION IN INTERVENTION

Pursuant to Texas Rule of Civil Procedure 60, the State of Texas files this Petition in Intervention in accordance with his constitutional, statutory, and common law powers to defend the laws of Texas. The State of Texas intervenes to prevent irreparable harm to the children of the State, and to protect its interest in the uniform, consistent application of the laws of the State of Texas.

BACKGROUND

On May 11, 2022, Plaintiff, Ximena Lopez, M.D., filed an Application for Temporary Restraining Order, Temporary Injunction, and Original Petition for Permanent Injunctive and Declaratory Relief. Plaintiff contends that Defendant Children's Medical Center (CMC) is engaging in the corporate practice of medicine and unlawfully discriminating on the basis of gender identity and sex by prohibiting her from providing hormone treatment to *new* pediatric patients treated for gender dysphoria.

On May 12, 2022, this Court entered a Temporary Restraining Order against Defendant and scheduled a Temporary Injunction Hearing for May 26, 2022.

ARGUMENT

I. STANDARD FOR INTERVENTION

"Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party." TEX. R. CIV. P. 60. An intervenor is not required to secure a court's permission to intervene in a cause of action or establish standing. *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990). An intervenor need only show a "justiciable interest in a pending suit to intervene in the suit as a matter of right." *In re Union Carbide Corp.*, 273 S.W.3d 152, 154 (Tex. 2008). "A party has a justiciable interest in a lawsuit, and thus a right to intervene, when his interests will be affected by the litigation." *Jabri v. Alsayyed*, 145 S.W.3d 660, 672 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (citing *Law Offices of Windle Turley P.C. v. Ghiasinejad*, 109 S.W.3d 68, 71 (Tex. App.—Fort Worth 2003, no pet.)). "The interest asserted by the intervenor may be legal or equitable." *Guar. Fed. Sav. Bank*, 793 S.W.2d at 657 (citation omitted).

II. INTERVENTION IS NECESSARY TO PROTECT THE INTERESTS OF THE STATE IN THE WELFARE OF CHILDREN.

The State of Texas has a solemn responsibility to defend the constitutional rights of the People of Texas. And "[i]n matters of litigation," specifically, "the Attorney General is the officer authorized by law to protect the interests of the State . . . ." *Bullock v. Tex. Skating Ass'n*, 583 S.W.2d 888, 894 (Tex. Civ. App. 1979). Here, there are two reasons as to why the State of Texas, through the Texas Attorney General's Office, must intervene to protect its interests.

First, in line with this general authorization to protect the interests of the State, the State is also specifically tasked with protecting the interests of minors. "'*Parens patriae*,' literally 'parent of the country,' refers traditionally to the role of the state as sovereign and guardian of persons

under legal disability." *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 600 n.8 (1982) (quoting Black's Law Dictionary 1003 (5th ed. 1979)). Under this sovereign authority, as to minors, "[t]he state thus act[s] upon the assumption that its parentage supersedes all authority conferred by birth on the natural parents, [and] takes upon itself the power and right to dispose of the custody of children as it shall judge best for their welfare." *In re Barry*, 42 F. 113, 118 (S.D.N.Y. 1844), *approved by and attached as appendix to Ex parte Burrus*, 136 U.S. 586, 594–95 & n.1 (1890) (referring to *parens patriae* as a "common-law function" of the state).

As explained by the United States Supreme Court in *Schall v. Martin*, there are only two possible decision makers when contemplating the welfare of children, i.e., their natural parents and the state as *parens patriae*:

> Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae.* In this respect, the [child]'s liberty interest may, in appropriate circumstances, be subordinated to the State's "*parens patriae* interest in preserving and promoting the welfare of the child."

467 U.S. 253, 265 (1984) (citations omitted) (quoting *Santosky v. Kramer*, 455 U.S. 745, 766 (1982)); *Ex parte McIntyre*, 558 S.W.3d 295, 300 n.3 (Tex. App.—Fort Worth 2018, pet. ref'd) (per curiam) (quoting *Schall*). And as observed by Justice Scalia in *Reno v. Flores*, " '[Children], unlike adults, are always in some form of custody' and where the custody of the parent or legal guardian fails, the government may (indeed, we have said *must*) either exercise custody itself or appoint someone else to do so." 507 U.S. 292, 302 (1993) (citation omitted) (quoting *Schall*, 467 U.S. at 265).

Plaintiffs' petition seeks a decision by this Court that the provision of prescription medication to a child is simply a matter of medical judgment that should be left entirely to a treating

physician. This decision will have to be made despite the fact that certain forms of the medication in question are controlled substances[1], which could constitute child abuse under Texas law if provided to a minor.[2] The decision will also have to be made by ignoring the significant and, oftentimes, irreparable alterations that will occur to the children in this State while they are in the midst of their most critical developmental period.[3] And the decision will have to be made even in the face of numerous studies that such treatment may have other long-term harmful and detrimental impacts on the child, including infertility.[4] In order to protect its interest, as *parens patriae*, in the welfare of children subject to this life-altering decision in the hands of a doctor, the State surely has a right to intervene in this matter.

Second, the UDJA provides that when "declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties." TEX. CIV. PRAC. & REM. CODE § 37.006(b). Here, Plaintiffs seek declaratory relief in order to obtain a permanent injunction that limits CMC from imposing standards upon their physicians that they disfavor. The State of Texas establishes and regulates the hospitals in this state, both private and

[1] For example, testosterone, which is a Schedule III controlled substance. Tex. Admin. Code 481.002(5) ("Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Group 1, 1-A, 1-B, 2, 2-A, 3, or 4).

[2] Tex. Admin. Code 707.455 ("Physical abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person: (4) Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code").

[3] *Standards of Care for the Health of Transsexual, Transgender and Gender-Nonconforming People*, WPATH, available at: https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf at p. 11 ("formal epidemiologic studies on gender dysphoria—in children, adolescents, and adults—are lacking"); *id.* at 18 (providing that some of the medications Plaintiffs advocate for are "partially reversible." "These include hormone therapy to masculinize or feminize the body. Some hormone-induced changes may need reconstructive surgery to reverse the effect (e.g., gynaecomastia caused by estrogens), while other changes are not reversible (e.g., deepening of the voice caused by testosterone)."); *id.* at 18-19 (stating studies on the approach of puberty-suppressing hormones have only included children over 12); *id.* at 40 (showing risks associated with hormone treatment, including potentially fatal risks);

[4] *See, e.g.,* Asscheman, Henk, *A long-term follow-up study of mortality in transsexuals receiving treatment with cross-sex hormones*, European Journal of Endocrinology, available at: https://pubmed.ncbi.nlm.nih.gov/21266549/; *see also* WPATH *Standards of Care* at p. 50 ("feminizing/masculinizing hormone therapy limits fertility")

public, as well as conducts the licensure and regulation of all state physicians. 25 Tex. Admin. Code § 133.1, *et. seq.* (hospitals); Tex. Occ. Code Ann. § 155.001, *et. seq.* (physicians). It has a well-established interest not only in regulating the hospitals' and physicians' provision of treatment to its patients but also in ensuring hospitals are able to direct their own physicians in the proper care of patients without judicial intervention. Thus, because the relief sought in this case could potentially undermine the State's interest in the uniform application of its laws, the State of Texas must be made a party to this case under § 37.006(b). *See Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982) ("the power to create and enforce a legal code" is one "easily identified" example of sovereign interest.).

III. Intervention is Timely.

The State of Texas' petition is timely filed. Litigation in this matter has only just begun. Further, there is no pre-judgment deadline for intervention. *Tex. Mut. Ins. Co. v. Ledbetter*, 251 S.W.3d 31, 36 (Tex. 2008) (citing Tex. R. Civ. P. 60; *Citizens State Bank of Sealy v. Caney Invs.*, 746 S.W.2d 477, 478 (Tex. 1988). Texas courts recognize an "expansive" intervention doctrine in which a plea in intervention may be untimely only if it is "filed after judgment," though even post-judgment interventions are permissible in some circumstances. *State of Texas v. Naylor*, 466 S.W.3d 783, 788 (Tex. 2015) (quoting *First Alief Bank v. White*, 682 S.W.2d 251, 252 (Tex. 1984)); *Tex. Mut. Ins. Co.*, 251 S.W.3d at 36 (citing *In re Lumbermens Mut. Cas. Co.*, 184 S.W.3d 718, 725–26 (Tex. 2006)). Because there is no final judgment in this case, the State of Texas' intervention is timely.

CONCLUSION

For the foregoing reasons, the State of Texas respectfully requests that the Court permit it to appear and be heard in this cause of action as Intervenor and for such other and further relief, at law or in equity, to which Intervenor is justly entitled.

Respectfully Submitted.

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