

January 22, 2023

Re: Submission to United Nations (“UN”) Special Rapporteurs Concerning Urgent Circumstances of Anti-LGBTQIA+ Bills in Texas

Submitted to:

- UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity, *Graeme Reid*
- UN Working Group of Experts on People of African Descent Chairperson, *Barbara Reynolds*
- UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (Working Group on Business and Human Rights) Chairperson, *Damilola Olawuyi*
- UN Special Rapporteur in the Field of Cultural Rights, *Alexandra Xanthaki*
- UN Special Rapporteur on the Right to Education, *Farida Shaheed*
- UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Irene Khan*
- UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, *Clément Nyaletsossi Voule*
- UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, *Tlaleng Mofokeng*
- UN Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, *Balakrishnan Rajagopal*
- UN Special Rapporteur on the Situation of Human Rights Defenders, *Mary Lawlor*
- UN Special Rapporteur on the Rights of Indigenous Peoples, *Francisco Cali Tzay*
- UN Special Rapporteur on Minority Issues, *Nicolas Levrat*
- UN Special Rapporteur on the Right to Privacy, *Ana Brian Nougrères*
- UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Ashwini K.P.*
- UN Special Rapporteur on Freedom of Religion or Belief, *Nazila Ghanea*
- UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Alice Jill Edwards*
- UN Special Rapporteur on Violence Against Women and Girls, Its Causes and Consequences, *Reem Alsalem*

To whom it may concern:

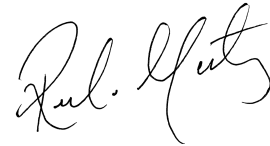
We are writing to you on behalf of the American Civil Liberties Union of Texas, Equality Texas, GLAAD, the Human Rights Campaign, and The University of Texas at Austin School of Law Human Rights Clinic to raise alarm about the deteriorating human rights situation for LGBTQIA+ persons in the state of Texas, United States of America, due to hostile rhetoric and legislation from the Texas state government. In 2023, the Texas Legislature targeted the

LGBTQIA+ community through hostile laws that have disrupted (or will disrupt) the ability of LGBTQIA+ persons to effectuate their rights. Taken individually, the seven pieces of legislation (the “**Bills**”) discussed in this submission will disrupt the lives of LGBTQIA+ people of various ages and backgrounds. Put together, the Bills are a systemic attack on the fundamental rights, dignities, and identities of LGBTQIA+ persons that opens the gates for discrimination by both public and private actors. Considering the danger this represents, we humbly ask for you to make inquiries into this backsliding of human rights of LGBTQIA+ persons in the state of Texas, United States of America. Furthermore, the United States federal government has failed to adopt necessary and adequate measures to prevent these abuses. While some federal courts have placed injunctions on some of the Bills, the federal government has not adopted a proper response to the systemic attack on LGBTQIA+ persons living in the state of Texas.

Most respectfully,



**American Civil Liberties
Union of Texas**



Equality Texas



GLAAD



Human Rights Campaign



**The University of Texas at
Austin School of Law
Human Rights Clinic**

I. Summary of Anti-LGBTQIA+ Legislation Passed During 88th Texas Legislative Session

From January 10, 2023, to May 29, 2023, members of the Texas Legislature of the 88th Legislative Session proposed numerous anti-LGBTQIA+ bills in the Texas House of Representatives and the Texas Senate. Advocacy groups identified anti-LGBTQIA+ bills that would have negatively affected health care, education, housing, and identification of LGBTQIA+ persons in the state of Texas.¹ This session represented an unprecedented onslaught of anti-LGBTQIA+ bills—the 141 proposed anti-LGBTQIA+ bills dwarfed the already alarming 33 proposed anti-LGBTQIA+ bills of the 87th regular Legislative Session.² Out of the wide array of threatening bills, the Texas Legislature passed seven different bills that endanger the rights of all Texans and especially LGBTQIA+ Texans (the “**Bills**”). Taken together, the Bills represent a systemic discriminatory policy that constitutes a concrete attack against LGBTQIA+ persons.

These Bills reflect a long history of anti-LGBTQIA+ attacks by the Texas state government. Texas maintained criminal anti-sodomy laws until they were ruled unconstitutional by the United States Supreme Court in 2003.³ More recently in 2017, members of the Texas Legislature attempted to pass a “bathroom bill,” which would have created civil and criminal penalties for transgender individuals who used bathrooms that matched their gender identities.⁴ In 2022, the Texas Attorney General, Ken Paxton, issued an opinion that equated certain medical procedures, including many forms of gender-affirming care, with child abuse.⁵ Subsequently, Texas Governor, Greg Abbott, directed the Texas Department of Family and Protective Services to investigate parents of transgender minors for child abuse.⁶ The 88th Legislature’s attacks against the LGBTQIA+ community are a continuation of this troubling history.

¹ *Legislative Bill Tracker 2023*, EQUALITY TEXAS, <https://www.equalitytexas.org/legislature/legislative-bill-tracker-2023/> (last visited Dec. 17, 2023).

² *Legislative Session Wrap-Up: Our Community Mobilized with Strength and Heart*, EQUALITY TEXAS, <https://www.equalitytexas.org/legislative-session-wrap-up-our-community-mobilized-with-strength-and-heart/> (last visited Dec. 17, 2023).

³ *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁴ Alexa Ura, *After months of controversy, Texas bathroom bill dies quietly*, THE TEXAS TRIBUNE (Aug. 16, 2007), <https://www.texastribune.org/2017/08/16/after-months-controversy-texas-bathroom-bill-dies-quiet-death/>.

⁵ Texas Att’y Gen. Op. No. KP-0401 (2022).

⁶ Eleanor Klibanoff, *Texas resumes investigations into parents of trans children, families’ lawyers confirm*, THE DAILY TEXAN (May 20, 2022), <https://www.texastribune.org/2022/05/20/trans-texas-child-abuse-investigations/>; see also Letter from Greg Abbott, Texas Governor, to Jaimie Masters, Commissioner of Texas Department of Family and Protective Services (Feb. 22, 2022), <https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf> [hereinafter Feb. 22, 2022 Letter from Greg Abbott to Jaimie Masters].

Senate Bill 14 (SB 14), signed into law on June 2, 2023, prohibits life-saving medical care for transgender children under the age of eighteen.⁷ This ban includes the use of puberty blockers, hormone therapy, and transition-related surgery.⁸ Physicians who violate SB 14 are subject to sanction and revocation of their licenses.⁹ Since the ban only applies to those seeking these medical treatments to treat gender dysphoria and continues to allow the use of the treatments for other reasons, SB 14 specifically discriminates against transgender individuals.¹⁰ On August 25, 2023, a Texas district court granted an injunction to stop the implementation of the bill.¹¹ The Texas Attorney General, Ken Paxton, filed an appeal to this injunction, automatically staying the district court’s injunction.¹² The Texas Supreme Court refused to reinstate the injunction while the appeals process continues, resulting in SB 14 taking effect on September 1, 2023.¹³

Senate Bill 17 (SB 17) prohibits public universities and colleges from maintaining diversity programs, from including considerations of race, gender, or sexuality when making employment decisions, or from referencing race, ethnicity, gender identity, or sexual identity in trainings or programs.¹⁴ Furthermore, diversity, equity, and inclusion (DEI) training for employees is prohibited unless it is developed by an attorney, is approved by the university’s chief legal officer, and is for the sole purpose of ensuring compliance with relevant federal and state laws.¹⁵ Universities running afoul of the vague language of SB 17 risk losing access to state funding.¹⁶ The bill also requires that public colleges and universities adopt policies to discipline employees who violate specific provisions of the bill.¹⁷ Meanwhile, the closing of DEI offices has eliminated spaces for LGBTQIA+ students to build communities and access essential resources, including programs offering HIV testing. The DEI office of Rice University, a private school, has attempted

⁷ Tex. S.B. 14 § 2, 88th Leg., R.S. (2023).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Temporary Injunction Order, *Loe v. Texas*, No. D-1-GN-23-003616 (401st Dist. Ct., Travis County, Tex. Aug. 25, 2023).

¹² *Office of the Attorney General Files Appeal to Texas Supreme Court, Blocking District Judge’s Ruling and Upholding Protections For Children From “Gender Transition” Procedures*, OFFICE OF THE ATTORNEY GENERAL OF TEXAS (Aug. 25, 2023), <https://www.texasattorneygeneral.gov/news/releases/office-attorney-general-files-appeal-texas-supreme-court-blocking-district-judges-ruling-and>.

¹³ *ACLU of Texas and Partners Respond to Texas Supreme Court Allowing S.B. 14 to Take Effect*, AMERICAN CIVIL LIBERTIES UNION OF TEXAS, <https://www.aclutx.org/en/press-releases/aclu-texas-and-partners-respond-texas-supreme-court-allowing-sb-14-take-effect>.

¹⁴ Tex. S.B. 17 § 2, 88th Leg., R.S. (2023).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

to fill the gap in Houston by offering its services to students of local public universities affected by SB 17; the office has already had at least 100 unserved LGBTQIA+ students from public universities contact its office for assistance, but makeshift responses such as these are inadequate to serve the hundreds of thousands of students enrolled at Texas public colleges and universities.¹⁸

Senate Bill 15 (SB 15) targets transgender athletes, preventing them from competing on collegiate sports teams that align with their gender identity if their gender identity does not match their “biological sex” as described on a birth certificate issued at or near the time of the student’s birth.¹⁹ The bill is a categorical ban on transgender athlete participation at the collegiate level that preempts the rules created by the National Collegiate Athletics Association (NCAA), which seek to balance fairness, inclusion, and safety for athletes at the collegiate level.²⁰ The bill also goes against the internationally recognized standards set by the Olympic National Committee, which recognized that transgender athletes should not be excluded and created medically informed guidelines for transgender athlete participation at the highest levels of competition.²¹ Some lawmakers attempted to amend SB 15 to create exceptions for club and intermural sports and for intersex athletes, but the majority refused to include the amendments.²² Although the bill is targeted at transgender athletes, all college athletes—both cis- and transgender—now face the possibility of having to prove their “biological sex.” SB 15 forces athletes in intercollegiate, intermural, and club sports to compete according to their sex assigned at birth, effectively precluding their participation in college athletics both professionally and recreationally.²³

Senate Bill 763 (SB 763), effective on September 1, 2023, allows local school districts to use state funds to employ, or accept as volunteers, religious chaplains to provide emotional, spiritual,

¹⁸ Chaz Miller, *Rice University offers LGBTQ+ services to other colleges in Texas amid new anti-DEI law*, ABC13 EYEWITNESS NEWS 13 (Aug. 31, 2023), <https://abc13.com/sb-17-senate-bil-rice-university-lgbtq-college-services/13722810/>.

¹⁹ Tex. S.B. 15 § 2, 88th Leg., R.S. (2023).

²⁰ Adela Uchida, *Texas House Gives Initial Approval to SB15 Affecting Transgender College Athletes*, CBS AUSTIN, (May 17, 2023), <https://cbsaustin.com/news/local/texas-house-gives-initial-approval-to-sb15-affecting-transgender-college-athletes>.

²¹ *IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism*, INT’L OLYMPIC COMMITTEE (November 2015), https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf.

²² Hannah Norton, *Bill Restricting Participation of Transgender College Athletes Approved by Texas House*, COMMUNITY IMPACT (May 18, 2023), <https://communityimpact.com/austin/central-austin/texas-legislature/2023/05/17/bill-restricting-participation-of-transgender-college-athletes-approved-by-texas-house/>.

²³ Karina Kumar, *Senate Bill 15 requires NCAA, club, intramural athletes to compete based on their sex assigned at birth*, THE DAILY TEXAN (July 3, 2023), <https://thedailytexan.com/2023/07/03/senate-bill-15-requires-ncaa-club-intramural-athletes-to-compete-based-on-their-sex-assigned-at-birth/>.

and interpersonal guidance to students.²⁴ Critically, any chaplain employed or volunteering as a counselor does not require accreditation similar to other professionals working with children and teenagers in public schools.²⁵ Chaplains are often used by law enforcement, the military, and hospitals to provide spiritual guidance and counseling, but they are not necessarily trained in working with children, especially those whose beliefs and identities conflict with certain religious values. Furthermore, nothing in SB 763 or Texas law protects students from mistreatment or proselytization by religious chaplains in schools nor does it require that chaplains maintain confidentiality. This presents particular danger to LGBTQIA+ students because chaplains could “treat” students in need of professional behavioral health services or suicide prevention with disproven methods (such as conversion therapy), shame them by labelling certain struggles or identity challenges as “sins,” or endanger LGBTQIA+ students by outing them without their consent. Multiple amendments were proposed for the bill to address this and many other issues, including a prohibition on proselytization, requirements for parental consent, requirements for accreditation similar to those required for prison and military chaplains, and a requirement that schools provide for any faith-based counseling based on student needs. Each of these amendments were rejected by the majority.²⁶

Senate Bill 12 (SB 12) prohibits “sexually oriented performances” on public property that could be “reasonably expected to be viewed” by someone under 18 or in a commercial establishment in the presence of someone under 18.²⁷ The bill has been repeatedly called a “drag ban” by its supporters and the Texas Governor.²⁸ Reflecting an intent to target drag performances, the original draft of SB 12 defined a “sexually oriented performance” as “a male performer exhibiting as a female, or a female performer exhibiting as a male” whose performance “appeals to the prurient interest in sex.” Although SB 12’s definition of “sexually oriented performance”

²⁴ Tex. S.B. 763 § 2, 88th Leg., R.S. (2023). In Texas, school counselors are tasked with developing “each student’s academic, career, personal, and social abilities,” which includes serving as a resource for bullied students and those experiencing suicidal ideation. Tex. Education Code § 33.006.

²⁵ *Id.* (“A chaplain employed or volunteering under this chapter is not required to be certified by the State Board for Educator Certification.”).

²⁶ Robert Downen, *Unlicensed religious chaplains may counsel students in Texas’ public schools after lawmakers OK proposal*, THE TEXAS TRIBUNE (May 24, 2023), <https://www.texastribune.org/2023/05/24/texas-legislature-chaplains-schools/>.

²⁷ Tex. S.B. 12 § 2, 88th Leg., R.S. (2023).

²⁸ *E.g.*, @GregAbbott_TX, X, (June 24, 2023, 11:03 PM)

https://x.com/GregAbbott_TX/status/1672817859729162240?lang=en (stating “Texas Governor Signs Law Banning Drag Performances in Public. That’s right.”).

was later changed to remove the reference to “a male performer exhibiting as a female, or a female performer exhibiting as a male,” the final version of SB 12 defines a “sexually oriented performance” as the “the exhibition of sexual gesticulations using accessories or prosthetics that exaggerate male or female sexual characteristics.” Although supporters of the legislation have claimed that it only targets highly sexualized performances, the vague definition of “sexualized performance” calls into question the legality of any performance by someone who is not conforming to traditional gender roles. The vague and overbroad nature of the law was the basis for a federal judge to rule SB 12 unconstitutional and block its enforcement due to its infringement on the US Constitution’s First Amendment right to free speech²⁹—the decision has since been appealed by the Texas Attorney General.³⁰ Even though SB 12 has not come into effect, it has been a signal for public and private actors to discriminate against LGBTQIA+ events. Indeed, Texas led the United States in anti-LGBTQIA+ demonstrations against drag shows in 2022³¹ and in March 2023 the President of West Texas A&M University prohibited drag performances on the public campus, stating that drag performances “denigrate and demean women,” after students attempted to host a fundraising drag performance for an LGBTQIA+ suicide prevention non-profit.³²

House Bill 900 (HB 900) restricts access to books in school libraries by banning “educationally unsuitable,” “pervasively vulgar,” and “sexually explicit” materials.³³ The bill also requires book sellers to adopt a ratings system for “sexually explicit” and “sexually relevant” materials and to review all books that they have sold to school libraries for the presence of sexual content. The definition of “sexually explicit” is broad, including any media “that describes, depicts, or portrays sexual conduct” and is “patently offensive” according to community standards.³⁴ A federal judge recently temporarily blocked the implementation of HB 900 because the law does not provide proper guidance as to which books or materials run afoul of community standards.³⁵ While the

²⁹ Alejandro Serrano and William Melhado, *Texas’ ban on certain drag shows is unconstitutional, federal judge says*, THE TEXAS TRIBUNE (Sept. 26, 2023), <https://www.texastribune.org/2023/09/26/texas-drag-queen-law-unconstitutional/>.

³⁰ Defendant Paxton’s Notice of Appeal, at 1, *The Woodlands Pride Inc. v. Ken Paxton*, No. 4:23-CV-2847 (S.D. Tex. Sept. 29, 2023).

³¹ *Updated GLAAD Report: Drag events faced at least 141 protests and significant threats in 2022*, GLAAD (Nov. 21, 2022), <https://glaad.org/glaad-report-drag-events-faced-least-125-protests-and-significant-threats-2022/>.

³² Walter Wendler, *Wendler commentary: A harmless drag show? No such thing*, AMARILLO GLOBE NEWS (Mar. 21, 2023), <https://www.amarillo.com/story/opinion/columns/2023/03/21/wendler-commentary-a-harmless-drag-show-no-such-thing/70033516007/>.

³³ Tex. H.B. 900 § 2, 88th Leg., R.S. (2023).

³⁴ *Id.*

³⁵ *Book People, Inc. v. Wong*, No. 1:23-CV-00858-ADA, 2023 WL 6060045 (W.D. Tex. Sept. 18, 2023).

case is on appeal, school districts across the state have followed the legislature’s signal and have begun to review and ban books featuring LGBTQIA+ characters and themes. For example, the board members of Katy Independent School District put 10,000 different titles that were purchased for the 2023-2024 school year on hold until they could be vetted. Following nationwide trends, the books that were taken off shelves disproportionately featured LGBTQIA+ characters and themes.³⁶

House Bill 2127 (HB 2127) prohibits local governments from adopting ordinances, orders, or rules that go beyond what is already expressly authorized in state law under various state codes, including the Business and Commerce Code, Labor Code, Local Government Code, and Property Code.³⁷ The bill is wide-sweeping and allows for private actors to challenge any local rule as unlawful.³⁸ Importantly, the bill has the potential to upset local and city housing non-discrimination ordinances, possibly diminishing current or future protections for LGBTQIA+ Texans.³⁹ Although these concerns were voiced to the bill’s author during public hearings and debate, no amendment was added to clarify HB 2127’s effect on local non-discrimination ordinances. This is of particular concern for transgender and gender non-conforming persons, who are oftentimes subject to housing discrimination; a 2015 report compiled from the largest survey of transgender people in the United States found that 22% of transgender or gender non-conforming individuals in Texas had faced housing discrimination during the year preceding the survey and 30% reporting that they had been unhoused in their lifetimes.⁴⁰

The Bills detailed above each restrict LGBTQIA+ communities’ access to health care, education, housing, and culture. Their cumulative effect is to police the public and private lives of LGBTQIA+ persons.

II. Texas and the U.S. federal government are in violation of their international human rights obligations

³⁶ Rebecca Noel, *‘It’s irresponsible’: Students in Katy ISD speak up against LGBTQ book bans, policies*, HOUSTON PUBLIC MEDIA (Sept. 19, 2023), <https://www.houstonpublicmedia.org/articles/news/in-depth/2023/09/19/462770/katy-isd-book-bans-lgbt-students-speak-up/>.

³⁷ Tex. H.B. 2127 § 2, 88th Leg., R.S. (2023).

³⁸ Tex. H.B. 2127 § 2, 88th Leg., R.S. (2023).

³⁹ American Civil Liberties Union of Texas, Equality Texas, Human Rights Campaign, Lambda Legal, Texas Freedom Network, and Transgender Education Network of Texas, *Fact Sheet: HB 2127 (“Death Star Preemption Bill”)*, https://www.aclutx.org/sites/default/files/hb_2127_factsheet_twopager.pdf (Sept. 27, 2023).

⁴⁰ Sandy James et al., *The Report of the 2015 U.S. Transgender Survey*, NAT’L CENTER FOR TRANSGENDER EQUALITY (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

The United States federal government has a duty to respect and ensure the rights under international human rights law without discrimination. In failing to secure Texas’s compliance with the letter and spirit of these obligations, the United States has failed in protecting the human rights of residents of Texas and thus failed to uphold its obligations under international human rights law.

In 1976, the United States Senate ratified the International Covenant on Civil and Political Rights (ICCPR), with a view to participate with greater effectiveness in shaping human rights norms.⁴¹ Thus, the United States—including its federal and state entities—is obligated to act in accordance with this treaty, per Article 50 of the ICCPR.⁴² The State of Texas blatantly disregards its responsibilities and obligations to uphold the standard of human rights as described in the ICCPR by targeting the LGBTQIA+ community with laws that seek to invalidate their lived experiences, prevent them from participating in society and ultimately, seeking to erase them from the public sphere.

In 2023 there were 496 proposed bills that attack LGBTQIA+ rights across state legislatures in the United States, per the ACLU.⁴³ While many will not become law, their existence reveals the societal intent behind them—of fear, hate and animosity towards the LGBTQIA+ community.⁴⁴ The attitudes that shape and bolster these views are gaining a stronger foothold in the social fabric and political landscape of the United States and require urgent attention. Allowing the unchecked proliferation of such bills in state legislatures indicates an unwillingness to adhere to the human rights norms of the ICCPR, both from individual states and the federal government. The concept of “administrative practice” developed in the European Court of Human Rights is analogous to the situation within the United States. An administrative practice is defined by a “repetition of acts” violating human rights standards and “official tolerance” of the acts.⁴⁵ Through this lens, the United States has failed to address localized practices that violate the rights of LGBTQIA+ persons. The United States in general, and Texas specifically, must take notice and action to curb

⁴¹ S. REP. NO. 102-23 at 3 (1992).

⁴² International Covenant on Civil and Political Rights, art. 50, Dec. 16, 1966, 999 UNTS 171 (“The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”) [hereinafter ICCPR].

⁴³ *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures*, AMERICAN CIVIL LIBERTIES UNION OF TEXAS, <https://www.aclu.org/legislative-attacks-on-lgbtq-rights?state=MD> (updated Dec. 1, 2023).

⁴⁴ *Bowers v. Hardwick*, 476 U.S. 186, 199 (1986).

⁴⁵ *Georgia v. Russia (II)*, App. No. 38263/08, ¶¶ 100-103 (Jan. 21, 2021), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-207757%22%7D>.

bills that unfairly target a specific demographic group and intends to strip them of the ability to enjoy their basic rights.

III. The Bills violate the rights to equality and non-discrimination of LGBTQIA+ persons

The rights to equality and non-discrimination are guaranteed in international human rights law through the Universal Declaration of Human Rights (UDHR), ICCPR, and the American Declaration of the Rights and Duties of Man (American Declaration).⁴⁶ Discrimination on the basis of sexual orientation and gender identity is prohibited in the context of the enjoyment of other rights, as well as more generally in the context of equality and equal protection of the law.⁴⁷

a. Texas directly discriminated against LGBTQIA+ persons

Direct discrimination, which occurs when a person is treated less favorably than someone else in comparable circumstances on account of their sexual orientation or gender identity, is prohibited under international human rights law.⁴⁸ SB 15 categorically prohibits participation of transgender students in intercollegiate sports competitions on the teams that align with the authentic representation of their gender identity. By barring these students from participating, and subjecting them to humiliation, harassment, and even exposing them to harm, Texas is actively violating and encouraging violations of the right to equality and non-discrimination that every individual is entitled to. SB 14 prevents transgender minors from accessing life-saving medical care for the treatment of gender dysphoria while allowing the same exact care for cisgender minors, and therefore differentially restricts access to medical care for certain categories and classes of persons. Finally, SB 17 prohibits the existence of diversity, equity and inclusion offices and initiatives at public universities in the state, which curbs institutional ability to advance equality and non-discrimination by providing programs, resources, and support services to promote these rights, measures recommended by international human rights bodies.

These bills, while attacking the entire LGBTQIA+ community, particularly target transgender persons. In restricting access to life-saving health care, to community-building through competitive sports, and access to diversity, equity, and inclusion programs, the Texas legislature

⁴⁶ Universal Declaration of Human Rights, arts. 1, 2, 7, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (Dec. 10, 1948) [hereinafter UDHR]; ICCPR, *supra* note 42, arts. 2, 3, 26; American Declaration of the Rights and Duties of Man, art. II, May 2, 1948, Ninth International Conference of American States [hereinafter American Declaration].

⁴⁷ U.N. Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (Mar. 31, 1994), at ¶ 8.7.

⁴⁸ UDHR, *supra* note 46, arts. 2, 7; ICCPR, *supra* note 42, arts. 2, 3 and 26.

exposes its animus against this community and violates its obligation to respect, protect and fulfill the human rights of all people. Texas violated the rights to equality and non-discrimination by creating, enforcing, and supporting laws and attitudes that differentially apply to certain categories of individuals and are meant to specifically target and push them out of public participation.

b. Texas indirectly discriminated against LGBTQIA+ persons

Indirect discrimination, which occurs when a measure that is neutral on its face exclusively or disproportionately affects particular groups, is prohibited under international human rights law.⁴⁹ While some of the Bills apply to all persons without distinction, they have a disproportionate impact on LGBTQIA+ persons. Advocacy groups have expressed concern about the far-reaching impact of HB 2127 on non-discrimination ordinances, particularly in the context of housing discrimination against LGBTQIA+ persons.⁵⁰ Furthermore, SB 763 adversely affects LGBTQIA+ students by introducing religious chaplains at schools, who may engage in conversion therapy, may shame students for their sexual or gender identities, or may out students without their consent. SB 17 effectively bans diversity, equity, and inclusion (DEI) offices focused on LGBTQIA+ students, and SB 12 targets drag performances. Finally, HB 900 will likely lead to the removal of many public school library books on sexual orientation and gender identity that serve as important resources for LGBTQIA+ students.

c. Texas's conduct stigmatizing LGBTQIA+ persons amounts to public incitement to discrimination, hostility, or violence, prohibited under international human rights law

Rhetoric by a public authority stigmatizing and labeling LGBTQIA+ persons as unwanted members of the society may amount to public incitement to discrimination, hostility, or violence, prohibited under article 20, paragraph 2 of the ICCPR because promoting harmful stereotypes about gender and sexuality risks creating wider repercussions such as persecution, violence, and discrimination against LGBTQIA+ persons.⁵¹ Statements by Texas legislators stigmatizing and

⁴⁹*Id.*; U.N. Human Rights Committee, Communication No. 998/2001, *Althammer v. Austria*, U.N. Doc. CCPR/C/78/998/2001 (Aug. 8, 2003), at ¶ 10.2; *see also* U.N. Human Rights Committee, Communication No. 208/1986, *Karnel Singh Bhinder v. Canada*, U.N. Doc. CCPR/C/37/D/208/1986 (Nov. 9, 1989).

⁵⁰ *Fact Sheet: HB 2127*, AMERICAN CIVIL LIBERTIES UNION OF TEXAS (Sept. 27, 2023); *see also* Andrew Weber, *Texas' 'Death Star' could kill a slew of local laws. Here's how.*, KUT NEWS (June 7, 2023), <https://www.kut.org/politics/2023-06-07/house-bill-2127-local-laws-worker-protections-discrimination-in-housing-and-hiring-payday-lending>.

⁵¹ Special Rapporteur on the Situation of Human Rights in the Russian Federation, the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity, and the Working

labeling LGBTQIA+ persons as unwanted members of the society over the course of the 88th Legislative Session constitute public incitement to discrimination, hostility, or violence, which are prohibited under article 20, paragraph 2 of the ICCPR. For example, Representative Tom Oliverson equated the provision of gender-affirming care to the opioid epidemic.⁵² Similarly Attorney General Ken Paxton declared gender-affirming care procedures to be “child abuse” under Texas law.⁵³ Senator Donna Campbell, author of SB 14, likened gender-affirming care for transgender children to a “social contagion.”⁵⁴

IV. The Bills violate the right to privacy of LGBTQIA+ persons

The right to privacy is guaranteed in international human rights law through the UDHR, ICCPR, and the American Declaration.⁵⁵ “Privacy” refers to the sphere of a person’s life in which they can freely express their identity.⁵⁶ The right to privacy is fundamental to enjoying other basic aspects of human life, and enables individuals to express themselves, participate in political and social life, and form interpersonal relationships safe from state retaliation. The fundamental aspects of this right, as described by the UDHR, ICCPR, and the American Declaration, is that everyone is entitled to the protection of the law from attacks on their privacy.⁵⁷ The established jurisprudence of the Human Rights Committee confirms that the right to privacy includes protection of a person’s gender identity.⁵⁸

In order to appropriately uphold and protect the right to privacy, States must: (1) take measures to end violations and abuses of the right to privacy and to create the conditions to prevent such violations and abuses;⁵⁹ (2) take necessary administrative and other measures for the management of health-related data so as to ensure enjoyment of the right to the highest attainable standard of

Group on Discrimination against Women and Girls, Joint Communication on Information Received Concerning Federal Law No. 386 “On Amendments to Certain Legislative Acts of the Russian Federation,” OL RUS 20/2023 (Aug. 16, 2023), at 2 [hereinafter Russia Joint Communication].

⁵² Debate on Tex. S.B. 14 on the Floor of the House, 88th Leg., R.S. (May 12, 2023) (at 5:28:35).

⁵³ *AG Paxton Declares So-Called Sex-Change Procedures on Children and Prescription of Puberty Blockers to be “Child Abuse” Under Texas Law*, ATTORNEY GENERAL OF TEXAS (Feb. 21, 2022) <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-declares-so-called-sex-change-procedures-children-and-prescription-puberty-blockers-be>.

⁵⁴ Debate on Tex. S.B. 14 in the Senate Committee on State Affairs, 88th Leg., R.S. (May 16, 2023) (at 00:05:00).

⁵⁵ UDHR, *supra* note 46, art. 12; ICCPR, *supra* note 42, art. 17; American Declaration, *supra* note 46, art. V.

⁵⁶ U.N. Human Rights Committee, Communication No. 453/1991, Coeriel and Aurik v. Netherlands, U.N. Doc. CCPR/C/52/D/453/1991 (Oct. 31, 1994), at ¶ 10.2.

⁵⁷ UDHR, *supra* note 46, art. 12.

⁵⁸ U.N. Human Rights Committee, Communication No. 2172/2012, G v. Australia, U.N. Doc. CCPR/C/119/D/2172/2012, at ¶ 7.2.

⁵⁹ Human Rights Council Res. 42/15, U.N. Doc. A/HRC/RES/42/15, at 4 (Oct. 7, 2019).

health without discrimination on the basis of gender, gender identity, or expression;⁶⁰ and (3) review, on a regular basis, their procedures, practices and legislation regarding the surveillance of communications, including mass with a view to upholding the right to privacy.⁶¹

The right to privacy encompasses personal privacy, privacy of health data, digital privacy, and privacy of other forms of personal information that may otherwise expose an individual to harm upon its exposure. Personal information must be kept private to protect individuals from retaliation, exclusion, or other harms, and it is of paramount importance that States do not arbitrarily access personal information without narrowly tailored reasons to support this access.

a. Texas failed to uphold the right to privacy of LBTOIA+ students at institutions of higher education in Texas

SB 15 categorically bans the participation of transgender athletes at a competitive level in intercollegiate sports by requiring all athletes to participate only on teams that match their sex assigned at birth. This bill usurps the authority of intercollegiate sports regulatory organizations like the NCAA and replaces their carefully established rules with a punishing framework; thus, transgender students are given a choice either to participate according to a gender they do not identify with and in a situation in which they may feel unsafe, to move to another state, or to give up their sport and scholarships entirely. The bill authorizes extensive, and often invasive, checks of individual student's documentation including birth certificates or affidavits to determine a student's sex assigned at birth. By requiring birth certificates issued at or near the time of birth, this bill forces students to hand over documents that may no longer be legally valid. It also exposes these students and their private medical information to the scrutiny of college athletics officials and others who may have access to it. It also makes no exceptions or allowances for individuals who are intersex, exposing them to this bill and their educational institution's scrutiny.

b. Texas failed to uphold to the right to privacy of LGBTIQIA+ persons seeking gender-affirming health care

SB 14 prohibits provision of certain gender-affirming health care treatments to children and teenagers, such as those for gender transitioning, gender reassignment, or gender dysphoria. Accordingly, SB 14 encourages scrutiny into patient health records and physician practice records.

⁶⁰ Human Rights Council Res. 43/52, U.N. Doc. A/HRC/RES/43/52, at 17 (Mar. 24, 2020).

⁶¹ Human Rights Council Res. 42/15, U.N. Doc. A/HRC/RES/42/15, at 4 (Oct. 7, 2019).

The bill strips not only transgender persons, but all persons, of their right to privacy of their health data by encouraging state intrusion in this space. In doing so, the bill runs against UN-supported norms for the protection of privacy, including but not limited to: (1) ensuring enjoyment of the right to the highest attainable standard of health, without discrimination on the basis of gender, gender identity, or expression; (2) maintaining privacy without regard to gender, gender identity, or sexual orientation; and (3) preventing the use of health-related data based on gender from being used to restrict the enjoyment of human rights in health or non-health related contexts.⁶² The bill encourages and supports the violation of the right to privacy and endangers transgender youth by exposing them to the scrutiny of the state and bars access to life-saving health care.

V. The Bills violate the right to health of LGBTQIA+ persons

The right to health is guaranteed in international human rights law through the UDHR and the American Declaration.⁶³ General Comment No. 14 on Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) serves as persuasive authority for the scope of the right to health under the UDHR and the American Declaration.⁶⁴ The essential features of the right to health are availability, accessibility, acceptability, and quality.⁶⁵ States have obligations to respect, protect, and fulfill each of these essential features of the right to health at all levels of health care.⁶⁶ Accordingly, States must: (1) refrain from interfering directly or indirectly with the enjoyment of the right to health (the obligation to respect); (2) take measures that prevent third parties from interfering with the enjoyment of the right to health (the obligation to protect); and (3) take measures that enable and assist individuals and communities to enjoy the right to health (the obligation to fulfill).⁶⁷

a. Texas failed to uphold its obligation to respect the right to health by denying gender-affirming health care to transgender youth

Texas interfered with the enjoyment of the right to health of transgender youth by passing SB 14, which prevents transgender youth from accessing medically necessary health care. SB 14

⁶² Human Rights Council Res. 43/52, U.N. Doc. A/HRC/RES/43/52, at 10 (Mar. 24, 2020).

⁶³ UDHR, *supra* note 46, art. 25; American Declaration, *supra* note 46, art. XI.

⁶⁴ U.N. Committee on Economic, Social, and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12), U.N. Doc. E/C.12/2000/4 (2000).

⁶⁵ *Id.*, at ¶ 12.

⁶⁶ *Id.*, at ¶ 33.

⁶⁷ *Id.*, at ¶¶ 33, 37.

prohibits physicians and other healthcare providers from performing procedures and providing treatments for gender transitioning, gender reassignment, or gender dysphoria, sometimes referred to as “gender-affirming care,” for minors.⁶⁸ Gender-affirming care is nationally and internationally recognized as both safe and effective. The American Medical Association, the American Academy of Pediatrics, and the American Psychological Association recognize the medical necessity of gender-affirming care.⁶⁹ The World Health Organization recognized that gender-affirming care is a fundamental part of the right to health.⁷⁰ Gender-affirming care is significantly related to lower rates of depression, suicidal thoughts, and suicide attempts among transgender and nonbinary youth.⁷¹ The Texas Legislature disregarded testimony from healthcare providers about how SB 14 would adversely impact the mental health and wellbeing of transgender youth, including causing an increase in anxiety, depression, suicidal ideation, and suicide attempts.⁷²

The Special Rapporteur on the Situation of Human Rights in the Russian Federation, Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity and the Working Group on Discrimination Against Women and Girls expressed concern on a similar bill banning gender-affirming care signed into law in Russia.⁷³

b. Texas failed to uphold its obligation to respect the right to health by pathologizing transgender persons

Texas interfered with the enjoyment of the right to health of transgender youth by defending SB 14 based on misunderstandings rooted in the pathologization of transgender identities. Senator Donna Campbell, SB 14’s lead author, referred to gender dysphoria as a “mental delusion.”⁷⁴ Reducing transgender identities to diseases compounds stigma and discrimination and creates

⁶⁸ Tex. S.B. 14 §2, 88th Leg., R.S. (2023).

⁶⁹ *Medical Organization Statements*, TRANSGENDER LEGAL DEFENSE & EDUCATION FUND, <https://transhealthproject.org/resources/medical-organization-statements/> (last visited Dec. 17, 2023).

⁷⁰ *Gender incongruence and transgender health in the ICD*, WORLD HEALTH ORGANIZATION, <https://www.who.int/standards/classifications/frequently-asked-questions/gender-incongruence-and-transgender-health-in-the-icd> (last visited Dec. 17, 2023).

⁷¹ Kinzi Sparks, *New Study Finds Gender-Affirming Hormone Therapy Linked to Lower Rates of Depression, Suicide Risk Among Transgender Youth*, THE TREVOR PROJECT (Dec. 14, 2021), <https://www.thetrevorproject.org/blog/new-study-finds-gender-affirming-hormone-therapy-linked-to-lower-rates-of-depression-suicide-risk-among-transgender-youth/>.

⁷² Debate on Tex. S.B. 14 in the Senate Committee on State Affairs, 88th Leg., R.S. (Mar. 16, 2023). For example, the Texas Psychological Association testified that, “The kind of medical care that SB 14 seeks to prohibit for children is literally lifesaving . . . Research has demonstrated that gender-affirming medical care decreases suicidality, depression, and anxiety, as well as increases self-confidence and improves body image” (at 1:36:10-1:38:05).

⁷³ Russia Joint Communication, *supra* note 51.

⁷⁴ @TXValues, X, (May 12, 2023, 2:45 PM) <https://x.com/txvalues/status/1657109671361105936?s=20>.

additional barriers to the realization of the right to health.⁷⁵ SB 14 cuts off medical treatments for gender dysphoria, in an attempt to erase the very state of being transgender, which is not a medical condition that can be cured.

c. Texas failed to uphold its obligation to respect the right to health by discriminating against LGBTQIA+ persons on the basis of sexual orientation and gender identity

Texas interfered with the enjoyment of the right to health of LGBTQIA+ persons by passing the Bills, which discriminate against LGBTQIA+ persons on the basis of sexual orientation and gender identity. Notably, SB 14 does not ban the same care for cisgender individuals, such as hormone therapy for cisgender minors, as it does for transgender individuals. The Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity recognized that discrimination on the basis of sexual orientation and gender identity has “far-reaching detrimental effects” on the mental and physical health of LGBTQIA+ persons.⁷⁶

d. Texas failed to uphold its obligation to fulfill the right to health by failing to provide LGBTQIA+ persons with physical and mental health support and resources

Texas failed to take measures that enable LGBTQIA+ persons to enjoy the right to health. In particular, Texas allows religious chaplains at public schools who may cause harm to LGBTQIA+ students by shaming them, failing to connect them to professional mental health providers, or attempting conversion therapy, but failed to provide LGBTQIA+ students at public schools with remedial measures for the possible harm caused. Texas also failed to provide LGBTQIA+ students

⁷⁵ *Call for the effective implementation of SDG Goal 3: Removing barriers and closing the gap of health disparities for lesbian, gay, bisexual, trans and gender-diverse people*, OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS (Oct. 11, 2019), <https://www.ohchr.org/en/statements-and-speeches/2019/10/call-effective-implementation-sdg-goal-3-removing-barriers-and>; “*Pathologization – Being lesbian, gay, bisexual and/or trans is not an illness*” *For International Day against Homophobia, Transphobia and Biphobia - Tuesday 17 May 2016*, OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS (May 12, 2016), <https://www.ohchr.org/en/press-releases/2016/05/pathologization-being-lesbian-gay-bisexual-andor-trans-not-illness> [hereinafter *Pathologization*, OHCHR].

⁷⁶ U.N. Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Freedom of Religion or Belief, and Freedom from Violence and Discrimination Based on Sexual Orientation and Gender Identity, Report on the Right to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health of Persons, Communities and Populations Affected by Discrimination and Violence based on Sexual Orientation and Gender Identity in Relation to the Sustainable Development Goals, U.N. Doc. A/HRC/50/27, at ¶¶ 18, 41.

at public institutions of higher education with effective physical and mental health support and resources.

VI. The Bills violate the right to freedom of religion of LGBTQIA+ persons

The right to freedom of religion, conscience, and belief is guaranteed in international human rights law through the UDHR, ICCPR, and the American Declaration.⁷⁷ This right is considered to be two-fold: it includes “(a) the right to hold or to change one’s theistic, non-theistic, atheistic or non-religious beliefs; and (b) the right to manifest those beliefs individually or in community with others.”⁷⁸ The exercise of this right can only be limited to the extent that it is “necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.”⁷⁹

a. Texas violated the right to freedom of religion and belief of LGBTQIA+ persons

In recent years and especially in the most recent 88th Legislative Session, the Texas government has intensified its erosion of the barriers between church and state in favor of a specific strain of conservative Christian ideology. These moves have had a particularly adverse effect on the LGBTQIA+ community. Specifically, SB 763 mandates that school districts vote on whether they will employ or accept as volunteers religious chaplains. SB 763 does not mandate specific training or certification requirements for chaplains nor does it prevent chaplains from proselytizing to students. This has raised valid concerns that chaplains may try to convert students⁸⁰ or suggest that LGBTQIA+ students reject their own identities. Furthermore, some religious leaders represent the ostracization and social rejection LGBTQIA+ youth may already face in their communities and may further perpetuate feelings of fear and lack of safety. Allowing chaplains to hold these positions of power without significant restrictions or oversight has created an environment where LGBTQIA+ students cannot effectively exercise the freedom of religion and belief.

⁷⁷ UDHR, *supra* note 46, art. 18; ICCPR, *supra* note 42, art. 18; American Declaration, *supra* note 46, art. III.

⁷⁸ U.N. Special Rapporteur on Freedom of Religion or Belief, Report on Gender-Based Violence and Discrimination in the Name of Religion or Belief, U.N. Doc. A/HRC/43/48 (Aug. 24, 2020), at ¶ 59.

⁷⁹ U.N. Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, Report on Freedom of Religion or Belief, and Freedom from Violence and Discrimination Based on Sexual Orientation and Gender Identity, U.N. Doc. A/HRC/53/37 (June 7, 2023), at ¶¶ 11-12 (citing U.N. Human Rights Committee, General Comment No. 22: Freedom of Religion (Article 18), U.N. Doc. CCPR/C/21/Rev.1/Add.4, at ¶ 8) [hereinafter IESOGI Report].

⁸⁰ *Texas Chaplains in Public Schools Law: A Toolkit for Advocates to Urge School Districts to Vote to Protect Religious Freedom by Not Adopting a School Chaplain Policy*, INTERFAITH ALLIANCE, https://interfaithalliance.org/wp-content/uploads/2023/09/Chaplain-Toolkit_V1_9.18.23.pdf (last visited Dec. 17, 2023).

Furthermore, states have a positive obligation to create “an enabling environment” wherein marginalized peoples are protected from religious persecution and discrimination so that they can exercise their rights on an equal footing.⁸¹ Instead of creating a safe environment for LGBTQIA+ persons and their allies, Texas has restricted their expression, their health care, and their education, among other violations. By aligning itself with homophobic and transphobic extremists against the LGBTQIA+ community, Texas has effectively precluded the development of a tolerant society in which all people’s rights are respected by one another. Thus, Texas has joined in an alarming trend of religious actors and governments vilifying those in the LGBTQIA+ community as dangerous and immoral actors.⁸²

- b. Texas has impermissibly justified anti-LGBTQIA+ legislation by claiming that a “moral majority” does not recognize the rights of LGBTQIA+ persons.

International human rights law does not permit states to justify laws infringing on the rights of LGBTQIA+ persons by casting those laws in service of protecting the “traditional values” of a “moral majority.”⁸³ This means that Texas cannot violate the rights of LGBTQIA+ persons in “defense” of freedom of religion. Although most Texas legislators have been careful to avoid explicitly justifying anti-LGBTQIA+ laws by citing a particular religion, debates and surrounding context make it clear that the Texas Legislature has aligned itself with certain religious groups in opposition to the freedoms of LGBTQIA+ persons. For instance, Texas State Senator Mayes Middleton, the author of SB 763, stated that “chaplains represent God in our institutions” and said that the separation of church and state is “not a real doctrine” during Senate floor debates.⁸⁴ In addition to the Bills, members of the Texas Legislature voted on bills that would have required the display of the Ten Commandments in every classroom (SB 1515) and that would have required schools to set aside time for prayer (SB 1396). Put together, the Texas legislature is following the same concerning pattern of other state governments in utilizing religious leaders and ideas to advance anti-LGBTQIA+ legislation observed by the Special Rapporteur on Sexual Orientation and Gender Identity in their visit to United States in 2022.⁸⁵ In this way, the Texas’s state

⁸¹ IESOGI Report, *supra* note 79, at ¶¶ 9-10.

⁸² See U.N. Special Rapporteur on Freedom of Religion or Belief, Report on Gender-Based Violence and Discrimination in the Name of Religion or Belief, *supra* note 78, at ¶ 33.

⁸³ IESOGI Report, *supra* note 79, at ¶¶ 9-10.

⁸⁴ Debate on Tex. H.B. 763 on the Floor of the Senate, 88th Leg., R.S. (Apr. 24, 2023) (at 2:09:40).

⁸⁵ Independent Expert on Protection from Violence and Discrimination based on Sexual Orientation and Gender Identity, Preliminary Observations from Country Visit to the United States of America (Aug. 29, 2022), at ¶ 28.

government is impermissibly crafting legislation to fit the predilections of an imagined “moral majority” in violation of international human rights law.

VII. The Bills violate the right to freedom of expression of LGBTQIA+ persons

The right to freedom of expression is guaranteed in international human rights law through the UDHR, ICCPR, and the American Declaration.⁸⁶ Under the ICCPR, states may not restrict this freedom unless a restriction is “provided by law” and “necessary” for either the protection of other rights guaranteed under the ICCPR or for the protection of national security or public order.⁸⁷ Furthermore, the restriction must “conform to strict tests of necessity and proportionality”⁸⁸ and must not be applied in an unreasonably discriminatory manner.⁸⁹ Not only should States avoid limiting the freedom of expression for LGBTQIA+ persons without valid justification, States have an obligation to repeal problematic legislation and to ensure the protection of the LGBTQIA+ community from attacks that endanger their ability to express themselves publicly.⁹⁰

a. Texas significantly interfered with the right to freedom of expression of LGBTQIA+ persons.

Texas officials, through statements, administrative actions, and legislation, are removing LGBTQIA+ persons from public life through restrictions on their right to freedom of expression by conflating LGBTQIA+ identities and stories with “sexually explicit” content. SB 12, drafted in the context of a nationwide panic over drag shows, creates criminal and civil penalties for any public “sexually oriented performance” that occurs in the presence of minors and defines “sexually oriented performance” as a performance that “appeals to a prurient interest in sex.”⁹¹ Although the final version of SB 12 does not contain an explicit reference to drag performances or LGBTQIA+ identities, the original draft of SB 12 defined a “sexually explicit performance” as one that featured “a male performer exhibiting as a female, or a female performer exhibiting as a male, who uses clothing, makeup, or other similar physical markers and who sings, lip syncs, dances, or otherwise

⁸⁶ UDHR, *supra* note 46, art 19; ICCPR, *supra* note 42, art. 19; American Declaration, *supra* note 46, art. IV.

⁸⁷ ICCPR, *supra* note 42, art. 19.

⁸⁸ U.N. Human Rights Committee, General Comment No. 34: Freedoms of Opinion and Expression (Article 19), U.N. Doc. CCPR/C/GC/34 (2011), at 6.

⁸⁹ U.N. Human Rights Committee, *Irina Fedotova v. Russian Federation*, Communication No. 1932/2010, U.N. Doc. CCPR/C/106/D/1932/2010 (Nov. 30, 2012), at ¶ 10.3.

⁹⁰ Office of the U.N. High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity* (May 4, 2015), U.N. Doc. A/HRC/29/23, at 7.

⁹¹ Tex. S.B. 12 § 3, 88th Leg., R.S. (2023).

performs before an audience.”⁹² Furthermore, Texas State Senator Bryan Hughes, the author of SB 12, repeatedly justified the bill under the aegis of protecting children from drag shows. In introducing the bill to a Senate Committee, Hughes stated that “drag shows are sexually explicit and expose children to issues of sexuality and identity that should be reserved for adults.”⁹³ After signing the SB 12 into law, Texas Governor Greg Abbott said that he had signed a law “banning drag performances in public.”⁹⁴ This attack on drag performances is an attack on the LGBTQIA+ community because drag performances offer a safe haven for performers and their audience to creatively challenge traditional gender roles and form lasting connections between performers and audience members.

In a similar fashion to SB 12, HB 900 bans “sexually explicit” materials from public school libraries, which will serve to accelerate a growing phenomenon of books with LGBTQIA+ characters or themes being taken off of Texas school library shelves. In recent years, some parents and public officials have targeted books in school libraries and public libraries that contain anti-racist and LGBTQIA+ themes with the stated intent of protecting children from adult content.⁹⁵ As a result, school library books have been challenged in record numbers, many of which merely contain LGBTQIA+ themes, characters, and stories and do not otherwise contain explicit content.⁹⁶ The author of HB 900, State Representative Jared Patterson, has personally worked to remove the book *Gender Queer: A Memoir*, an illustrated memoir that details the author’s adolescence and journey towards discovering and understanding their sexual and gender identity.⁹⁷ Among other steps to remove *Gender Queer*, Patterson signed on to a letter to the Superintendent of Prosper Independent School District demanding that the school district remove the book from library shelves for “containing pornography, explicit pedophilia, peddling perversion and sexual arousal

⁹² Tex. S.B. 12 § 3, 88th Leg., R.S. (2023) (Introduced Version of SB 12).

⁹³ Debate on Tex. S.B. 12 in the Senate Committee on State Affairs, 88th Leg., R.S. (Mar. 23, 2023 (at 00:48:00)).

⁹⁴ @GregAbbott_TX, X, (June 24, 2023, 11:03 PM)

https://x.com/GregAbbott_TX/status/1672817859729162240?lang=en.

⁹⁵ *Book Ban Data*, OFFICE FOR INTELLECTUAL FREEDOM, AMERICAN LIBRARY ASSOCIATION, <https://www.ala.org/advocacy/bbooks/book-ban-data> (last visited Dec. 17, 2023).

⁹⁶ Mike Hixenbaugh, *Banned: Books on race and sexuality are disappearing from Texas schools in record numbers*, NBC NEWS, <https://www.nbcnews.com/news/us-news/texas-books-race-sexuality-schools-rcna13886> (Feb. 2, 2022).

⁹⁷ Francesca D’Annunzio, *Prosper parents and state Rep. Jared Patterson are on a quest to remove ‘obscene’ books from schools*, THE DALLAS MORNING NEWS, <https://www.dallasnews.com/news/politics/2022/01/27/prosper-parents-and-state-rep-jared-patterson-are-on-a-quest-to-remove-obscene-books-from-schools/> (Feb. 1, 2022).

in comic book style.”⁹⁸ Through HB 900, the state has officially sanctioned this deliberate marginalization of LGBTQIA+ themed stories from the shelves of public libraries.

The introduction and passage of these laws has also emboldened state and private actors to interfere with the exercise of the right to freedom of expression of the LGBTQIA+ community. In March 2023, the President of West Texas A&M University, Walter Wendler, prohibited a drag show from occurring on campus. The student organizers, who had planned the event as a fundraiser for an LGBTQIA+ suicide prevention non-profit, were forced to relocate the event off of campus. In a public statement justifying his decision to exclude the drag show, Wendler said that a “harmless drag show” is “[n]ot possible” because they are inherently exhibit “derisive, divisive and demoralizing misogyny.”⁹⁹ Unfortunately, such dangerous and exclusionary rhetoric has become commonplace in Texas; in 2022, Texas led the nation in threats and attacks against drag events.¹⁰⁰ Although HB 900 has not taken effect due to an injunction, book bans in Texas public schools have accelerated in 2023 due to pressure from parents and public officials.

b. The restrictions imposed by Texas on the exercise of the right to freedom of expression of LGBTQIA+ persons do not conform to the strict tests of necessity or proportionality.

The Bills do not conform to a strict test of necessity or proportionality required by international human rights law. Specifically, the Bills suffer from vagueness, inviting arbitrary and discriminatory enforcement. Indeed, one federal court has blocked SB 12 from implementation because its wording fails to give notice to the type of conduct that it has criminalized.¹⁰¹ Similarly, HB 900 does not provide strong guidelines for librarians, school teachers, or book sellers to know what works contain “sexually explicit materials;” this fact led another Texas court to partially block HB 900’s implementation.¹⁰² Under international human rights standards, restrictions on expression “must be applied only for those purposes for which they are prescribed and must be directly related to the specific need for which they are predicated.” The vagueness inherent within

⁹⁸ *Id.*

⁹⁹ Walter Wendler, *Wendler commentary: A harmless drag show? No such thing*, AMARILLO GLOBE NEWS (Mar. 21, 2023), <https://www.amarillo.com/story/opinion/columns/2023/03/21/wendler-commentary-a-harmless-drag-show-no-such-thing/70033516007/>.

¹⁰⁰ *Equality Texas and GLAAD Release Updated Findings on Attacks and Threats Targeting Drag Events in 2022*, GLAAD, (Dec. 21, 2022), <https://glaad.org/releases/equality-texas-and-glaad-release-updated-findings-attacks-and-threats-targeting-drag-events/> (May 24, 2023).

¹⁰¹ *Woodlands Pride, Inc. v. Paxton*, No. CV H-23-2847, 2023 WL 6226113 (S.D. Tex. Sept. 26, 2023).

¹⁰² Sneha Dey, *Texas House passes bill that aims to keep sexually explicit materials out of school libraries*, THE TEXAS TRIBUNE, <https://www.texastribune.org/2023/04/19/texas-libraries-books-schools-legislature/> (Apr. 20, 2023).

these Bills will result in enforcement that goes beyond any ostensible need to protect children from harmful conduct.

Freedom of expression rights cannot be restricted in a discriminatory manner without showing that the restriction is necessary for the maintenance of a democratic society.¹⁰³ SB 12 was written specifically to target drag performances, which were labeled by some lawmakers as inherently perverse. Texas has not advanced a legitimate reason as to why drag performances, as opposed to performers whose presentation matches certain gender norms, require specific regulation in order to preserve democratic society. In fact, by criminalizing performances that serve as a focal point for the LGBTQIA+ community and challenge conventional gender norms, Texas has undermined community formation and preservation that is necessary for healthy discourse and a democratic society. Texas cannot be allowed to categorically label drag performances as inherently “sexually explicit” regardless of the content and use this as a justification to prohibit and criminalize performances that provide a haven for members of the LGBTQIA+ community.¹⁰⁴

These Bills create an amorphous set of restrictions on the exercise of the right to freedom of speech and expression of LGBTQIA+ persons, limiting their ability to perform publicly and to publish works with LGBTQIA+ characters and themes. Even if some of the Bills have, at least temporarily, been blocked by federal and state courts, the Bills have emboldened state and non-state actors to marginalize LGBTQIA+ people and chilled support from community members worried about civil and criminal penalties. The harm is perhaps most acutely felt by LGBTQIA+ youth, who will not be able to read books or watch performances that reflect their identities and experiences under these laws.

VIII. The Bills violate the right to education of LGBTQIA+ persons

The right to education is guaranteed in international human rights law through the UDHR and the American Declaration.¹⁰⁵ General Comment No. 13 on Article 13 of the ICESCR serves as persuasive authority on the scope of the right to education under the UDHR and the American Declaration.¹⁰⁶ The “essential features” of the right to education are availability, accessibility,

¹⁰³ U.N. Human Rights Committee, *Irina Fedotova v. Russian Federation*, Communication No. 1932/2010, U.N. Doc. CCPR/C/106/D/1932/2010 (Nov. 30, 2012), at ¶ 10.3.

¹⁰⁴ Robert Downen, *How Texas activists turned drag events into fodder for outrage*, THE TEXAS TRIBUNE (Feb. 24, 2023), <https://www.texastribune.org/2023/02/24/texas-drag-protests-children/>.

¹⁰⁵ UDHR, *supra* note 46, art. 26; American Declaration, *supra* note 46, art. XII.

¹⁰⁶ U.N. Committee on Economic, Social, and Cultural Rights, General Comment No. 13: The Right to Education (Article 13), U.N. Doc. E/C.12/1999/10 (1999).

acceptability, and adaptability.¹⁰⁷ States have the obligation to respect, protect, and fulfill each of these “essential features” of the right to education at all levels of education.¹⁰⁸ Accordingly, States must: (1) avoid measures that hinder or prevent the enjoyment of the right to education (the obligation to respect); (2) take measures that prevent third parties from interfering with the enjoyment of the right to education (the obligation to protect); and (3) take measures that enable and assist individuals and communities to enjoy the right to education (the obligation to fulfill).¹⁰⁹

One of the essential features of the right to education under international human rights law is accessibility.¹¹⁰ Education at all levels must be accessible to everyone without discrimination on the basis of sexual orientation or gender identity.¹¹¹

a. Texas failed to uphold its obligation to respect the right to primary and secondary education

Texas hindered the enjoyment of the right to education of LGBTQIA+ persons by passing HB 900 and SB 763, which limit LGBTQIA+ people’s access to primary and secondary education. LGBTQIA+ students already experience rampant bullying and discrimination in primary and secondary schools in Texas, which demonstrate that schools are not safe for LGBTQIA+ persons.¹¹² HB 900 negatively affects the school environment for LGBTQIA+ students. HB 900 restricts the availability of LGBTQIA+ resources at public school libraries by establishing compulsory standards that limit books containing content about sex, sexuality, and related topics. Political and social groups in Texas have increasingly labeled LGBTQIA+ identities as inherently sexual and suspect,¹¹³ placing books that address LGBTQIA+ themes at particular risk of restriction and removal from library shelves. Libraries should be a safe place for students to learn

¹⁰⁷ *Id.*, at ¶ 6.

¹⁰⁸ *Id.*, at ¶ 50.

¹⁰⁹ *Id.*, at ¶¶ 46-47.

¹¹⁰ *Id.*, at ¶ 6.

¹¹¹ *Id.*; International Commission of Jurists, Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (March 2007), Principle 16 [hereinafter Yogyakarta Principles].

¹¹² Joseph G. Koskiw et al., *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools.*, GAY, LESBIAN, AND STRAIGHT EDUCATION NETWORK (2020), https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf.

¹¹³ *Legislative Priorities for the 88th Session (2023-2024) of the Texas Legislature*, REPUBLICAN PARTY OF TEXAS, <https://texasgop.org/priorities/> (last visited Dec. 17, 2023). For the 88th Session (2023-2024) of the Texas Legislature, the Republican Party of Texas’s Legislative Priorities include “prohibit[ing] teaching, exposure, and/or discussion of sexual matters (mechanics, feelings, orientation, or “gender identity” issues), and prohibit[ing] use or provision of related books and other materials using criminal, civil or other enforcement measures.” *Id.*

and understand their own sexual orientation and gender identity, which is essential to their academic experience.¹¹⁴

Similarly, SB 763 negatively affects the school environment for LGBTQIA+ students by permitting school districts to employ or to accept as volunteers chaplains to assist students with mental health, suicide prevention, and trauma assistance. These chaplains may be employed without the normal accreditation required for student counselors in public schools. For many LGBTQIA+ students, certain chaplains represent religious and social rejection, discrimination, and attempts at changing their sexual or gender identity because religious dogma has been used to dehumanize LGBTQIA+ people, and LGBTQIA+ people have frequently been excluded from religious spaces.¹¹⁵ Therefore, it is unlikely that LGBTQIA+ students will feel comfortable approaching chaplains for mental health support at school.¹¹⁶ Further, there are concerns that chaplains may engage in conversion therapy or other harmful practices that endanger the mental health of LGBTQIA+ students.¹¹⁷

c. Texas failed to uphold its obligation to respect the right to higher education

Texas hindered the enjoyment of the right to education of LGBTQIA+ persons by passing SB 17 and SB 15, which limit LGBTQIA+ people's access to higher education. SB 17 prevents institutions of higher education in Texas from establishing or maintaining diversity, equity, and inclusion (DEI) offices.¹¹⁸ SB 17 effectively bans offices focused on LGBTQIA+ students at public institutions of higher education in Texas. In August 2023, the University of Houston's LGBTQ Resource Center, which offered a safe space for LGBTQIA+ students to navigate their identity, was disbanded as part of the University of Houston's efforts to comply with SB 17.¹¹⁹ In the immediate aftermath of its closure, nearly one hundred students were forced to seek assistance

¹¹⁴ John Siegel et al., *Perceptions of Academic Librarians toward LGBTQ Information Needs: An Exploratory Study*, 81 COLLEGE & RESEARCH LIBRARIES 1 (2020), <https://cr.l.acrl.org/index.php/crl/article/view/17654/32067>.

¹¹⁵ *Religion and Spirituality Among LGBTQ+ Youth*, THE TREVOR PROJECT (Dec. 21, 2022), <https://www.thetrevorproject.org/research-briefs/religion-and-spirituality-among-lgbtq-youth-dec-2022/>

¹¹⁶ Bill Zeeble, *Texas will soon allow unlicensed chaplains act as school counselors*, Texas Public Radio (Aug. 31, 2023), <https://www.tpr.org/2023-08-31/texas-will-soon-allow-unlicensed-chaplains-to-act-as-school-counselors>.

¹¹⁷ Interfaith Alliance, *supra* note 80.

¹¹⁸ Tex. S.B. 17 § 1, 88th Leg., R.S. (2023).

¹¹⁹ Gerald Harris, *University of Houston reconfiguring LGBTQ Resource Center as part of compliance process for SB17*, KHOU 11 (Aug. 11, 2023), <https://www.khou.com/article/news/education/university-of-houston-lgbt-resource-center-sb-17/285-13f67026-a01e-41f8-a2dd-6ee6d95a2b3b>; Monique Welch, *University of Houston students brace for LGBTQ Resource Center Closure in response to Texas' DEI ban*, THE TEXAS TRIBUNE (Aug. 17, 2023), <https://www.texastribune.org/2023/08/17/university-houston-lgbtq-center-dei-ban/>.

from private university DEI offices, thus extending the effects of SB 17 beyond public university.¹²⁰ SB 17 also prevents institutions of higher education in Texas from requiring mandatory DEI training for faculty and staff members. The Texas Legislature disregarded testimony that faculty and staff members at institutions of higher education are unprepared to support LGBTQIA+ students.¹²¹ SB 15 further alienates LGBTQIA+ students at institutions of higher education in Texas by banning the participation of transgender and intersex athletes at a competitive level in intercollegiate sports.¹²² At the same time, SB 15 prevents LGBTQIA+ students from accessing an essential part of education, limiting participation in sport both professionally and recreationally for LGBTQIA+ students based on their gender identity.¹²³ Participation in sport improves LGBTQIA+ students' educational attainment and skills development, such as empowerment, leadership and self-esteem.¹²⁴

IX. Requests and Recommendations

We request the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, UN Working Group of Experts on People of African Descent, UN Working Group on Business and Human Rights, UN Special Rapporteur in the Field of Cultural Rights, UN Special Rapporteur on the Right to Education, UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression,

¹²⁰ Miller, *supra* note 18.

¹²¹ House of Representatives Compilation of Public Comments for S.B. 17, Submitted to the Committee on Higher Education for Hearing on May 8, 2023 (May 9, 2023). Dr. Jennifer Adair stated, "When I graduated from my undergraduate degree, I was not prepared to work with communities of color and [LGBTQIA+] communities. As a white woman, the narrow point of view offered at my undergraduate institution prevented me from being effective in my role as a social worker and educator. I do not want that to happen to students at UT Austin." *Id.*

¹²² *Participation in Sport Can Improve Children's Learning and Skills Development*, OFFICE OF RESEARCH-INNOVATION, UNITED NATIONS CHILDREN'S FUND (Mar. 26, 2019), <https://www.unicef-irc.org/article/1900-participation-in-sport-can-improve-childrens-learning-and-skills-development.html>.

¹²³ Debate on Tex. S.B. 17 in the Senate Subcommittee on Higher Education, 88th Leg., R.S. (April 6, 2023). Hugh Lee testified, "SB 17 would prevent the same universities from creating welcoming, inclusive learning environments" (at 1:58:05). Greg Norwood testified, "The passage of [SB 17] would ultimately hinder the educational and emotional progress of Texas students" (at 3:39:11). Elizabeth Arintonang testified, "Faculty diversity is incredibly important for student outcomes, including graduation rates, sense of belonging, persistence, and retention rates" (at 3:41:28).

¹²⁴ Victor Madrigal-Borloz and Koumbou Boly Barry, *The inclusion of LGBT people in education settings of paramount importance to "leaving no one behind"*, OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS (Oct. 2, 2019) https://www.ohchr.org/en/statements/2019/10/inclusion-lgbt-people-education-settings-paramount-importance-leaving-no-one#_ftn12 (stating "[T]hese unwelcome environments affect LGBT people's overall education and employment prospects. They are more likely to feel unsafe at school, avoid school activities, miss classes, skip school or drop out, and achieve lower academic results than their peers, setting them to an economic disadvantage in life.").

UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, UN Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, UN Special Rapporteur on the Situation of Human Rights Defenders, UN Special Rapporteur on the Rights of Indigenous Peoples, UN Special Rapporteur on Minority Issues, UN Special Rapporteur on the Right to Privacy, UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, UN Special Rapporteur on Freedom of Religion or Belief, UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and UN Special Rapporteur on Violence Against Women and Girls, Its Causes and Consequences addressed in this letter to:

1. Accept this submission.
2. Request information from the U.S. federal government on how the U.S. federal government is currently securing the equal rights of LGBTQIA+ persons in Texas and what actions the U.S. federal government intends to take to secure the equal rights of LGBTQIA+ persons in Texas.
3. Request information from the Texas state government on the Bills and how they promote and protect the rights of LGBTQIA+ persons.
4. Issue a public statement about the anti-LGBTQIA+ laws and policies adopted by the Texas state government, including the Bills, and make the following recommendations to the Texas state government and the U.S. federal government:
 - a. Repeal the Bills.
 - b. Introduce stronger legislation to protect the rights of LGBTQIA+ persons at both the federal and state levels.
 - c. Provide remedies for violations of the rights of LGBTQIA+ persons at both the federal and state levels.
 - d. Implement and increase the availability of training programs on sexual orientation and gender identity to government officials at both the federal and state levels.
 - e. With respect to the *right to equality and non-discrimination*

- i. Texas must adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation and gender identity.¹²⁵
 - ii. Texas must take all appropriate action to achieve the elimination of prejudicial or discriminatory attitudes or behaviors, which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression.¹²⁶
- f. With respect to the *right to privacy*
 - i. Texas must repeal any law that prohibits or criminalizes the expression of gender identity, including through dress, speech, or mannerisms, or that denies to individuals the opportunity to change their bodies as a means of expressing their gender identity.¹²⁷
 - ii. Texas must ensure the right of all persons ordinarily to choose when, to whom and how to disclose information pertaining to their sexual orientation or gender identity, and protect all persons from arbitrary or unwanted disclosure, or threat of disclosure of such information by others.¹²⁸
- g. With respect to the *right to health*
 - i. Texas must ensure that all persons have access to health care facilities, goods and services free from stigma, pathologization, and discrimination, including, in the case of transgender persons, gender-affirming health care.¹²⁹
 - ii. Texas must address discrimination, prejudice and other social factors which undermine the health of persons because of their sexual orientation or gender identity.¹³⁰
- h. With respect to the *right to freedom of religion*
 - i. Texas must pass legislation that ensures all necessary rights of persons, regardless of sexual orientation or gender identity, to hold and practice

¹²⁵ International Commission of Jurists, Yogyakarta Principles, *supra* note 111, Principle 2.

¹²⁶ *Id.*, Principle 6 (2008).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*, Principle 17; *Pathologization*, OHCHR, *supra* note 75.

¹³⁰ *Id.*

religious and non-religious beliefs, alone or in association with others, to be free from interference with their beliefs, and to be free from coercion or the imposition of beliefs.¹³¹

ii. Texas must ensure that any law or public policy relating to the frameworks of religious exemptions or conscientious objection is compatible with international human rights standards and does not negate the access of LGBTQIA+ and other gender diverse persons to fundamental rights, services and goods, including health, education, employment, housing and political participation.¹³²

i. With respect to the *right to freedom of expression*

i. Texas must introduce legislation that will protect the expression of LGBTQIA+ persons within the state of Texas.

ii. Texas must allow LGBTQIA+ groups to participate in the drafting and implementation of future legislation that may impact the rights of freedom of expression of the LGBTQIA+ community.¹³³

iii. Texas must officially collect data concerning violent or threatening disruptions of drag shows, pride events, story hours, and other events with LGBTQIA+ themes or participation.¹³⁴

j. With respect to the *right to education*

i. Texas should take all necessary legislative, administrative, and other measures to ensure equal access to education without discrimination on the basis of sexual orientation or gender identity.¹³⁵

ii. Texas should ensure that education responds to the needs of students of all sexual orientations and gender identities.¹³⁶

iii. Texas should ensure that laws and policies provide adequate protection for students of different sexual orientations and gender identities against all

¹³¹ *Id.*, Principle 21.

¹³² IESOGI Report, *supra* note 79, at ¶ 71.

¹³³ *Id.*, at para 19.

¹³⁴ Yogyakarta Principles, *supra* note 111, Principle 19.

¹³⁵ *Id.*, Principle 16.

¹³⁶ *Id.*

forms of social exclusion and violence within the school environment, including bullying and harassment.¹³⁷

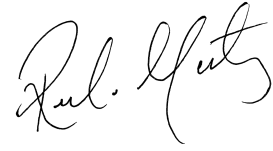
[Signature page follows]

¹³⁷ *Id.*

Most respectfully,



**American Civil Liberties
Union of Texas**



Equality Texas



GLAAD



Human Rights Campaign



**The University of Texas at
Austin School of Law
Human Rights Clinic**

ANNEX 1

Timeline of Anti-LGBTQIA+ Actions Preceding 88th Legislative Session

Events in 2019

- **October 23, 2019:** Governor Greg Abbott declared that the Office of the Attorney General (“OAG”) and the Texas Department of Family Protective Services (“DFPS”) are investigating the case of Luna Younger, a 7-year-old transgender child.¹³⁸
 - The Younger family is the first family ever in Texas to be investigated by the state for child abuse based on treatment for a transitioning child.¹³⁹
 - The case sparked conservative pressure for anti-transgender legislation in the 87th Legislative Session.
- **October 23, 2019:** Senator Ted Cruz tweeted, “This is horrifying & tragic. For a parent to subject such a young child to life-altering hormone blockers to medically transition their sex is nothing less than child abuse,” in response to a jury ruling against Jeff Younger seeking sole custody of his children in his attempt to stop Luna Younger from transitioning.¹⁴⁰
- **October 24, 2019**
 - State Rep. Steve Toth, R-The Woodlands declared in a since-deleted tweet, “The 1st bill I file in the 87th [legislative session] will add ‘Transitioning of a Minor’ as Child Abuse.”¹⁴¹
 - Former State Rep. Matt Krause, R-Fort Worth declared in a tweet, “I will introduce legislation that prohibits the use of puberty blockers in these situations for children under 18.”¹⁴²
 - Senator Donna Campbell tweeted, “This is child abuse that falls under unregulated human experimentation, which is outside the bounds of bio-ethical practice. I will do whatever it takes to stop this child abuse!” in response to Governor Abbot’s declaration that the OAG and DFPS are investigating the case of Luna Younger.¹⁴³
 - First Assistant Attorney Jeffrey Mateer wrote a letter to DFPS Acting Commissioner Trever Woodruff requesting investigation into the Younger case

¹³⁸ @GregAbbott_TX, X, (Oct. 23, 2019, 6:58 PM), https://x.com/GregAbbott_TX/status/1187156266449330176.

¹³⁹ Karen Brooks Harper, *His public custody battle helped ignite a movement against transgender health care for kids. Will it carry him to the Texas House?*, THE TEXAS TRIBUNE (Mar. 14, 2022), <https://www.texastribune.org/2022/03/14/jeff-younger-transgender-care-house/>.

¹⁴⁰ @SenTedCruz, X, (Oct. 23, 2019, 7:01 PM) <https://x.com/SenTedCruz/status/1187157024888496128>.

¹⁴¹ Megan Munce, *Gender-affirming medical treatment for transgender kids would be considered child abuse under Texas Senate bill*, THE TEXAS TRIBUNE, <https://www.texastribune.org/2021/04/27/texas-senate-transgender-child-abuse/#:~:text=Steve%20Toth%2C%20R%2DThe%20Woodlands,of%20any%20physician%20or%20health> (Apr. 18, 2021).

¹⁴² @MattKrauseTX, X, (Oct. 23, 2019, 8:03 PM) <https://x.com/MattKrauseTX/status/1187172853621428226?s=20>.

¹⁴³ @DonnaCampbellTX, X, (Oct. 24, 2019, 2:26 PM) <https://x.com/DonnaCampbellTX/status/1187450315181871106>.

pursuant to their emergency powers to protect the child from “permanently and potentially irreversible harm by his mother.”¹⁴⁴

Events in 2020

- **July 19, 2020:** The Texas Republican Party platform for 2020 declared the following:¹⁴⁵
 - ¶ 146: “The official position of the Texas schools shall be that there are only two genders: biological male and biological female. We oppose transgender normalizing curriculum and pronoun use.”
 - ¶ 147: “We request that the Texas Legislature pass legislation that requires Texas schools and libraries to filter inappropriate content, such as pornography, for minors. Operators of adult sex entertainment businesses and venues, adult entertainment of any kind, including Drag Queen Story Hour, shall not be part of educational programming in public schools, libraries, or any other taxpayer-funded program for children.”
 - ¶ 148: “We hold that biological men shall compete against other biological men and biological women shall compete against other biological women in athletics in the public school.”
 - ¶ 245: “Homosexuality is an abnormal lifestyle choice. We believe there should be no granting of special legal entitlements or creation of special status for homosexual behavior, regardless of state of origin, and we oppose any criminal or civil penalties against those who oppose homosexuality out of faith, conviction, or belief in traditional values. No one should be granted special legal status based on their LGBTQ+ identification.”
 - ¶ 246: “We oppose all efforts to validate transgender identity. For the purpose of attempting to affirm a person 21 or under if their perception is inconsistent with their biological sex, no medical practitioner or provider may engage in the following practices:
 - a. Intervene in any way to prevent natural progression of puberty.
 - b. Administer or provide opposite sex hormones.
 - c. Perform any surgery on healthy body parts of the underage person.”
 - ¶ 247: “We oppose the use of taxpayer funds for any type of medical gender dysphoria treatments or sex change operations and/or treatments. This includes but is not limited to military personnel as well as inmates in federal, state, or local prisons or jails. Inmates must be housed according to their biological sex.”
 - ¶ 248: “Therapists, psychologists, and counselors licensed with the State of Texas should not be forbidden or penalized by any licensing board for practicing

¹⁴⁴ Letter from Ken Paxton, Attorney General of Texas, to Trevor Woodruff, Acting Commissioner of Texas Department of Family and Protective Services Re: In re J.A.D.Y and J.U.D.Y., Cause No. DF-15-09887-S, 255th District Court, Dallas County, Texas (Oct. 24, 2019), [https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/Acting Commissioner Woodruff_DF-15-09887-](https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/Acting%20Commissioner%20Woodruff_DF-15-09887-S_10242019.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

[S_10242019.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.](https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/Acting%20Commissioner%20Woodruff_DF-15-09887-S_10242019.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

¹⁴⁵ *Report of 2020 Platform & Resolutions Committee*, REPUBLICAN PARTY OF TEXAS, <https://drive.google.com/file/d/1HFTbz1vb6KSqwu9Rjv4zxc-85q14XzhZ/view> (last visited Dec. 17, 2023).

- Reintegrative Therapy or other counseling methods when counseling clients of any age with gender dysphoria or unwanted same-sex attraction.”
- ¶ 267: “Therapists, psychologists, and counselors licensed with the State of Texas should not be forbidden or penalized by any licensing board for practicing Reintegrative Therapy or other counseling methods when counseling clients of any age with gender dysphoria or unwanted same-sex attraction.”
 - ¶ 288: “We oppose gender norming in the military. Transgendered persons should not serve in the military as a special class; no special considerations or medical treatment shall be required or offered.”
 - ¶ 316: “We oppose any attempt to criminalize and/or penalize anyone for the wrong use of pronouns.”
 - ¶ 317: “We affirm God’s biblical design for marriage and sexual behavior between one biological man and one biological woman, which has proven to be the foundation for all great nations in Western civilization. We oppose homosexual marriage, regardless of state of origin. We urge the Texas Legislature to pass religious liberty protections for individuals, businesses, and government officials who believe marriage is between one man and one woman. We oppose the granting of special legal entitlements or creation of special status for LGBTQ+ behavior, regardless of state of origin. We oppose any criminal or civil penalties against those who oppose homosexuality out of faith, conviction, or belief in traditional values.”

Events in 2021

- **August 31, 2021:** Former State Senator Don Huffines tweeted a video of himself claiming that DFPS is “promoting transgender sexual policies to Texas youth” through a webpage titled “Gender Identity and Sexual Orientation.”¹⁴⁶
 - In the video, Huffines declared, “They’re talking about helping empower and celebrate lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, allied, non-heterosexual behavior. And, it goes on and on. I mean, really? This is Texas. These are not Texas values.”¹⁴⁷
 - This appears to have influenced a decision by DFPS to remove the webpage, which included information about a suicide prevention hotline, LGBTQIA+ legal services, and questions about defining gender and sexual identity, within 24 hours of the tweet.¹⁴⁸
- **December 13, 2021:** Attorney General Ken Paxton initiated an investigation of AbbVie Inc. and Endo Pharmaceuticals, Inc., two pharmaceutical companies that sell puberty-delaying medications, under the Texas Deceptive Trade Practices Act, calling the “use of

¹⁴⁶ Allyson Waller, *State agency removed online resources for LGBTQ youth after complaints from a Republican challenging Gov. Greg Abbott, emails show*, THE TEXAS TRIBUNE (Oct. 12, 2021), <https://www.texastribune.org/2021/10/12/texas-lgbtq-resources-department-family-protective-services/>.

¹⁴⁷ Sarah Tiano, *LGBTQ Foster Youth in Texas Suffer Years of Political Attacks and Scaled Back Protections*, THE IMPRINT NEWS (Dec. 21, 2021), <https://imprintnews.org/foster-care/lgbtq-foster-youth-in-texas-suffer-political-attacks/61451>.

¹⁴⁸ Waller, *supra* note 146.

puberty blockers on young teens and minors” to treat gender dysphoria “dangerous and reckless”¹⁴⁹

Events in 2022

- **February 22, 2022:** Attorney General Ken Paxton released a non-binding opinion claiming that necessary, evidence-based gender-affirming medical treatment for transgender youth is per se “child abuse” under Texas law.¹⁵⁰
- **February 23, 2022:** Governor Greg Abbott directed the DFPS to investigate families of transgender youth who receive gender-affirming medical care for the treatment of gender dysphoria.¹⁵¹
- **March 9, 2022:** Attorney General Ken Paxton amended a lawsuit previously filed against the U.S. Department of Health and Human Services regarding newly issued guidance, which states that doctors, medical providers, and other related medical staff who report “sex change” procedures and the administration of puberty blockers to minors as “child abuse” may violate federal law even though state law provides that such procedures can constitute “child abuse.”¹⁵²
- **March 24, 2022:** Attorney General Ken Paxton issued Civil Investigative Demands to AbbVie Inc. and Endo Pharmaceuticals, Inc. as part of an investigation to determine whether these manufacturers of puberty-blocking drugs deceptively advertised and promoted hormone blockers for unapproved uses without disclosing the potential risks to children and their parents.¹⁵³
- **June 21, 2022:** The Texas Republican Party platform for 2022 declared the following:¹⁵⁴
 - ¶ 46: “Texas should . . . [a]dd penalties in Texas law for corporations operating in Texas that lead or participate in boycotts against Texas due to legislative action to protect the rights of Texans to decline vaccination, protect the unborn, stop the teaching of Critical Race Theory in schools, compete in sports with only those of their own biological gender, or to protect children and juveniles against sexual organ mutilation and hormones and puberty blockers designed to fake transition from one gender to another.”
 - ¶ 106: “We request that the Texas Legislature pass legislation that requires Texas schools and libraries to filter inappropriate and/or harmful content, such as pornography, for minors. Operators of adult sex entertainment businesses and venues, adult entertainment of any kind, including Drag Queen Story Hour, shall not be part of educational programming in public schools, libraries, or any other

¹⁴⁹ *AG Paxton to Investigate Promotion of Puberty Blockers in Children*, OFFICE OF THE ATTORNEY GENERAL OF TEXAS (Dec. 13, 2021),

<https://www.texasattorneygeneral.gov/news/releases/ag-paxton-investigate-promotion-puberty-blockers-children>.

¹⁵⁰ Texas Att’y Gen. Op. No. KP-0401 (2022).

¹⁵¹ Feb. 22, 2022 Letter from Greg Abbott to Jaimie Masters, *supra* note 6.

¹⁵² *Paxton Files Lawsuit Against Biden Administration in Defense of the Safety and Wellbeing of Texas Children*, OFFICE OF THE ATTORNEY GENERAL OF TEXAS (Mar. 9, 2022),

<https://www.texasattorneygeneral.gov/news/releases/paxton-files-lawsuit-against-biden-administration-defense-safety-and-wellbeing-texas-children>.

¹⁵³ *AG Paxton Investigates Potential Violations of State Law by Puberty Blocking Drug Manufacturers*, OFFICE OF THE ATTORNEY GENERAL OF TEXAS (Mar. 24, 2022), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-investigates-potential-violations-state-law-puberty-blocking-drug-manufacturers>.

¹⁵⁴ *Platform*, REPUBLICAN PARTY OF TEXAS, <https://texasgop.org/platform/> (last visited Dec. 17, 2023).

taxpayer-funded program for children. We support passage of a law more comprehensive than the Florida law that prohibits instruction in sexual orientation and gender identity in public schools. We advocate for those who violate any of the above to have their educator’s certification revoked and be prosecuted to the fullest extent of the law where appropriate.”

- ¶ 125: “The official position of the Texas schools shall be that there are only two genders: biological male and biological female. We oppose transgender normalizing curriculum and pronoun use. We hold that biological men shall compete only against other biological men and biological women shall compete only against other biological women in athletics in the public school system of Texas and at the collegiate level.”
- ¶ 129: “We oppose using public funds for homosexuality, transgender, or diversity-equity-inclusion centers.”
- ¶ 137: “[T]he following [is] expressly forbidden: Any school, public or private, or any health care provider withholding from a parent or legal guardian information that is relevant to the physical or mental health of the minor, to include information related to a minor's perception that his or her gender or sex is inconsistent with his or her biological sex.”
- ¶ 155: “Homosexuality is an abnormal lifestyle choice. We believe there should be no granting of special legal entitlements or creation of special status for homosexual behavior, regardless of state of origin, and we oppose any criminal or civil penalties against those who oppose homosexuality out of faith, conviction, or belief in traditional values. No one should be granted special legal status based on their LGBTQ+ identification.”
- ¶ 156: “We oppose all efforts to validate transgender identity. For the purpose of attempting to affirm a person age 21 or under if their perception is inconsistent with their biological sex, no medical practitioner or provider may engage in the following practices:
 - a. Intervene in any way to prevent natural progression of puberty.
 - b. Administer or provide opposite sex hormones.
 - c. Perform any surgery on healthy body parts of that person.”
- ¶ 157: “We oppose the use of taxpayer funds for any type of medical gender dysphoria treatments or sex change operations and/or treatments. This includes but is not limited to military personnel as well as inmates in federal, state, or local prisons or jails. Inmates must be housed according to their biological sex. No Federal, state, insurance, or probate monies may be allocated for the use of such treatment.”
- ¶ 158: “We oppose the use of taxpayer funds for any type of medical gender dysphoria treatments or sex change operations and/or treatments. This includes but is not limited to military personnel as well as inmates in federal, state, or local prisons or jails. Inmates must be housed according to their biological sex. No Federal, state, insurance, or probate monies may be allocated for the use of such treatment.”

- **June 22, 2022:** The Republican Party of Texas released their Legislative Priorities for the 88th Session (2023-2024) of the Texas Legislature, which include:¹⁵⁵
 - **Stop Sexualizing Texas Kids:** Repeal Texas Penal Code “Obscenity Exemption” 43.24(c), which allows children access to harmful, explicit, or pornographic materials and 43.25(f)(2) and (3), which allows sexual performance by a child. In addition, prohibit teaching, exposure, and/or discussion of sexual matters (mechanics, feelings, orientation, or “gender identity” issues), and prohibit use or provision of related books and other materials using criminal, civil or other enforcement measures.
 - **Ban Gender Modification of Children:** Texas must ban chemical castration, puberty blockers, cross-sex hormones, genital mutilation, bodily alteration surgery, psychological/social transitioning, and any other methods applied to or performed on children.
- **July 8, 2022:** Attorney General Ken Paxton joined an Arkansas-led amicus brief filed in the U.S. Court of Appeals for the Eleventh Circuit supporting Alabama’s appeal of the district court’s injunction of the state’s Vulnerable Child Compassion and Protection Act, which prohibits the use of puberty blockers, cross-sex hormones, and surgery to medically “transition” children and adolescents¹⁵⁶

Events in 2023

- **May 5, 2023:** The OAG announced an investigation into Dell’s Children Medical Center, which has provided medical treatment to transgender youth.¹⁵⁷
- **May 19, 2023:** The OAG announced an investigation into Texas Children’s Hospital, which has provided medical treatment to transgender youth.¹⁵⁸
- **June 14, 2023:** The OAG filed a lawsuit against the U.S. Department of Education over its newly issued Title IX guidance, which expands the prohibition of discrimination “on the basis of sex” to include “sexual orientation” and “gender identity” and thereby risks federal education of funding for Texas colleges, universities, and K-12 schools.¹⁵⁹

¹⁵⁵ *2020-2022 Legislative Priorities, 87th Legislative Session*, REPUBLICAN PARTY OF TEXAS, <https://texasgop.org/wp-content/uploads/2022/07/2020-Legislative-Priorities.pdf> (last visited Dec. 17, 2023). For the 87th Session (2020-2022) of the Texas Legislature, the Republican Party of Texas’s Legislative Priorities included “[a]bolish[ing] the following practices for minors: intervention to prevent natural progression of puberty; administration of opposite sex hormones; and performance of any type of gender reassignment surgery.” *Id.*

¹⁵⁶ *AG Paxton Joins Amicus Brief Supporting Alabama Law Prohibiting “Transgender” Procedures on Children*, OFFICE OF THE ATTORNEY GENERAL OF TEXAS (July 8, 2022), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-joins-amicus-brief-supporting-alabama-law-prohibiting-transgender-procedures-children>.

¹⁵⁷ *Request to Examine Re: The Office of the Attorney General’s Investigation of Dell Children Medical Center*, CONSUMER PROTECTION DIVISION, OFFICE OF THE ATTORNEY GENERAL OF TEXAS (May 5, 2023), <https://www.texasattorneygeneral.gov/sites/default/files/images/press/RTE.pdf>.

¹⁵⁸ *Request to Examine Re: The Office of the Attorney General’s Investigation of Texas Children’s Hospital*, CONSUMER PROTECTION DIVISION, OFFICE OF THE ATTORNEY GENERAL OF TEXAS (May 18, 2023) https://www.texasattorneygeneral.gov/sites/default/files/images/press/RTE_0.pdf.

¹⁵⁹ *Texas Launches Lawsuit Against Biden’s Unlawful Title IX Guidance Forcing “Transgender” Policies in Schools by Threatening Education Funds*, OFFICE OF THE ATTORNEY GENERAL OF TEXAS (June 14, 2023) https://www.texasattorneygeneral.gov/sites/default/files/images/press/RTE_0.pdf.

- Under this guidance, violations of Title IX would include teachers failing to forcibly compel students to use classmates’ so-called “preferred pronouns,” schools’ policies enforcing separate bathroom facilities for biological males and females, and schools’ policies refusing to allow biological males to compete on female sports teams.¹⁶⁰
- **November 17, 2023:** The OAG sent a subpoena to Seattle Children’s Hospital, demanding private medical information of transgender patients with a Texas connection.¹⁶¹

¹⁶⁰ *Id.*

¹⁶¹ William Melhado, *Seattle Children’s Hospital sues Texas Attorney General over trans patient records*, THE TEXAS TRIBUNE (Dec. 21, 2023), <https://www.texastribune.org/2023/12/21/texas-attorney-general-trans-seattle-childrens/>.