

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

The Woodlands Pride, Inc.; Abilene Pride Alliance; Extragrams, LLC; 360 Queen Entertainment LLC; Brigitte Bandit,

Plaintiffs,

v.

Angela Colmenero, in an official capacity as Interim Attorney General of Texas; The Woodlands Township; Montgomery County, Texas; Brett Ligon, in an official capacity as District Attorney of Montgomery County; City of Abilene, Texas; Taylor County, Texas; James Hicks, in an official capacity as District Attorney of Taylor County; Delia Garza, in an official capacity as County Attorney of Travis County; Joe D. Gonzalez, in an official capacity as District Attorney of Bexar County,

Defendants.

Civil Action No.

**ORIGINAL COMPLAINT**

1. Senate Bill 12 (“SB 12” or “Drag Ban”) unconstitutionally singles out drag performances as a disfavored form of expression. In its zeal to target drag, the Legislature also passed a bill so yawning in scope that it criminalizes and restricts an enormous swath of constitutionally protected activity, including theater, ballet, comedy, and even cheerleading. By

enacting this law, the State has threatened the livelihood and free expression of many Texans, including drag performers across our state. The First and Fourteenth Amendments prohibit such strident attempts to regulate and ban free expression, and SB 12 should be declared unconstitutional and enjoined.

2. Plaintiffs The Woodlands Pride, Inc.; Abilene Pride Alliance; Extragrams, LLC; 360 Queen Entertainment LLC; and Brigitte Bandit (collectively, “Plaintiffs”) bring this action to enjoin the enforcement of SB 12.<sup>1</sup> Defendants are sued because they are statutorily tasked with enforcing this unconstitutional law and include Angela Colmenero, in an official capacity as Interim Attorney General of Texas; The Woodlands Township; Montgomery County, Texas; Brett Ligon, in an official capacity as District Attorney of Montgomery County; City of Abilene, Texas; Taylor County, Texas; James Hicks, in an official capacity as District Attorney of Taylor County; Delia Garza, in an official capacity as County Attorney of Travis County; and Joe D. Gonzalez, in an official capacity as District Attorney of Bexar County (collectively, “Defendants”).

3. The Drag Ban creates a new category of criminal offense and civil penalties that violate Plaintiffs’ First Amendment rights because the law discriminates against the content and viewpoints of performances and imposes prior restraints on free expression. The Drag Ban is sweepingly overbroad and vague and fails to give adequate notice of what it proscribes. Guardrails that are common among other criminal laws—such as a *mens rea* element—are utterly lacking from SB 12. The Drag Ban impermissibly gives police, prosecutors, municipalities, counties, and the Texas Attorney General unbridled discretion to censor

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<sup>1</sup> S.B. 12, 88th Leg. (2023) is codified as proposed Tex. Health & Safety Code § 769.002; Tex. Local Gov. Code § 243.0031; Tex. Penal Code § 43.28.

expressive activity by cancelling events and imposing criminal penalties of up to a year in jail or fines of up to \$10,000. Such harsh punishments based on vague restrictions on expressive activities chill free speech and present this Court with clear violations of the First and Fourteenth Amendments.

4. Plaintiffs have already suffered concrete harms due to the passage of SB 12, including the financial loss of business, threats to their personal safety, and having to change or censor their own free expression. Plaintiffs' imminent plans and performances have already been chilled by SB 12, and they will continue to suffer irreparable harm if the Drag Ban goes into effect on September 1, since Plaintiffs will lose their livelihood and right to free expression or face harsh criminal and civil sanctions. Plaintiffs urge this Court to enjoin SB 12's enforcement to prevent irreparable harm and ensure that no performer in our state is thrown in jail simply for engaging in constitutionally protected expression.

**I. Jurisdiction and Venue**

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this action raises federal questions and seeks to vindicate civil rights protected by the First and Fourteenth Amendments to the U.S. Constitution, pursuant to 42 U.S.C. § 1983.

6. The Court has personal jurisdiction over Defendants because they are residents and officials in the State of Texas.

7. Venue in this district is proper under 28 U.S.C. § 1391(b) because multiple Defendants reside in this district and because all Defendants are residents of the State in which this district is located.

8. This Court has jurisdiction to issue declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983, and Fed. R. Civ. P. 65.

attract fewer visitors and less revenue since drag performances are one of the primary draws and causes for celebration each year.

77. The Woodlands Pride is also planning another event that will feature drag performances. In February 2024, it plans to host a fundraiser in a car dealership, which it will rent from a private owner and which the Woodlands Pride will “control” for the purposes of the event. But if SB 12 is not enjoined, The Woodlands Pride fears that it must either cancel the planned drag performances at the fundraiser or take burdensome action, such as strictly age-limiting the event, to comply with the law and avoid incurring its civil penalties. Any such course of action would not only limit the organization’s fundraising potential but also fundamentally alter its character as a family friendly group that celebrates drag artistry.

78. The Woodlands Pride brings this action for injunctive and declaratory relief against Defendants Angela Colmenero, in an official capacity as Interim Attorney General of Texas; The Woodlands Township; Montgomery County, Texas; and Brett Ligon, in an official capacity as District Attorney of Montgomery County so that it can continue hosting drag performances at its Pride Festival this October and at other future events without fear of civil or criminal penalties.

## **2. Abilene Pride Alliance**

79. The Abilene Pride Alliance is a non-profit organization focused on supporting Abilene’s LGBTQIA+ community, based in Taylor County, Texas.

80. The Abilene Pride Alliance hosts social support groups and free events in Abilene, with the goal of fostering a strong community. For example, the Abilene Pride Alliance currently hosts monthly social support meetings for transgender and nonbinary people, holds free

game nights multiple times a month, and sponsors a free support group facilitated by a therapist. Last year, it also hosted its first pride festival and parade.

81. The Abilene Pride Alliance and its community events have been victims of the recent uptick of anti-drag and anti-LGBTQIA+ rhetoric in Texas. In June and July of 2022, the Abilene Pride Alliance partnered with a local Abilene coffee shop to host a drag brunch fundraiser. After these events, the coffee shop was targeted by protestors, who sent harassing and threatening phone calls and emails to the coffee shop and even entered the shop to scream at its employees. The Abilene Pride Alliance was forced to cancel its future planned drag brunches for the safety of its drag performers, fundraiser patrons, and the coffee house staff.

82. In September 2022, the Abilene Pride Alliance held Abilene's first full-scale Pride event, which included a parade and a festival at Grover Nelson Park with over 1,800 attendees. The parade, through the streets of downtown Abilene, featured a drag artist float, and the festival included an all-ages drag show. The event was also targeted by protestors, who held anti-LGBTQIA+ signs during the parade and yelled at and intimidated attendees entering the festival.

83. The Abilene Pride Alliance is currently planning its annual Pride event on September 30, 2023, which will feature a parade through Abilene's public downtown streets and a festival at the Expo Center of Taylor County. The Expo Center of Taylor County is operated by a non-profit organization who rents the facility from Taylor County. The City of Abilene has issued a permit for the parade.

84. If SB 12 takes effect, it could end or severely hinder the Abilene Pride Alliance's 2023 pride event and other drag-related fundraisers.

85. The drag performers at past Abilene Pride Alliance events have used accessories and prosthetics that “that exaggerate male or female sexual characteristics” like wigs, makeup, dresses, and jewelry. The performers have also danced and moved in ways that could arguably be considered “sexual gesticulations” under the Drag Ban’s vague and undefined provisions. The Abilene Pride Alliance considers all of the drag performances at its events to be family friendly and does not view them as “sexually oriented” or explicit in any way. But under the Drag Ban’s vague and broad provisions, some people could arguably view these performances as “sexually oriented” or “appealing to the prurient interest in sex.”

86. The Abilene Pride Alliance fears that, if SB 12 takes effect, its permit for the use of Abilene’s city streets may be revoked—with no established due process or recourse—by the City of Abilene because of the Abilene Pride Alliance’s well-known and common tradition of including drag performers in its events.

87. Because SB 12 also grants specific enforcement power to Taylor County to restrict and regulate any “sexually oriented performance,” the Abilene Pride Alliance worries that the County will restrict or stop its drag performances if the Drag Ban takes effect, particularly at its planned pride festival on county property.

88. The Abilene Pride Alliance also fears that, if its 2023 pride event, or any of its upcoming fundraisers, incorporate drag, the organization and its performers may incur SB 12’s harsh civil or criminal penalties. For example, if, like they have in the past, the Abilene Pride Alliance rents or is donated the use of a private event space or coffee shop to host a fundraiser featuring a drag performance, it could be said to “control[] the premises of a commercial enterprise” and could be targeted by the Texas Attorney General under the Drag Ban’s civil

enforcement provisions. As a result, it could be liable for a \$10,000 penalty, plus fees, for each alleged violation of SB 12.

89. Further, if someone accuses a drag performer employed by the Abilene Pride Alliance of giving a “sexually oriented performance,” the performer would be exposed to criminal penalties and members of the Abilene Pride Alliance could be charged with aiding and abetting that performance. Therefore, the Abilene Pride Alliance fears exposing itself, its volunteers, and its performers to criminal liability if SB 12 is not enjoined.

90. The Abilene Pride Alliance brings this action for injunctive and declaratory relief against Defendants Angela Colmenero, in an official capacity as Interim Attorney General of Texas; City of Abilene, Texas; Taylor County, Texas; and James Hicks, in an official capacity as District Attorney of Taylor County, so that it can continue hosting drag performances at its Pride event this September and at other future events without fear of civil or criminal penalties.

### **3. Extragrams**

91. Extragrams is a drag entertainment and delivery service based in Austin, Texas. Extragrams operates by connecting drag performers, working as independent contractors, with customers seeking entertainment for birthday parties, corporate events, festivals, fundraisers, weddings, university orientations, bachelorette parties, and more. Extragrams has successfully coordinated approximately 1,000 drag performances, many of which occurred in public spaces and were open to all ages, with children and families often in attendance.

92. Extragrams retains a level of control over its drag performers and commonly approves its performers’ costumes, songs, and routines.

93. Extragrams’ drag performers, like many drag artists, wear accessories or prosthetics that “exaggerate male or female sexual characteristics,” such as wigs, makeup, high

heels, dresses, body padding, pantyhose, false eyelashes, fake fingernails, waist cinchers and corsets, push-up bras, and breast plates. Extragrams drag performers also shimmy and shake their hips during performances, which could arguably be interpreted as “sexual gesticulations” under the Drag Ban’s vague and broad provisions.

94. Extragrams also fears that SB 12 could lead their performers to be accused of “representation [of] . . . simulated . . .sexual acts,” or “simulated contact occurring between one person and the buttocks, breast, or any part of the genitals of another person,” although Extragrams would disagree with such a description of its performers’ routines.

95. Extragrams fears that, because of SB 12’s vagueness and uncertainty, it will not be able to correctly advise Extragrams’ drag performers about how to comply with the law, leaving them vulnerable to harsh criminal penalties if they are accused of giving a “sexually oriented performance.” As a result, Extragrams also fears that it could be charged with aiding and abetting a prohibited performance.

96. This fear is intensified by the Drag Ban’s lack of a *mens rea* requirement. It is not Extragrams’ business practice to inquire if minors will be present at the events its drag performers attend, and it would be impossible to know for sure whether a minor may be present, even if it asked. But Extragrams and its performers could be accused of being strictly liable for a performance in front of a minor even if they do not intentionally or knowingly host such a performance.

97. Extragrams also worries that private venues—such as hotels, restaurants, wedding venues, ballrooms, and corporate offices—which typically host Extragrams drag performers, will no longer book or allow drag performances on their premises, for fear of incurring SB 12’s civil penalties and Texas Attorney General enforcement action, and that Extragrams itself could be