NO. 12-20-00210-CV

IN THE COURT OF APPEALS
FOR THE TWELFTH JUDICIAL DISTRICT
TYLER, TEXAS

IN RE MATTHEW BERRYMAN AND TABITHA BERRYMAN,
RELATORS.

Original Proceeding Arising Out of
The 307th Judicial District Court, Gregg County, Texas
Cause No. 2020-1515-DR
(Honorable Tim Womack, Presiding)

BRIEF OF THE TEXAS PUBLIC POLICY FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF RELATORS' PETITION FOR MANDAMUS

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INTEREST OF *AMICUS CURIAE*

The Texas Public Policy Foundation (the "Foundation") is a non-profit, non-partisan research organization dedicated to promoting liberty, personal responsibility, and free enterprise through academically sound research and outreach.

Since its inception in 1989, the Foundation has emphasized the importance of limited government, free market competition, private property rights, and freedom from regulation. In accordance with its central mission, the Foundation has hosted policy discussions, authored research, presented legislative testimony, and drafted model ordinances to reduce the burden of government on Texans. Specifically, the Foundation seeks to promote the welfare of children and the fundamental rights of Texas families to live free from unnecessary and unconstitutional government interference through its child and family policy research.

It is with this background and experience that the Foundation files this Brief in support of Relator's Petition for Mandamus.

The Foundation has paid all of the costs and fees incurred in the preparation of this brief.

SUMMARY OF ARGUMENT

Respondent abused his discretion and violated the Relators' constitutional rights by issuing an Order in Aid of Investigation pursuant to Tex. Fam. Code §261.303 authorizing the Texas Department of Family and Protective Services (hereinafter "Real Party in Interest" or "the Department") to enter Relators' home, interview their children, and transport the children to another location for the purpose of an interview. This Order was issued in spite of the Real Party in Interest's failure to consider the constitutional fit parent presumption owed to Realtors or present any facts or evidence showing that Relators' children had been or were in imminent danger of being abused or neglected. See *In re C.J.C.*, No. 19-0694, 63 Tex. Sup. Ct. J. 1547 at 11-12 (Tex. 2020) (quoting *In re V.L.K.*, 24 S.W.3d 338, 341 (2000)). In fact, the Real Party in Interest's own investigator stated in her sworn affidavit that the child who was the subject of the false report "had no visible physical injuries" and "appeared to be clean and healthy from what was observable." Appx. 7-8.

The sole evidence cited by the Real Party in Interest to support its request for an Order in Aid of Investigation was Relators' choice to deny the investigator's request to enter the home and interview Relators' children. Appx. 9. Based upon the Real Party in Interest's own account, the entire basis for seeking an Order in Aid of Investigation was due to Relators' exercising their right to be free from

unreasonable government intrusion guaranteed by the Fourth Amendment to the U.S. Constitution and Article 1, Section 9 of the Texas Constitution—an outcome which renders these rights essentially meaningless. *See Griffin v. California*, 380 U.S. 609, 613-14 (1965). This violation of Relators' constitutional rights was enabled by the unconstitutionally vague language of Texas Family Code §261.303, which provides no guidance as to what type of conduct constitutes interference with a child welfare investigation nor what amount of evidence is required to meet the statute's evidentiary standard of "good cause shown."

Since "[m]en of common intelligence cannot be required to guess at the meaning of the enactment," due process requires that statutes be reasonably clear and understandable to the average person. *Winters v. New York*, 333 U.S. 507, 515 (1948); *Bradley v. State ex rel. White*, 990 S.W.2d 245, 252 (Tex. 1999) (Abbott concurring). Any statute that does not give fair notice to the public of what conduct is required or prohibited and fails to provide explicit standards for its application is void for vagueness. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *Texas Antiquities Comm. v. Dallas Cty. Cmty. Coll. Dist.*, 554 S.W.2d 924, 927–28 (Tex. 1977). This is based not only on basic principles of fairness, but on centuries of experience that "[v]ague laws invite arbitrary power." *Sessions v. Dimaya*, 138 S.Ct. 1204, 1223 (2018). Accordingly, this Court should find Texas Family Code §261.303 void for vagueness.

Respondent's order further violated Relators' constitutional rights by denying them the notice and opportunity to challenge the reasonableness of the Real Party in Interest's petition to compel them to allow the investigator to enter their home and interview their children. It is well settled that "[a]bsent consent, exigent circumstances, or the like, in order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker." *City of Los Angeles v. Patel*, 576 U.S. 409, 420 (2015) (quoting *See v. Seattle*, 387 U.S. 541, 545 (1967) and *Donovan v. Lone Steer*, 464 U.S. 408, 415 (1984)). While the Supreme Court has declined to prescribe the exact form such precompliance review should take, it is clear that it requires, at minimum, that this opportunity come prior to the rendering of an order. Since Relators were not afforded the opportunity to challenge the Real Party in Interest's petition for an Order in Aid of Investigation prior to Respondent issuing said order, Respondent abused his discretion.

Independent of these constitutional violations, Respondent abused his discretion by issuing an Order that exceeded the authority granted by statute. Respondent's order specifically authorized the Real Party in Interest to take custody of the children and transport them to another location for the purpose of conducting an interview. Appx. 2. The plain language of TEX. FAM. CODE § 261.303 only allows for the issuance of an Order in Aid of Investigation for the limited purposes

of gaining entry to a location where a child subject of an investigation may be, obtaining certain health records concerning the child, or accessing information about the location or identity of a family subject of an investigation. The code does not allow for an order authorizing the transportation of children by the department. Moreover, Respondent's order permitting the department to transport the children constitutes a removal subject to the requirements of TEX. FAM. CODE Chapter 262, Subchapter B. Respondent, therefore, abused his discretion by issuing an Order not permitted by TEX. FAM. CODE § 261.303.

Not only did the actions of the Respondent and Real Party in Interest violate Relators' rights under the United States and Texas Constitutions, the statutory scheme authorizing these actions renders essentially meaningless the protections guaranteed by the Fourth Amendment to the U.S. Constitution and Article 1, Section 9 of the Texas Constitution. As evidenced by Respondent's order in this case, Texas Family Code §261.303 empowers the Department to run roughshod over constitutional limitations. Accordingly, this Court should grant Relators' petition for mandamus relief, find that Respondent abused his discretion by issuing Orders in Aid of Investigation in this case, and hold Texas Family Code § 261.303 unconstitutionally vague.

ARGUMENT

I. THE UNITED STATES AND TEXAS CONSTITUTIONS PRESUME PARENTS ARE FIT AND PROVIDE EXPANSIVE PROTECTIONS FOR FIT PARENTS TO RAISE THEIR CHILDREN FREE FROM GOVERNMENT INTERFERENCE.

Both the United States and Texas Constitutions have long recognized that the parent-child relationship is a fundamental right and provided expansive protections for families against government intervention and interference. *See, e.g., Troxel v. Granville*, 530 U.S. 57, 65 (2000) (recognizing that the liberty interest of "parents in the care, custody, and control of their children […] is perhaps the oldest of the fundamental liberty interests recognized by this Court."); *Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976) (vindicating the "presumptive right of parents" in the custody of their children as a "natural right […] of constitutional dimensions."). These expansive protections derive from the presumption that, absent strong evidence to the contrary, parents are fit and naturally act in the best interests of their children, creating no reason for the state to question or otherwise insert itself into the private realm of the family. *See, e.g., Troxel v. Granville*, 530 U.S. 57, 68-69; *Parham v. J.R.*, 442 U.S. 584, 602 (1979). This fit parent presumption is so important that the Supreme Court of Texas has repeatedly held that it is "deeply embedded in Texas law" and must be applied in any circumstance where a third party seeks to interfere with the right

of parents in the care and custody of their children. *See In re C.J.C.*, No. 19-0694, 63 Tex. Sup. Ct. J. 1547 at 11-12 (Tex. 2020) (quoting *In re V.L.K.*, 24 S.W.3d 338, 341 (2000)).

Whenever a government agency seeks to take an action that infringes upon fundamental rights, the action is invalid unless there is a compelling state interest and the government's actions are narrowly tailored to serve that compelling interest. *See Reno v. Flores*, 507 U.S. 292, 302 (1993). Moreover, courts are required to subject actions by government that "break the ties between a parent and child" and which seek to "permanently sunder[] those ties." *Wiley*, 543 S.W.2d at 352; *see also Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985) (citing *Cawley v. Allums*, 518 S.W.2d 790 (Tex. 1975) and *Heard v. Bauman*, 443 S.W.2d 715 (Tex. 1969)). Because any investigation conducted by the Department inevitably puts the ties between parents and children at risk, any actions taken by the Department in furtherance of an investigation are subject to strict scrutiny. And, Respondent abused his discretion by failing to apply the fit-parent presumption to his Orders in Aid of Investigation. Had Respondent correctly done so, Realtors would have been constitutionally shielded from this abuse of power by the Department.

II. RESPONDENT'S ORDER VIOLATED RELATORS' RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES UNDER THE FOURTH AMENDEMENT TO THE UNITED STATES CONSTUTITION AND ARTICLE 1, SECTION 9 OF THE TEXAS CONSTITUTION.

A. Investigations by the Department are subject to the requirements of the Fourth Amendment to the U.S. Constitution and Article 1, Section 9 of the Texas Constitution.

In the present case, the Department sought to intervene in the private realm of Relators' family by demanding entry into their home and access to their children without any evidence that the children were in imminent danger of harm or that Relators were unfit. The sole evidence that the Real Party in Interest cites to support its intervention is an unsubstantiated call to the state's child abuse hotline alleging that the infant slept in a closet and Relators' refusal to allow the investigator to enter their home and interview their children.

The Fourth Amendment to the United States Constitution and Article 1, Section 9 of the Texas Constitution guarantees the right of the people to be secure against unreasonable searches and seizures. One way this right is safeguarded is through the prohibition of searches and seizures without prior judicial approval. *See Katz v. United States*, 389 U.S. 347, 357 (1967). It is well established that the Fourth Amendment governs actions taken in furtherance of a child welfare investigation, including entry into a private home. *See, e.g.*, *Gates v. Tex. Dep't of Protective & Regulatory Servs.*, 537 F.3d 404, 422 (5th Cir. 2008) (stating that

"Regardless of what Texas law may authorize, entry into a house by the individual defendants must satisfy Fourth Amendment standards.").

The Department's own policy handbook testifies to this basic truth. Section 2240 of the Child Protective Services Handbook admonishes Department caseworkers that they "must comply with Fourth Amendment requirements" when taking intrusive actions in connection with an investigation, including entering a home and interviewing a child. Tex. Dep't of Family & Protective Servs., Child Protective Services Handbook, 2240 Interviewing, Examining, and Transporting a Child (2017). It further specifies that before entering the home or interviewing a child the caseworker must have consent, exigent circumstances, or a court order. *Id*.

The record in the present case is clear that the investigator did not have consent or a court order to enter Relators' home and interview their children, so the only option available was to obtain a court order. As will be demonstrated, however, the statutory standards that govern the process of obtaining a court order are so vague as to transform an Order in Aid of Investigation into a blank check for the department to run roughshod over constitutional limitations.

B. Standards governing the issuance of an Order in Aid of Investigation pursuant to Tex. Fam. Code § 261.303 are unconstitutionally vague.

In response to Relators' exercise of their right to refuse to allow the Department's investigator to enter their home and interrogate their other children,

the Department sought and obtained an Order in Aid of Investigation compelling Relators to cooperate with this demand. On Wednesday, September 2, 2020, this Court stayed said Order.

The purpose of Texas Family Code § 261.303 is to enable the Department to investigate and respond to allegations of abuse or neglect by prohibiting interference with its investigations. Tex. Fam. Code § 261.303(a); *Ross v. State*, 507 S.W.3d 881, 901 (Tex. App.—Texarkana 2016). Pursuant to the statute, a court may remedy alleged interference by issuing orders requiring cooperation with certain investigation activities. Tex. Fam. Code § 261.303(b). Such orders may issue for "good cause shown." *Id*.

However, the Family Code provides little guidance concerning what actions constitute impermissible interference or a refusal to cooperate with an investigation and does not define the amount of evidence sufficient to meet the "good cause shown" standard. In this respect, Orders in Aid of Investigation are remarkably similar to the British Writs of Assistance, which directly inspired the Fourth Amendment. Writing of the now legendary February 1761 case challenging the use of these vague, open-ended orders by British authorities to enter and search the homes of colonists, John Adams declared, "then and there the Child Independence was born." Letter from John Adams to William Tudor, Sr. (29 March 1817), https://founders.archives.gov/documents/Adams/99-02-02-

6735. The lack of statutory clarity governing the circumstances under which and Order in Aid of Investigation can issue and the proof required to support it is directly responsible for the controversy in the present case and creates an environment in which the department has virtually unbridled authority to force its way into the homes and lives of Texas families.

Because "[m]en of common intelligence cannot be required to guess at the meaning of the enactment," due process requires that statutes be reasonably clear and understandable to the average person. *Winters v. New York*, 333 U.S. 507, 515 (1948); *Bradley v. State ex rel. White*, 990 S.W.2d 245, 252 (Tex. 1999) (Abbott concurring). Any statute that does not give fair notice to the public of what conduct is required or prohibited and fails to provide explicit standards for its application is void for vagueness. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *Texas Antiquities Comm. v. Dallas Cty. Cmty. Coll. Dist.*, 554 S.W.2d 924, 927–28 (Tex. 1977). The void for vagueness doctrine is based not only on basic principles of fairness, but on centuries of experience that "vague laws invite arbitrary power" by denying people the opportunity to understand what conduct is prohibited so that they can adjust their behavior accordingly. *Grayned*, 408 U.S. at 108.; *Sessions v. Dimaya*, 138 S.Ct. 1204, 1223 (2018).

Here, the vagueness of Texas Family Code §261.303 directly caused both issues the Court was concerned with preventing in *Grayned*. Even if Relators

had a copy of the statute in front of them there is no way that they would have been able to know that exercising rights expressly protected by the Fourth Amendment and affirmed in the department's own policy handbook would constitute "interference" with the investigation. The determination of whether Relators actions constituted interference with an investigation, then, ultimately lied with the investigator who was prevented from entering the home and interviewing the children—an enforcement scheme that can be described using no better word than arbitrary.

Mrs. Berryman voluntarily spoke with the investigator, answered her questions regarding the child's sleeping arrangements, and even allowed her to visually examine the child in a diaper so that the investigator could confirm that the child "had no visible physical injuries" and "appeared to be clean and healthy." Appx. 8. Despite Mrs. Berryman's compliance and the investigator's failure to identify any evidence corroborating the allegation the department received, the Real Party in Interest still petitioned the trial court for an Order in Aid of Investigation. The investigator's own words in the affidavit she submitted to the trial court make it clear that her intrusion into Relators' home was groundless and arbitrary: "[…] I have concerns that there is a risk to the Berryman children's safety *based upon* [emphasis added] the failure to cooperate with the investigation into the allegations of neglect and abuse […]." Appx. 9. The

investigator provides no evidence of actual or imminent danger of harm to the children. In fact, she specifically admitted in her affidavit that the child subject of the report had no injuries and appeared to be in full health. Appx. 8. Yet, she goes on to state that she has concerns for the children's safety based solely upon Relators' legitimate exercise of her Fourth Amendment right to refuse to grant consent for the investigator to enter their home and question their children. Appx. 8-9. If a Department investigator can obtain an Order in Aid of Investigation on the sole basis that a person exercised their constitutional rights, these rights are effectively meaningless because their exercise becomes costly and can be penalized by the courts. *See Griffin v. California*, 380 U.S. 609, 613-14 (1965).

Mrs. Berryman did her best to cooperate with the investigator's request while also exercising her constitutional rights. However, the lack of clarity in Texas Family Code §261.303 with respect to what constitutes interference or failure to cooperate with an investigation allows for a virtually unlimited list of actions to fall within this category. Thus, there is no way for a reasonable person to understand whether or not they are being sufficiently cooperative. This, in turn, leads to the second problem of arbitrary and inconsistent enforcement. As demonstrated here, the question is ultimately left to the subjective determination of the individual investigator who, upon information and belief pursuant to Department policy and practice, will almost always interpret anything short of

full compliance to constitute interference with their investigation. Such a scenario is precisely what the Founders intended to prevent when they drafted the Fourth Amendment.

While the Family Code does provide somewhat of a check on the Department's nearly unbridled authority to invade the private homes and lives of families by requiring it to obtain a court order to compel cooperation, the "good cause shown" standard renders this check essentially toothless. Both the Fourth Amendment to the United States Constitution and Article 1, Section 9 of the Texas Constitution require that an order to enter and search a private home be supported by probable cause. In its reply, however, the Real Party in Interest rejects event this most fundamental of limitations on its authority by arguing that "good cause shown" is something less than probable cause. Tellingly, the Real Party in Interest admits in its response brief that "good cause is not defined by the Texas Family Code." The lack of a statutory definition for "good cause shown" is also noted in the Department's policy handbook in the section discussing the burden of proof the department must meet to obtain an Order in Aid of Investigation. Tex. Dep't of Family & Protective Servs., Child Protective Services Handbook, 5112 Proof Required to Obtain a Court Order in Aid of Investigation (2018).

The Department insists that "good cause shown" is a lower standard of proof than the probable cause standard required by the Fourth Amendment. But this reading would render Texas Family Code §261.303 unconstitutional[1], and therefore cannot be adopted by this court. Under the doctrine of constitutional avoidance, "where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided," courts are obligated to adopt the construction that avoids placing its constitutionality in doubt. *Jones v. United States*, 529 U.S. 848, 857 (2000). However, even if this Court finds that "good cause shown" is equivalent to probable cause, this does not cure the ambiguity surrounding what actions constitute interference with an investigation. Since the Texas Family Code §261.303 lacks even the most basic information to help the courts, the Department, and the public understand how much evidence the Department must present for an order to issue, this Court must hold the statute void for vagueness.

[1] The only way a standard of less than the probable cause mandated by the Fourth Amendment could survive would be if the standard satisfied strict scrutiny. As discussed earlier, since the Department's investigation necessarily places Relators' fundamental right to their relationship with their children in jeopardy, this court must apply strict scrutiny when considering whether the "good cause shown" standard of Texas Family Code § 261.3030 passes constitutional muster. *See Reno*, 507 U.S. at 302; *Wiley*, 543 S.W.2d at 352; *see also Holick v. Smith*, 685 S.W.2d at 20. To pass strict scrutiny, Texas Family Code §261.303 must be justified by a compelling government interest and the most narrowly tailored means of achieving that interest. *See Reno*, 507 U.S. at 302. The Department makes no attempt to make such a showing here.

C. Respondent's Order violated Relators' constitutional rights by denying them the opportunity for precompliance review.

On August 17, 2020, the Real Party in Interest received the call alleging that Relators were neglecting their infant child and dispatched the investigator to Relators' home. Appx. 7. The next day, August 18, 2020, the investigator signed the affidavit, which was submitted with the Real Party in Interest's petition for an Order in Aid of Investigation. Appx. 7-9. On August 21, 2020, the trial court issued its Order in Aid of Investigation. Appx. 1-2. Interestingly, the Real Party in Interest's petition seeking the order was not filed until August 24, 2020. Appx. 3-6. Relators were then served with the trial court's order on August 27, 2020. Appx. 10-13.

Setting aside the strange chronology resulting in Respondent issuing his order three days before the Real Party in Interest filed their Petition, the issuance of the order without providing Relators with notice and the opportunity to respond violated Relators' due process rights. In *City of Los Angeles v. Patel*, the U.S. Supreme Court noted that "[a]bsent consent, exigent circumstances, or the like, in order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker." *City of Los Angeles v. Patel*, 576 U.S. 409, 420 (2015) (quoting *See v. Seattle*, 387 U.S. 541, 545 (1967) and *Donovan v. Lone Steer*, 464 U.S. 408, 415 (1984)). While the Court declined to "prescribe the

exact form an opportunity for precompliance review must take," it noted in *See* that such review, at minimum, must include the opportunity to challenge the reasonableness of the search before suffering penalties associated with failure to comply. *Patel*, 576 U.S. at 420; *See*, 387 U.S. at 545.

Here, Relators learned of the Real Party in Interest's intent to compel them to permit the investigator to search their home, interview their children, and even remove the children to another location for the purpose of an interview when they were served with Respondent's Order. Despite the fact that the citation stated Relators had the opportunity to file a written answer, no reasonable person can argue that this constitutes meaningful precompliance review since the opportunity to respond came *after* the trial court had made its decision and entered the Order. Respondent, thus, abused its discretion by entering its Order in Aid of Investigation based solely on information presented by the Real Party in Interest without affording Relators a meaningful opportunity to challenge the reasonableness of the Real Party in Interest's petition.

III. RESPONDENT'S ORDER EXCEEDED THE AUTHORITY GRANTED BY TEX. FAM. CODE § 261.303.

Notwithstanding the constitutional issues with the "good cause shown" standard provided in Texas Family Code § 261.303(b), Respondent abused his discretion by issuing an order that exceeded the authority granted by statute. A plain reading of Texas Family Code § 261.303 makes it abundantly clear that an

Order in Aid of Investigation can only be issued for the purposes of (1) gaining admission to a location where a child subject of an investigation may be, (2) obtaining certain health records concerning the child, or (3) accessing locating or identifying information regarding the family. Courts have further held that "Section 261.303(b) contemplates that the order only authorizes entry into a place where the child 'may be,' i.e., where the child is located." *Ross v. State*, 507 S.W.3d 881, 901 (Tex. App.—Texarkana 2016). There is no language anywhere in Texas Family Code § 261.303 that expressly or implicitly allows for an Order in Aid of Investigation that empowers the department to remove the child from the location and transport him or her for the purposes of furthering the investigation. Yet, that is exactly with Respondent's order in this case did. Appx. 2.

In order for a writ of mandamus to issue, it must be shown that the trial court clearly abused its discretion by arriving at a decision that is "'so arbitrary and unreasonable as to amount to a clear and prejudicial error of law' or if it clearly fails to correctly analyze or apply the law." *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005). Respondent's Orders at 3.3 and 3.4 expressly authorize the Real Party in Interest to transport both the infant at issue in this case as well as "unknown children" for the purposes of conducting an interview in furtherance of the investigation. Since Texas Family Code § 261.303

does not permit an Order in Aid of Investigation to issue for the purpose of removing children from the place where they are located and transporting them to a separate location, Respondent's orders demonstrate a clear failure to properly analyze and apply the law. This fact alone is sufficient for this Court to grant Relators' petition for mandamus relief.

CONCLUSION

The relationship between a parent and their child is a fundamental liberty interest afforded expansive protection against government intervention and interference. *Troxel*, 530 U.S. at 65; *Wiley*, 543 S.W.2d at 352. Families, like all citizens, also enjoy protections against unreasonable searches and seizures provided by the Fourth Amendment to the United States Constitution and Article 1, Section 9 of the Texas Constitution. There is no doubt that these protections apply to child welfare investigations and limit the authority of the Department of Family and Protective Services to intrude into the private homes and lives of families.

The Founders intended for the courts to serve as guardians of the fundamental rights of citizens and to stand as "an impenetrable bulwark against every assumption of power in the legislative or executive." James Madison, *Amendments to the Constitution [8 June 1789]*, National Archives, https://founders.archives.gov/documents/Madison/01-12-02-0126. Rather than fulfilling this role, however, Respondent granted Real Party in Interest's petition for

an Order in Aid of Investigation, which infringed upon Relators' fundamental rights. Respondent further abused his discretion by authorizing the Department to remove Relators' children and transport them to a separate location for an interview—something Texas Family Code § 261.303 does not permit.

This injustice was enabled by the unconstitutionally vague language of Texas Family Code §261.303, which fails to define conduct that constitutes an impermissible interference with an investigation as well as the amount of proof the department is required to present to meet the statute's "good cause shown" burden. Due process requires that statutes requiring or prohibiting conduct be clearly written and understandable to the average person. *Winters*, 333 U.S. at 515. If, as here, a statute does not clearly define the conduct it seeks to require or prohibit and outline explicit standards for its application, then that statute is void for vagueness. *Grayned*, 408 U.S. at 108 (1972). Accordingly, this court should grant Relators' petition for mandamus relief and declare Texas Family Code §261.303 unconstitutional.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the typeface requirements of Tex. R. App. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of Tex. R. App. 9.4(i), because it contains 4,473 words, excluding any parts exempted by Tex. R. App. P. 9.4(i)(1).

/s/Robert Henneke
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to the following persons via the Court's electronic filing system this 17th day of September, 2020.

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