

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs Katherin Youniacutt and Tammy Thompson, and file their Original Petition against the Texas State Board of Social Worker Examiners; Dolores Saenz-Davila, Katie Andrade, Korina Delapeña, Ryan Dollinger, Asia Rodgers, Lea Ann Tatum, and Jennifer Swords, in their official capacities as members of the Texas State Board of Social Worker Examiners; the Texas Behavioral Health Executive Council; Darrel D. Spinks, in his official capacity as Executive Director of the Texas Behavioral Health Executive Council; Gloria Canseco, John K. Bielamowicz, Mark E. Cartwright, Steven Hallbauer, Daniel W. Parrish, and Christopher S. Taylor, in their official capacities as members of the Texas Behavioral Health Executive Council; and Brian C. Brumley and Quida J. Pryor, in their official capacities as members of both the Texas State Board of Social Worker Examiners and the Texas Behavioral Health Executive Council. Plaintiffs would show the Court the following:

I. INTRODUCTION

1. This lawsuit challenges the constitutionality of a Texas law that prevents people with certain convictions from ever working as social workers. There is no basis for this blanket, lifetime ban.

2. Plaintiffs Katherin Youniacutt and Tammy Thompson won their battles with alcohol and drug addiction more than a decade ago. Then, after achieving sobriety, Katherin and Tammy dedicated themselves to helping others overcome addiction and other challenges too. Both women went to school and obtained bachelor's and master's degrees in social work, and both feel called to share their education and expertise as social workers. Both women also took and passed the Licensed Master Social Worker exam. But

because Katherin and Tammy each pleaded guilty to a single assault conviction during the 2000s, both women are permanently ineligible for social work licenses.

3. Katherin and Tammy are banned from working as social workers in Texas for the rest of their lives. Tex. Occ. Code § 108.052 (statute); 22 Tex. Admin. Code § 882.42(e) (implementing regulation) (together, the “Lifetime Licensing Ban”).

4. Katherin and Tammy can and have obtained high-ranking positions at treatment facilities—but not doing social work. They do not earn a living in the careers or treatment roles that they worked towards for years.

5. Both women dream of gaining enough experience as social workers that they can open up their own clinics tailored to the needs of their communities, but neither can do so while Texas bans them from obtaining licenses.

6. Applying the Lifetime Licensing Ban to Katherin and Tammy does not pass constitutional scrutiny. Its actual, real-world effect lacks any rational connection to a legitimate government purpose, and the Ban is so burdensome as to be oppressive. The Texas Constitution prohibits the government from unreasonably depriving individuals of their right to earn an honest living in their chosen occupation. A lifetime ban on licensure as a social worker for decades-old crimes without any consideration of individual circumstances or rehabilitation violates Article I, Section 19 of the Texas Constitution.

7. Texas’s Lifetime Licensing Ban imposes an irrational and oppressive burden on obtaining a social work license while imposing no similar restrictions on similar professions such as professional counseling. That too violates the Texas Constitution because Article I, Section 3 requires the government to treat similarly situated people equally.

8. Texas's Lifetime Licensing Ban is a solution to a problem that doesn't exist. Before the Lifetime Licensing Ban was enacted in 2019—and still to this day—licensing authorities have the power to deny social work licenses to applicants with criminal history that makes them unsuited for social work. Tex. Occ. Code § 53.023. That procedure involves an individualized determination that considers who the applicant is today, not who they were years or decades ago. *See id.*

9. And the Lifetime Licensing Ban worsens Texas's dire shortage of mental health professionals like social workers, shutting out the very people who have first-hand experience overcoming challenges like alcoholism, addiction, and abuse.

10. The Lifetime Licensing Ban does nothing to protect the public; it merely deprives struggling people of qualified and passionate social workers like Katherin and Tammy. Both women thus seek a declaratory judgment declaring the Lifetime Licensing Ban unconstitutional on its face and as applied to them, a permanent injunction enjoining enforcement of the Ban, and the chance to work in the career that they spent years training for.

II. JURISDICTION AND VENUE

11. Plaintiffs bring this lawsuit pursuant to Article I, Sections 3 and 19 of the Texas Constitution and pursuant to the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code § 37.003.

12. Plaintiffs seek declaratory and injunctive relief against the enforcement of Defendants' Lifetime Licensing Ban, related implementing rules and regulations, and the practices and policies of Defendants, all of which unconstitutionally deprive Plaintiffs of the licenses they need to earn a living in the occupation of their choice.

13. The Court has subject matter jurisdiction because Plaintiffs seek to vindicate their rights under the Texas Constitution, because Plaintiffs seek a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code § 37.003, and because Plaintiffs seek injunctive relief, *see* Tex. Civ. Prac. & Rem. Code § 65.021.

14. Venue is proper in Travis County under Tex. Civ. Prac. & Rem. Code § 15.002(a)(3).

III. PARTIES AND SERVICE OF PROCESS

Plaintiffs

15. Plaintiff Katherin Youniacutt is a resident of Lubbock, Texas.

16. Katherin has a Master of Social Work degree from the University of Texas at Arlington and has passed her Licensed Master Social Worker exam.

17. Katherin wants to work as a social worker but can't do so without a license from the state, which Texas's Lifetime Licensing Ban permanently prohibits her from receiving.

18. Plaintiff Tammy Thompson is a resident of Fort Worth, Texas.

19. Tammy has a Master of Social Work degree from Tarleton State University, Stephenville, and has passed her Licensed Master Social Worker exam.

20. Like Katherin, Tammy wants to work as a social worker but can't do so without a license from the state, which Texas's Lifetime Licensing Ban permanently prohibits her from receiving.

Defendants

21. Defendant Texas State Board of Social Worker Examiners ("Board") is, together with the Texas Behavioral Health Executive Council ("Council"), responsible for

enforcing Texas's Lifetime Licensing Ban. *See* Tex. Occ. Code § 507.151(b); 22 Tex. Admin. Code §§ 882.1–.4.

22. Defendants Dolores Saenz-Davila, Katie Andrade, Korina Delapeña, Ryan Dollinger, Asia Rodgers, Lea Ann Tatum, and Jennifer Swords are members of the Board and enforce Texas's Lifetime Licensing Ban. They are sued in their official capacities.

23. Defendant Texas Behavioral Health Executive Council is, together with Board, responsible for enforcing Texas's Lifetime Licensing Ban. *See* Tex. Occ. Code § 507.151(a); 22 Tex. Admin. Code §§ 882.1–.4.

24. Defendant Darrel D. Spinks is the Executive Director of the Council and enforces Texas's Lifetime Licensing Ban. He is sued in his official capacity.

25. Defendants Gloria Canseco, John K. Bielamowicz, Mark E. Cartwright, Steven Hallbauer, Daniel W. Parrish, and Christopher S. Taylor are members of the Council and enforce Texas's Lifetime Licensing Ban. They are sued in their official capacities.

26. Defendants Brian C. Brumley and Quida J. Pryor are members of both the Board and the Council and enforce Texas's Lifetime Licensing Ban. They are sued in their official capacities.

27. Plaintiffs will mail the Texas Attorney General a file-stamped copy of this Original Petition and Application for Permanent Injunction (“Original Petition”) and notice of these proceedings. *See* Tex. Civ. Prac. & Rem. Code § 30.004(b).

IV. FACTUAL ALLEGATIONS

Social Work Licensing in Texas

28. Practicing social work without a license is illegal in Texas. Tex. Occ. Code § 505.0251(a).

29. The practice of social work is “the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, or communities.” Tex. Occ. Code § 505.0025(a).

30. That practice is subdivided into several license categories based on the social worker’s experience and education. 22 Tex. Admin. Code § 781.302. A Licensed Baccalaureate Social Worker (“LBSW”) requires a bachelor’s degree, a Licensed Master Social Worker (“LMSW”) requires a master’s degree, and a Licensed Clinical Social Worker (“LCSW”) requires both a master’s degree and several years of supervised professional clinical experience (often earned as an LMSW). 22 Tex. Admin. Code § 781.401. All three licenses also have an exam requirement. *Id.*

31. Under Texas’s licensing regime, the scope of practice expands with each license category, particularly in the clinical context where social workers are providing one-on-one therapy to patients. For example, an LCSW can diagnose and treat patients independently, but an LMSW can treat patients only under supervision (and cannot diagnose), and an LBSW cannot treat or diagnose patients at all. 22 Tex. Admin. Code § 781.302.

32. Texas law allows licensing authorities to deny social work licenses to people who have been convicted of certain crimes. Tex. Occ. Code § 53.021(a). But for more than twenty years, the law also *required* authorities to first make an individualized determination and consider mitigating factors, such as “evidence of [a] person’s rehabilitation,” Tex. Occ. Code § 53.023, before denying someone a social work license.

33. There's still an individualized-determination law on the books. Tex. Occ. Code § 53.023. But it's been rendered largely superfluous by the harsh 2019 Lifetime Licensing Ban that Plaintiffs are challenging in this lawsuit.

34. The new law imposes a lifetime ban on social work licensure for individuals with certain convictions, including any felony involving the use of force. Tex. Occ. Code § 108.052; 22 Tex. Admin. Code § 882.42(e). Unlike the individualized-determination law, the Lifetime Licensing Ban has no provisions allowing licensing authorities to make an individualized determination or consider mitigating factors such as evidence of rehabilitation. Anyone who fits the Lifetime Licensing Ban is permanently barred from practicing as a social worker. *Id.*

35. The Lifetime Licensing Ban went into effect on September 1, 2019. And it short-circuited the dreams of many aspiring social workers—including Katherin Youniacutt and Tammy Thompson.

Katherin Youniacutt

A. Katherin's struggle with alcoholism

36. Katherin Youniacutt is a 55-year-old grandmother who lives a quiet life with her husband in Lubbock, Texas.

37. Until recently, Katherin worked as Director of Intensive Outpatient Services at Oceans Behavioral Hospital, a mental health hospital in Lubbock, Texas. She left that position in May 2024 because the long hours of her administrative work exacerbated a preexisting health condition.

38. Despite her success today, Katherin's life was challenging when she was younger.

39. As a child and young adult, Katherin was a victim of clerical abuse and used alcohol to cope with the trauma.

40. Katherin's struggle with alcoholism continued through the 2000s.

41. In 2007, an off-duty police officer approached Katherin's vehicle late at night, then claimed to have been injured when Katherin pulled away. Katherin was arrested and pleaded guilty to driving while intoxicated and assault of a public servant, though she does not recall injuring the officer.

42. Katherin made a formal apology to the officer, which he accepted.

43. Assault of a public servant is a third-degree felony and involves the use of force.

44. Katherin received five years' probation and no jail time for her assault conviction.

45. In 2012, Katherin's probation was restarted when officers found a small amount of marijuana belonging to someone else in her car. Katherin pleaded guilty to possessing less than two ounces of marijuana and received no jail time.

46. Katherin successfully completed her probation and has not been arrested for, charged with, or convicted of any crime since 2012.

B. Katherin's recovery and calling to help others

47. Katherin tried for years to overcome her difficulties with alcohol. But many recovery programs involve placing faith in a higher power. The clerical abuse Katherin suffered when she was younger made this step difficult, and she had trouble trusting the recovery process.

48. Katherin spent years in therapy working through her trauma. And on January 1, 2011, Katherin got sober and entered recovery with the help of her husband and newfound community. She has been sober ever since.

49. After Katherin completed her first year of sobriety, she dedicated herself to helping others facing similar challenges.

50. For five years Katherin worked on outreach and with a codependency group to help women and families in recovery through her church.

51. Katherin felt called to help those struggling with abuse and addiction. She believes that her experience with trauma and alcoholism helps her to connect and empathize with others in similar situations. And she discovered that social work would be the best way to transform her personal experiences into useful tools to help others.

52. In 2017, Katherin was accepted into Lubbock Christian University's undergraduate social work program.

53. Katherin graduated from her program in 2020 (a year early) and was accepted into a Master of Social Work program at the University of Texas at Arlington with a concentration in Community & Administrative Practice.

54. Katherin graduated with her master's degree in December 2022.

55. After that, Katherin accepted a position with Oceans Healthcare on a probationary period pending her passage of the state social work exam and licensure.

C. Texas bans Katherin from helping others through social work

56. In January 2022, Katherin applied for an LMSW with the Council and Board.

57. While an undergraduate, Katherin had asked the Texas State Board of Social Worker Examiners to evaluate her eligibility for social work licensure considering her criminal history.

58. On April 2, 2019, the Board told her that while her convictions “may present a barrier to licensure,” she was “not automatically disqualified” and could apply for a license. The Board would be required to “consider other factors in addition to [her] conviction,” such as “the extent and nature of [her] criminal history,” her “age at the time of commission of the offense,” and “the amount of time that has elapsed since [her] last criminal activity.” The Board promised it would “consider the above-listed factors before making a decision on granting or denying licensure.”

59. When the Board sent Katherin its April 2019 letter, the individualized-determination law was in place and the Lifetime Licensing Ban was not yet in effect.

60. When the law changed five months later, the Board did not tell Katherin.

61. On February 28, 2023, Katherin took and passed the LMSW exam.

62. Katherin paid over \$350 in exam and application fees required by the Board and Council.

63. Aside from her criminal history, Katherine met all of the LMSW licensing requirements.

64. Katherin was not told before paying fees or taking the LMSW exam that the Lifetime Licensing Ban prohibited her from obtaining an LMSW.

65. On April 3, 2023, the Council sent Katherin a letter requesting a written explanation and supporting legal documents for Katherin’s criminal history. Katherin provided these to the Council.

66. On May 11, 2023, Council staff denied Katherin’s application for an LMSW.

67. Under 22 Tex. Admin. Code § 882.3(a), applicants denied by Council staff can request review by the Board.

68. Katherin promptly submitted a written request to the Council for the Board to review her denial.

69. In June 2023, the Board received several glowing recommendations for Katherin encouraging the Board to issue her an LMSW.

70. One letter, from the Director of Social Services at Oceans Healthcare, told the Board that in the “ten years [she had] worked in the field of social work [she had] never come across a social worker as passionate as Katherin[.]” Katherin, she said, “gives hope to the hopeless and provides a voice to those who would otherwise not speak up for themselves.” And she was “dumbfounded” when she discovered Katherin’s license might be denied “due to a charge she received over a decade ago.”

71. Another, from the CEO of Oceans, described Katherin as “one of the very best individuals I have ever known” and “extremely talented at her job.” The CEO reaffirmed that she had “every intention of utilizing [Katherin] as an LMSW to provide therapy and care to [Oceans’] patient population” when “she receives her license.”

72. Yet on July 7, 2023, the Board upheld the Council’s denial of Katherin’s application.

73. Because Katherin was convicted of a felony involving the use of force, she is permanently ineligible for a social work license under the Lifetime Licensing Ban.

74. The Board informed Katherin that its “statutory obligations” under the Lifetime Licensing Ban—Tex. Occ. Code § 108.052—“required the Board to uphold the denial; the statute does not give the [Social Work] Board discretion in this matter.”

75. Because the Lifetime Licensing Ban prevented the Board from reversing the denial, it did not address whether it would grant Katherin a license were it permitted to do so under the individualized-determination law.

76. Nor did the Board make an individualized determination regarding Katherin's suitability for social work or address any of the mitigating factors—such as “evidence of . . . rehabilitation” or “letters of recommendation”—that it would have had to consider under the individualized-determination law.

77. The Board told Katherin that she could reapply after having her conviction expunged.

78. But under Texas law, Katherin's conviction will never be eligible for expunction. *See* Tex. Code Crim. Proc. § 55.01.

79. The Board further informed Katherin that she could appeal this decision to the State Office of Administrative Hearings (SOAH).

80. Although Katherin initially sent the Board a letter appealing the decision to SOAH, she ultimately withdrew the appeal because it would have been futile while the Lifetime Licensing Ban is in effect.

81. Administrative law judges who hear SOAH cases lack the power to address the constitutionality of the Lifetime Licensing Ban and could not have granted Katherin a license or overturned her denial. *See, e.g., City of Dallas v. Stewart*, 361 S.W.3d 562, 568–69 (Tex. 2012).

82. The Board also told Katherin that she could apply for a license as a professional counselor (“LPC”) because the Lifetime Licensing Ban does not apply to LPC licensure.

83. But Katherin spent years training to be a social worker, not an LPC. Applying for an LPC would require Katherin to start from square one and learn a new set of methodologies and approaches to therapy to pass the LPC exam.

84. Although Katherin meets the requirements for an LMSW, she meets neither the exam nor the 3,000-hour experiential requirements for an LPC.

85. Oceans Healthcare was determined to keep Katherin on and created a new administrative role for her overseeing its programs. Unfortunately, these administrative duties required long hours looking at a screen that exacerbated a preexisting medical condition. Katherin left Oceans in May 2024.

86. Katherin would like to find work as a social worker providing therapy to those struggling with addiction and trauma from abuse but cannot do so without an LMSW.

87. Katherin would like to perform clinical work as an LMSW (under supervision) to work towards obtaining her LCSW. With an LCSW, Katherin hopes to open her own nonprofit clinic to diagnose and treat patients directly, particularly patients in vulnerable populations.

88. So long as Texas continues to enforce the Lifetime Licensing Ban, Katherin will never be eligible for an LMSW or LCSW and will not be able to use her education and experience to help others through social work.

Tammy Thompson

A. Tammy's past drug addiction

89. Tammy Thompson is a 50-year-old grandmother who lives in Fort Worth, Texas, with her husband and children.

90. Tammy has worked in rehabilitation, clinician, and case management roles in multiple mental health and community services centers in the Fort Worth area.

91. Like Katherin, Tammy has overcome serious challenges to get where she is today.

92. In the mid-2000s, Tammy was struggling with a difficult divorce and an abusive marriage. For the first time, she was the sole caregiver for her children.

93. Tammy was introduced to methamphetamine by her ex-husband and began abusing it to cope with the stress of the divorce.

94. In 2006, Tammy visited her father's apartment complex to pick up his dog while he was in the hospital. When she arrived, a stranger had the dog with him and refused to turn it over to her.

95. Tammy and the stranger began to loudly argue, and the stranger picked up a baseball bat and threatened her with it.

96. Tammy's son and his friends rushed over to protect her and several onlookers tried to intervene as well. Tammy left with the dog and the kids before the police arrived. Tammy didn't hear any more about the incident for two years.

97. In 2008, Tammy was arrested during a routine traffic stop when officers found an outstanding warrant from the 2006 incident that Tammy was unaware of. Tammy learned that the stranger had told police that Tammy injured him with a baseball bat during the confrontation, though she does not recall ever picking up the bat or striking him.

98. Even so, Tammy pleaded guilty to aggravated assault causing serious bodily injury and received a deferred judgment with two years' probation.

99. Tammy's conviction is a felony that involves the use of force.

100. Tammy was still addicted to methamphetamine and did not complete her probation, so she was sent to prison for four years in 2010. She was paroled after 26 months and completed her parole in 2014.

101. Tammy has not been arrested, charged, or convicted of any crime since her conviction for the 2006 incident.

B. Tammy's recovery and passion for social work

102. Prison was a wake-up call, and Tammy was determined to turn her life around. She got clean and earned her GED while serving her time.

103. Having experienced what it was like to face addiction and hard times without support, Tammy dedicated herself to helping others overcome the same challenges. So Tammy pursued a career in social work.

104. In 2014, Tammy enrolled at Tarrant County College before transferring to Tarleton State University, Stephenville. Tammy excelled at school, made the Dean's List, and graduated in 2018 with a bachelor's in social work.

105. Tammy continued at Tarleton for an accelerated graduate program and, in 2019, received her master's in social work with a concentration in Multicultural Practice with Children & Families and a 4.0 GPA.

106. While in school and after graduating, Tammy worked as a case manager (which does not require a social work license) at multiple mental health and community services centers providing support to children and families with various problems, including substance abuse and vocational assistance.

107. Tammy's work as a case manager often involved extensive one-on-one time with clients in various environments, including their homes. Tammy found the work

rewarding, but it wasn't without its risks: on more than one occasion, clients attempted to assault Tammy during mental health episodes.

108. But Tammy is passionate about her work and her clients. For Tammy, her work is her way of giving others the supporter and advocate that she never had.

109. Tammy wanted to expand her work and begin providing direct treatment to patients as a social worker.

C. Texas's ban stops Tammy from becoming a social worker

110. Like Katherin, Tammy asked the Texas State Board of Social Worker Examiners to evaluate her eligibility for social work licensure considering her criminal history.

111. On April 2, 2019, the same day it sent a letter to Katherin, the Board likewise told her that while her convictions "may present a barrier to licensure," she was "not automatically disqualified" and would receive an individualized determination that considered mitigating factors.

112. When the Board sent Tammy its April 2019 letter, the individualized-determination law was in place and the Lifetime Licensing Ban was not yet in effect.

113. Five months later, the law changed but the Board did not tell Tammy.

114. In 2021, Tammy passed the LMSW exam.

115. Like Katherin, Tammy paid hundreds of dollars in required exam and application fees and was permitted to take the LMSW exam without being told that the Lifetime Licensing Ban made her ineligible for an LMSW.

116. On October 8, 2021, Council staff denied Tammy's application for an LMSW.

117. Tammy promptly submitted a written request to the Council for the Board to review her denial, as permitted by 22 Tex. Admin. Code § 882.3(a).

118. In November 2021, the Board received several glowing recommendations for Tammy encouraging the Board to issue her an LMSW.

119. One letter, from the MSW Program Director at Tammy’s university, told the Board that Tammy has a “special gift” for “mak[ing] everyone she meets feel comfortable and respected.” “It is without doubt,” the Director assured the Board, “that Tammy will be a great asset to the field of social work as an LMSW. . . . [She] will be a remarkable social worker.”

120. Another, from an LMSW who knew Tammy, expressed admiration for Tammy’s “strong moral and family values.” Given Tammy’s “life experiences and dedication to social work, she would be an asset to this profession,” and the social worker stressed that she “would be honored to be able to work along[side] Tammy one day”

121. Yet on January 7, 2022, the Board upheld Tammy’s denial.

122. Because Tammy was convicted of a felony involving the use of force, she is permanently ineligible for a social work license under the Lifetime Licensing Ban.

123. Like with Katherin, the Board informed Tammy that the Lifetime Licensing Ban prohibited Tammy from receiving an LMSW.

124. The Board did not conduct an individualized determination regarding Tammy’s suitability for social work or address any of the mitigating factors—such as “evidence of . . . rehabilitation” or “letters of recommendation”—that it would have had to consider under the individualized-determination law.

125. The Board told Tammy that she could appeal this decision to SOAH.

126. Tammy did not appeal to SOAH because an appeal couldn't grant her a license while the Lifetime Licensing Ban remained in place.

127. As a state agency, SOAH lacks the power to rule the Lifetime Licensing Ban unconstitutional or overturn Tammy's denial. Any appeal to SOAH would have been futile while the Lifetime Licensing Ban is in effect. *See, e.g., City of Dallas*, 361 S.W.3d at 568–69.

128. Tammy was determined to continue helping people even if she could not do so as a social worker. So she continued providing services that do not require licensure under Texas law, such as working as a case manager and as a clinician and clinician supervisor at mental health facilities.

129. But Tammy cannot provide direct therapy and treatment—or independently supervise those who do—because she does not have a social work license.

130. Tammy would like to work as a social worker providing direct therapy and treatment to those struggling with addiction and trauma from abuse but cannot do so without an LMSW.

131. Tammy would like to perform clinical work as an LMSW (under supervision) to work towards obtaining her LCSW. With an LCSW, Tammy hopes to take on a supervisory clinical role or open her own clinic to diagnose and treat patients directly.

132. So long as Texas continues to enforce the Lifetime Licensing Ban, Tammy will never be eligible for an LMSW or LCSW and will not be able to use her education and experience to help others through social work.

The Lifetime Licensing Ban Is Unconstitutional

133. Mental health and substance abuse are rampant in Texas and across the country, and Texas has a severe shortage of social workers and other mental health professionals.

134. As the Texas Tribune recently noted, “[s]ocial workers are often the first point of contact for many people looking for mental health help.” Stephen Simpson, *A Look at the Texas Mental Health Workforce Shortage*, Texas Tribune (July 17, 2024), <https://www.texastribune.org/2024/07/17/texas-mental-health-workforce-explainer/>.

135. Yet “91 Texas counties lack access to licensed clinical social workers, [and] 74 counties lack licensed master social workers” *Id.* “65 counties” lack even “baccalaureate social workers.” *Id.*

136. On information and belief, there is no evidence that the Lifetime Licensing Ban protects the public from bad or dangerous social workers.

137. Instead, the Lifetime Licensing Ban’s application to Tammy and Katherin *worsens* mental health and substance abuse problems in Texas by limiting the supply of qualified social workers.

138. At the time the Lifetime Licensing Ban was adopted, Texas already had a mechanism to deny applicants based on criminal history when the applicant poses a risk to patients—the individualized determination procedure provided in Tex. Occ. Code § 53.023.

139. On information and belief, there is no evidence that the existing individualized determination procedure was insufficient to accomplish any legitimate government interest.

140. Nonetheless, without repealing the individualized determination mechanism, Texas imposed a flat ban on social work licensing for anyone with certain convictions—no matter when they were convicted.

141. Under Tex. Occ. Code § 53.023, the state has the power to conduct an individualized determination for social work applicants and deny licenses to people whose criminal records mean they should not be social workers.

142. But unlike Texas’s individualized determination procedure, the Lifetime Licensing Ban does not allow licensing authorities to consider a person’s *current* ability and qualifications to be a social worker. Its actual, real-world effect is to permanently deprive social workers from the license that they need to work in their chosen occupation.

143. Likewise the Lifetime Licensing Ban does not allow for consideration of the “extent and nature of the person’s past criminal activity,” the “age of the person when the crime was committed,” the “amount of time that has elapsed since the person’s last criminal activity,” the “conduct and work activity of the person before and after the criminal activity,” any “evidence of the person’s rehabilitation or rehabilitative effort while incarcerated or after release,” any “evidence of the person’s compliance with any conditions of community supervision, parole, or mandatory supervision,” or *any* “other evidence of the person’s fitness, include letters of recommendation.”

144. There is no rational basis for a lifetime ban on practicing social work without an individualized determination.

145. There is no rational basis for a lifetime ban on practicing social work when an individualized determination process has been, and remains, available.

146. There is no rational basis for a lifetime ban on practicing social work without considering a person’s *current* ability and qualifications to be a social worker.

147. There is no rational basis for a lifetime ban on practicing social work without considering mitigating factors such as evidence of rehabilitation.

148. The actual, real-world effect of enforcing Texas’s Lifetime Licensing Ban on practicing social work, without basing the deprivation on an individualized determination, lacks a rational relationship to a government interest and is so burdensome as to be unconstitutionally oppressive.

149. Social work does not provide unique opportunities to commit crimes.

150. In particular, social work provides no unique opportunities to commit crimes beyond occupations that Katherin and Tammy can and have legally performed without a social work license, including occupations that involve one-on-one contact with clients, visiting clients’ homes, and dealing with violent episodes from clients.

151. People with criminal convictions who, like Katherin and Tammy, have taken all the steps to work as social workers are not more likely to commit crimes as social workers than in other positions.

152. Compared to other types of therapists and non-therapy positions at treatment facilities, social work does not provide unique opportunities to commit crimes.

153. Though the Lifetime Licensing Ban permanently bars people with listed crimes from obtaining a social work license, it imposes *no* restrictions on someone with the *same* criminal history becoming a Licensed Professional Counselor (“LPC”). *See* Tex. Occ. Code § 108.051.

154. Like an LMSW, an LPC may provide one-on-one therapy to patients—LPCs base their therapy on “mental health, psychotherapeutic, and human development principles” while social workers use “social work theory, knowledge, methods, ethics, and the professional use of self.” *Compare* Tex. Occ. Code § 503.003(a) (counseling)

with § 505.0025(a) (social work). Accordingly, an LPC has its own educational, experiential, and exam requirements. *See, e.g.*, 22 Tex. Admin. Code §§ 681.72–.93.

155. Even though LPCs and LMSWs are regulated differently, however, both professions involve similarly situated persons that sit down and talk to patients.

156. LPCs and LMSWs are similarly situated because they pose identical risks to patients.

157. Yet one profession has a lifetime ban for crimes involving force, and the other does not.

158. Nor does the Lifetime Licensing Ban impose restrictions on someone with the *same* criminal history that would prohibit social work licensure from obtaining a marriage and family therapy license (“LMFT”). *See* Tex. Occ. Code § 108.051.

159. Like an LMSW, an LMFT may provide one-on-one therapy to patients—LMFTs base their therapy on “family systems theories and techniques” instead of “social work theory, knowledge, methods, ethics, and the professional use of self.” *Compare* Tex. Occ. Code § 502.002(6) (marriage and family therapy) *with* § 505.0025(a) (social work). Accordingly, an LMFT has its own educational, experiential, and exam requirements. *See, e.g.*, 22 Tex. Admin. Code §§ 801.112–.113, .142–.143, .174.

160. Again, even though LMFTs and LMSWs are regulated differently, both professions involve similarly situated persons that sit down and talk to patients.

161. LMFTs and LMSWs are similarly situated because they pose identical risks to patients.

162. Yet, again, one profession has a lifetime ban for crimes involving force, and the other does not.

163. Like social work licenses, LPCs and LMFTs are issued by the Council together with professional boards.

164. There is no rational basis for banning a person from obtaining an LMSW based on a conviction that would not ban them from obtaining an LPC or an LMFT.

165. And the Lifetime Licensing Ban does not apply to the *many* types of direct, one-on-one client services adjacent to social work—such as case management—that do not require *any* license.

166. There is no rational basis for banning a person from obtaining an LMSW based on a conviction that would not ban them from providing similar one-on-one services to clients without the need for a license.

167. Katherin and Tammy are no more likely to commit crimes as social workers than as LPCs, LMFTs, case managers, or other positions at treatment facilities.

168. People subject to the Lifetime Licensing Ban, like Katherin and Tammy, would present no unique risk to the public if allowed to obtain social work licenses.

169. The Lifetime Licensing Ban ignores that recidivism decreases as time elapses after a conviction.

170. In general, it takes only a few years after the end of a criminal sentence for the chance that someone will reoffend to decrease to the risk level that people *without* criminal convictions have of offending for the first time.

171. Indeed, people over the age of 50 without recent criminal records present no meaningful risk of offending.

172. Tammy's conviction for an assault in 2006 and Katherin's conviction for an assault in 2007 do not make them any more likely than someone without prior assault convictions to commit crimes today.

173. The Lifetime Licensing Ban further ignores the modern reality that a person's specific criminal convictions can vary wildly based on plea bargaining, the quality of counsel, and other fortuities of the criminal-justice system.

174. Katherin and Tammy, for instance, could easily have pleaded to different specific charges and not be banned, despite committing the same criminal conduct.

175. On information and belief, states without lifetime bans for social workers with criminal history do not have more social worker misconduct.

176. On information and belief, social workers subject to the Lifetime Licensing Ban in Texas are no more likely to engage in criminal activity than social workers with the same criminal history in other states.

177. People who have overcome substance addiction and other forms of adversity are often uniquely qualified to help others beat similar challenges because of their first-hand experience.

178. But people who have overcome substance addiction and other forms of adversity often have old convictions covered by the Lifetime Licensing Ban from when they were still suffering from addiction and other issues themselves.

179. The Lifetime Licensing Ban thus excludes many people like Katherin and Tammy who are well-suited to work as social workers.

180. Applying the Lifetime Licensing Ban to Katherin and Tammy is not rationally related to any legitimate government interest.

181. The Lifetime Licensing Ban's basis for excluding Katherin and Tammy from social work licensure is not rationally related to either of their fitness for that work.

182. Katherin and Tammy have successfully worked in similar positions that do not require a social work license.

183. Katherin and Tammy remain fully qualified to be social workers.

184. Allowing Katherin and Tammy to work as social workers would not pose any risk to the public.

185. Allowing Katherin and Tammy to work as social workers would benefit the public.

V. INJURY TO PLAINTIFFS

186. The Lifetime Licensing Ban and Defendants' enforcement of the Ban are causing and will continue to cause irreparable constitutional harm to Katherin, Tammy, and other applicants.

187. Defendants will continue to enforce the Lifetime Licensing Ban against Katherin, Tammy, and other applicants unless they are enjoined from doing so.

188. Because of the Lifetime Licensing Ban, Katherin and Tammy are permanently barred from working in the occupation they want to work in.

189. Because of the Lifetime Licensing Ban, neither Katherin nor Tammy can accept a position providing social work therapy and social services to patients.

190. Because of the Lifetime Licensing Ban, Katherin and Tammy cannot use their years of social work education and experience to earn a living helping the public.

191. Because of the Lifetime Licensing Ban, Katherin and Tammy continue to be punished and stigmatized long after they paid their debt to society.

192. Today, it is futile for Katherin and Tammy to apply for social worker positions because they are prohibited by Texas law from obtaining a social work license.

193. Katherin and Tammy are not challenging the ability of the Council and Board to deny them licensure after making individualized determinations and considering mitigating factors. Nor are they seeking retrospective relief for their past

denials or challenging anything about their criminal convictions. They are seeking prospective relief to remedy the continuing injury the Lifetime Licensing Ban imposes on them by depriving them of an individualized determination conducted by the Council and Board considering their social work applications.

194. Unless the Lifetime Licensing Ban is declared unconstitutional and its enforcement enjoined, the Ban will continue to tie the hands of the Council and Board and prevent them from conducting an individualized determination on Katherin or Tammy's applications for LMSWs.

195. Unless the Lifetime Licensing Ban is declared unconstitutional and its enforcement enjoined, the Ban will continue to tie the hands of the Council and Board and prevent them from issuing Katherin or Tammy LMSWs (or any other social work license).

196. But for the Lifetime Licensing Ban, the Council and its staff could and would have issued Katherin and Tammy LMSWs.

197. But for the Lifetime Licensing Ban, the Board could and would have overturned any decision by the Council to deny Katherin or Tammy a license and could and would have issued them LMSWs.

198. But for the Lifetime Licensing Ban, the Council and Board would have been required to consider the limited "extent and nature" of Katherin's and Tammy's "past criminal activity."

199. But for the Lifetime Licensing Ban, the Council and Board would have been required to consider Katherin's and Tammy's "age[s] . . . when the[ir] crime[s] w[ere] committed."

200. But for the Lifetime Licensing Ban, the Council and Board would have been required to consider the “amount of time that has elapsed since” Katherin’s and Tammy’s “last criminal activity.”

201. But for the Lifetime Licensing Ban, the Council and Board would have been required to consider the “conduct and work activity” of Katherin and Tammy “before and after the[ir] criminal activity.”

202. But for the Lifetime Licensing Ban, the Council and Board would have been required to consider the “evidence of” Katherin’s and Tammy’s “rehabilitation or rehabilitative effort while incarcerated or after release.”

203. But for the Lifetime Licensing Ban, the Council and Board would have been required to consider the “evidence of” Katherin’s and Tammy’s “compliance with any conditions of community supervision, parole, or mandatory supervision.”

204. But for the Lifetime Licensing Ban, the Council and Board would have been required to consider “other evidence of” Katherin’s and Tammy’s “fitness, including letters of recommendation.”

205. These factors would have weighed heavily in Katherin’s and Tammy’s favor.

206. Given the weight of mitigating factors for both Katherin and Tammy, but for the Lifetime Licensing Ban the Council would have granted Katherin and Tammy LMSWs.

207. Given the weight of mitigating factors for both Katherin and Tammy, but for the Lifetime Licensing Ban the Board would have overturned any decision by the Council to deny licenses to Katherin and Tammy and granted them LMSWs.

208. But for the Lifetime Licensing Ban, Katherin and Tammy would be hired as, and work as, social workers.

209. But for the Lifetime Licensing Ban, Katherin and Tammy would apply to work as, and would work as, LMSWs.

210. But for the Lifetime Licensing Ban, Katherin and Tammy would work towards obtaining, and would obtain, LCSWs.

211. But for the Lifetime Licensing Ban, Katherin and Tammy could and would work towards opening their own clinics after obtaining their LCSWs.

212. The Lifetime Licensing Ban and Defendants' enforcement of the Ban will continue to cause irreparable harm to Katherin, Tammy, and other applicants absent injunctive relief permanently enjoining Defendants from enforcing the Ban.

VI. CLAIMS

Claim I—Tex. Const. Art. I, § 19

(Due Course of the Law of the Land)

213. Plaintiffs incorporate paragraphs 1 through 212, all of which are fully realleged here.

214. Under Article I, Section 19 of the Texas Constitution, “[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.”

215. Among the rights secured by the due course of the law of the land guarantee of the Texas Constitution, commonly known as the constitution’s “substantive due course of law” guarantee, is the right to earn an honest living in the occupation of one’s choice free from unreasonable government interference.

216. Defendants have violated the substantive protections of Article I, Section 19 of the Texas Constitution by enacting and enforcing the Lifetime Licensing Ban, which permanently deprives Plaintiffs of the licenses they need to earn a living as social workers.

See Patel v. Texas Dep't of Licensing & Regulation, 469 S.W.3d 69, 87 (Tex. 2015) (standard for reviewing substance of economic restriction under Tex. Const. art. I, § 19); *accord State v. Loe*, 692 S.W.3d 215, 235 (Tex. 2024) (“Applicable law”) (quoting test announced in *Patel*, 469 S.W.3d at 87).

217. Article I, Section 19 of the Texas Constitution also has a procedural component. *See Univ. of Texas Medical School at Houston v. Than*, 901 S.W.2d 926, 929–30 (Tex. 1995) (standard for reviewing procedural due process under Tex. Const. art. I, § 19); *accord Mosley v. Texas Health and Human Services Comm'n*, 593 S.W.3d 250, 264–65 (Tex. 2019) (quoting test announced in *Than*, 901 S.W.2d at 929–30).

218. Article I, Section 19’s procedural protections require that, before a person can be permanently deprived of liberty, privileges, or immunities, they must be accorded an opportunity to be heard in a meaningful manner by a neutral decision maker.

219. Defendants have violated the procedural due course of law guarantee in Article I, Section 19 of the Texas Constitution by enacting and enforcing the Lifetime Licensing Ban, which deprives Plaintiffs of the ability to practice as licensed social workers in perpetuity without an opportunity to be heard in a meaningful manner by a neutral decision maker.

220. Texas’s Lifetime Licensing Ban violates Article I, Section 19 of the Texas Constitution on its face and as applied to Plaintiffs.

221. Defendants have no legitimate government interest for enacting or enforcing the Lifetime Licensing Ban against Plaintiffs, or against other aspiring social workers.

222. The purpose of the Lifetime Licensing Ban is not rationally related to a legitimate government interest.

223. The Lifetime Licensing Ban's actual, real-world effect is not rationally connected to a legitimate government interest.

224. Even if the Lifetime Licensing Ban served a legitimate government interest, any such interest would be better served by other provisions of law, such as Tex. Occ. Code § 53.023, and any benefit the Ban provides is redundant.

225. Though any benefit provided by the Lifetime Licensing Ban is redundant, the burden it imposes on Plaintiffs and other aspiring social workers is not.

226. The Lifetime Licensing Ban's actual real-world effect is so burdensome as to be unconstitutionally oppressive.

227. Even if the Lifetime Licensing Ban served a legitimate government interest, any such interest would be served without an unconstitutionally oppressive burden by other provisions of law, such as Tex. Occ. Code § 53.023.

228. Though any benefit provided by the Lifetime Licensing Ban is redundant, the Ban fails to provide the opportunity to be meaningfully heard by a neutral decisionmaker that other provisions of law, such as Tex. Occ. Code § 53.023, do provide.

229. Even if the Lifetime Licensing Ban served a legitimate government interest, any such interest would be served without an unconstitutional denial of procedural rights by other provisions of law, such as Tex. Occ. Code § 53.023.

230. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code §§ 37.001–.011, Plaintiffs respectfully request that the Court enter a judgment declaring that the Lifetime Licensing Ban, contained in Tex. Occ. Code § 108.052 and 22 Tex. Admin. Code § 882.42(e), violates the Due Course of the Law of the Land Clause of Article I, Section 19 of the Texas Constitution, both on its face and as applied to Plaintiffs.

231. Pursuant to Tex. Civ. Prac. & Rem. Code § 65.021., Plaintiffs respectfully request that the Court permanently enjoin Defendants from enforcing the Lifetime Licensing Ban, contained in Tex. Occ. Code § 108.052 and 22 Tex. Admin. Code § 882.42(e), against Plaintiffs or other applicants.

232. Plaintiffs have no adequate remedy at law for Defendants' enforcement of the unconstitutional Lifetime Licensing Ban. No award of damages or other legal remedy will compensate Plaintiffs for being denied their liberty, privileges, and immunities without due course of the law of the land. Plaintiffs are thus entitled to permanent injunctive relief enjoining Defendants from enforcing the Lifetime Licensing Ban against them or other applicants. This relief is necessary to ensure that Defendants no longer deny Plaintiffs their constitutional rights secured by Article I, Section 19 of the Texas Constitution.

Claim II—Tex. Const. Art. I, § 3

(Equal Rights)

233. Plaintiffs incorporate paragraphs 1 through 212, all of which are fully realleged here.

234. Under Article I, Section 3 of the Texas Constitution, “[a]ll freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.”

235. Equal rights and privileges mean that the government cannot irrationally subject similarly situated people to different rules.

236. Plaintiffs have equivalent training, experience, and qualifications for social work as other aspiring social workers without criminal history covered by the Lifetime Licensing Ban.

237. Social work, professional counseling, and marriage and family therapy are provided in equivalent therapeutic and clinical environments.

238. Social work, professional counseling, and marriage and family therapy involve equivalent safety, patient, and client concerns.

239. Social work and related unlicensed positions such as case management involve equivalent environments and safety, patient, and client concerns.

240. In all relevant respects, Plaintiffs are similarly situated to other aspiring social workers without criminal history covered by the Lifetime Licensing Ban.

241. In all relevant respects, Plaintiffs are similarly situated to LPCs with criminal history covered by the Lifetime Licensing Ban.

242. In all relevant respects, Plaintiffs are similarly situated to LMFTs with criminal history covered by the Lifetime Licensing Ban.

243. In all relevant respects, Plaintiffs are similarly situated to those in unlicensed positions such as case management with criminal history covered by the Lifetime Licensing Ban.

244. The Lifetime Licensing Ban irrationally distinguishes between Plaintiffs and aspiring social workers without criminal history covered by the Ban.

245. The Lifetime Licensing Ban irrationally distinguishes between Plaintiffs and LPCs.

246. The Lifetime Licensing Ban irrationally distinguishes between Plaintiffs and LMFTs.

247. The Lifetime Licensing Ban irrationally distinguishes between Plaintiffs and those in unlicensed positions such as case management.

248. Because the Lifetime Licensing Ban irrationally discriminates between similarly situated groups of people, it violates Article I, Section 3 of the Texas Constitution.

249. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code §§ 37.001–.011, Plaintiffs respectfully request that the Court enter a judgment declaring that the Lifetime Licensing Ban, contained in Tex. Occ. Code § 108.052 and 22 Tex. Admin. Code § 882.42(e), violates Article I, Section 3 of the Texas Constitution, both on its face and as applied to Plaintiffs.

250. Pursuant to Tex. Civ. Prac. & Rem. Code § 65.021., Plaintiffs respectfully request that the Court permanently enjoin Defendants from enforcing the Lifetime Licensing Ban, contained in Tex. Occ. Code § 108.052 and 22 Tex. Admin. Code § 882.42(e), against Plaintiffs or other applicants.

251. Plaintiffs have no adequate remedy at law for Defendants' enforcement of the unconstitutional Lifetime Licensing Ban. No award of damages or other legal remedy will compensate Plaintiffs for being denied rights and privileges equal to similarly situated people not covered by the Ban. Plaintiffs are thus entitled to permanent injunctive relief enjoining Defendants from enforcing the Lifetime Licensing Ban against them or other applicants. This relief is necessary to ensure that Defendants no longer deny Plaintiffs their equal rights and privileges secured by Article I, Section 3 of the Texas Constitution.

VII. APPLICATION FOR PERMANENT INJUNCTION

252. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully realleged here.

253. Plaintiffs respectfully ask the Court to set their application for permanent injunction for a hearing and, following the hearing, to issue a permanent injunction against Defendants.

VIII. ATTORNEYS' FEES

254. Plaintiffs hereby request all costs and reasonable attorneys' fees, as permitted by Section 37.009 of the Texas Civil Practices and Remedies Code.

IX. DISCOVERY CONTROL PLAN

255. Plaintiffs intend to conduct Level 2 discovery under Rule 190.3 of the Texas Rules of Civil Procedure.

X. RULE 47 STATEMENT

256. Plaintiffs seek non-monetary relief and an award of their reasonable attorneys' fees and costs incurred in this action for declaratory and injunctive relief. Plaintiffs affirmatively plead that this suit is not governed by the expedited-actions procedure in Texas Rule of Civil Procedure 169 because Plaintiffs request injunctive relief.

XI. OBJECTION TO VISTING JUDGE

257. Plaintiffs object to the assignment of a visiting judge to any proceeding in this case. *See* Tex. Gov't Code § 74.053.

XII. PRAYER

WHEREFORE, Plaintiffs request that the Court render judgment in their favor and grant the following specific relief:

A. A declaratory judgment that Tex. Occ. Code § 108.052 and 22 Tex. Admin. Code § 882.42(e) are unconstitutional on their face and as applied to Plaintiffs;

B. A permanent injunction preventing Defendants from enforcing Tex. Occ. Code § 108.052 and 22 Tex. Admin. Code § 882.42(e) against Plaintiffs or other applicants;

C. An award of attorneys' fees and court costs; and

D. Any further legal and equitable relief to which Plaintiffs may be entitled.

RESPECTFULLY SUBMITTED this 13th day of November, 2024.

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*Motion for Admission *pro hac vice*
forthcoming

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