

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

Alexander R. Deanda, on behalf of
himself and others similarly situated,

Plaintiff,

v.

Xavier Becerra, in his official capacity as
Secretary of Health and Human Services;
Jessica Swafford Marcella, in her
official capacity as Deputy Assistant
Secretary for Population Affairs; **United
States of America**,

Defendants.

Case No. 2:20-cv-00092-Z

BRIEF IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

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Plaintiff Alexander R. Deanda respectfully moves to certify two classes under Rule 23(b)(2). The first proposed class consists of all parents of minor children in the State of Texas. The second proposed class consists of all parents of minor children in the United States. The accompanying brief provides our arguments and authorities.

The common characteristics of these class members are that they are all parents of minor children. *See* Local Rule 23.2(b)(3). The distinguishing characteristics are that the parents differ in their the number of children that they have and the age of their children. *See id.*

I. THE COURT SHOULD CERTIFY THE PROPOSED CLASSES UNDER RULE 23(b)(2)

A party that moves for class certification must satisfy each requirement of Rule 23(a) and at least one subdivision in Rule 23(b). The proposed classes meet each of these requirements.

A. The Proposed Classes Are So Numerous That Joinder of All Members Is Impractical

The number of parents of minor children in Texas, and the number of parents of children in the United States, easily exceed the numerosity threshold. *See In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 426 (3d Cir. 2016) (“[N]umerosity is generally satisfied if there are more than 40 class members.”).

According to the Census Bureau, there are 63.1 million parents in the United States with children under 18 and living at home. *See* <https://bit.ly/2ULZYIY> (last visited on July 26, 2021). And the state of Texas has at least 7 million children under the age of 18, each of whom has at least one parent. *See* Texas Demographic Center, *Demographic Trends, Characteristics, and Projections of Texas Children* (Jan. 16, 2019), <https://bit.ly/3eV6kWX> (last visited on July 26, 2021). So each of the proposed classes easily meets the threshold of Rule 23(a)(1).

The local rules of this Court require us to provide the “approximate number of class members.” Local Rule 23.2(b)(1). Based on these data discussed above, the plaintiffs estimate that the proposed class of parents with minor children in Texas consists of between 5 to 6 million class members, while the proposed class of parents with minor children in the United States consists of approximately 63 million class members.

B. There Are Questions of Law or Fact Common to The Members of The Classes

Mr. Deanda seeks to litigate questions of law common to all members of each of the two classes. For the class of Texas-based parents, there are two common questions of law: (1) Whether Texas’s parental-consent laws are preempted by the Title X statute; and (2) Whether the Title X statute, as currently interpreted and administered by the defendants, infringes the constitutional right of parents to direct the upbringing of their children. The second of these two questions is also common to the proposed class of parents with minor children in the United States.

These questions affect all class members because each of them is being denied their statutory and constitutional rights to consent to their children’s medical treatment. Each class member is “suffer[ing] the same injury,” and that is all that needed to satisfy Rule 23(a)(2)’s commonality requirement. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (quoting *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)); *see also Wal-Mart*, 564 U.S. at 360 (“[E]ven a single [common] question will do.” (citation and internal quotation marks omitted)); *In re Deepwater Horizon*, 739 F.3d 790, 812 (5th Cir. 2014) (same). And a ruling on these issues “will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart*, 564 U.S. at 350; *see also M.D. v. Perry*, 675 F.3d 832, 840 (5th Cir. 2012).

C. Mr. Deanda's Claims Are Typical of The Claims of The Classes

Mr. Deanda's claims are more than typical: they are precisely the same as those of all members of the proposed classes. The defendants have implemented a program that denies parents the right to be notified of and consent to their children's medical treatment. Each member of the class is suffering the same denial of their parental rights.

Mr. Deanda's interests of the plaintiffs are aligned with those of the class, as each class member benefits from a ruling that allows them to be notified and gives them the right to consent to their children's medical treatment. *See James v. City of Dallas*, 254 F.3d 551, 571 (5th Cir. 2001) (“[T]he test for typicality is not demanding. It focuses on the similarity between the named plaintiffs’ legal and remedial theories and the theories of those whom they purport to represent.” (citations and quotation marks omitted)); *id.* (“[T]he critical inquiry is whether the class representative’s claims have the same essential characteristics of those of the putative class. If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality.” (citations and quotation marks omitted)); *see also Wal-Mart*, 564 U.S. at 350 n.5 (“[T]he commonality and typicality requirements of Rule 23(a) tend to merge.” (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157–58 n.13 (1982))).

D. Mr. Deanda Will Fairly and Adequately Protect the Interests of The Classes

Mr. Deanda will fairly and adequately represent the interests of its fellow class members, and there are no conflicts of interest between the plaintiffs and the other members of this class. No member of the class can be harmed or made worse off by a ruling that gives them the *option* to consent to medical treatment that their minor children receive from Title X participants. If a class member has no objections to his

children obtaining birth control and prescription contraception from a Title X participant, then he simply consent when asked, or he can execute a signed waiver of his rights and deliver it to Title X participants.

E. Mr. Deanda's Proposed Classes Satisfy Rule 23(b)(2)

The final criterion for class certification under Rule 23(b)(2) is that “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). The Supreme Court has held that this requirement is satisfied “when a single injunction or declaratory judgment would provide relief to each member of the class.” *Wal-Mart*, 564 U.S. at 360; *see also id.* at 361–62 (“[T] the relief sought must perforce affect the entire class at once . . .”). That is precisely what Mr. Deanda requests: a single injunction that stops the defendants from administering the Title X program in a manner that preempts Texas’s parental-consent laws, or that infringes the constitutional rights of parents to control and direct the upbringing of their children. No one is seeking individualized relief for any class member or for any subset of the class. *Compare with M.D.*, 675 F.3d at 845 (disapproving class certification under Rule 23(b)(2) when individualized relief was sought).

In addition, the defendant agencies are “act[ing] . . . on grounds that apply generally to the class.” Fed. R. Civ. P. 23(b)(2). With respect to the each class, the defendants have administered and implemented the Title X program in a manner that flouts Texas’s parental-consent laws and disregards the constitutional rights of parents to control and direct the upbringing of their children. Because this affects all class members by denying them the right to consent to their children’s medical care, it makes “final injunctive relief or corresponding declaratory relief . . . appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2); *see also Wal-Mart*, 564 U.S.

at 360 (“Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class.”).

II. CLASS DISCOVERY IS NOT NEEDED

Class discovery is unnecessary given that the proposed classes unquestionably satisfy the numerosity requirement of Rule 23(a)(1). *See* Local Rule 23.2(f). The plaintiff’s attorneys are self-financing this litigation, and will be seek to recover their lode-star fees from the defendants if the action is successful. *See* 42 U.S.C. § 1988(b); Local Rule 23.2(g). The remaining information required by Local Rule 23.2 is inapplicable because certification is sought solely under Rule 23(b)(2) and Mr. Deanda is not seeking damages or monetary relief, so notice need not be given to absent class members. *See* Local Rule 23.2(e). In addition, this is not a diversity action, so there is no need to determine a jurisdictional amount. *See* Local Rule 23.2(d).

CONCLUSION

The motion for class certification should be granted.

Respectfully submitted.

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Dated: July 26, 2021

*Counsel for Plaintiff
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CERTIFICATE OF CONFERENCE

I certify that on July 26, 2021, I conferred with Amber Richer, counsel for the defendants, and she informed me that the defendants oppose this motion.

/s/ Jonathan F. Mitchell
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CERTIFICATE OF SERVICE

I certify that on July 26, 2021, I served this document through CM/ECF upon:

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**[PROPOSED] ORDER GRANTING
MOTION FOR CLASS CERTIFICATION**

The plaintiff's motion for class certification is granted.

The Court certifies the following two classes under Rule 23(b)(2) of the Federal Rules of Civil Procedure. The first class consists of all parents of minor children in the State of Texas. Alexander R. Deanda is appointed class representatives. Jonathan F. Mitchell, D. Bryan Hughes, Charles W. Fillmore, H. Dustin Fillmore, and Alex Yarbrough are appointed class counsel under FRCP 23(g). The class claims are:

1. Whether Texas's parental-consent laws are preempted by the Title X statute.
2. Whether the defendants' administration of the Title X program violates the constitutional rights of parents to control and direct the upbringing of their children.

The second class consists of all parents of minor children in the United States.

Jonathan F. Mitchell, D. Bryan Hughes, Charles W. Fillmore, H. Dustin Fillmore, and Alex Yarbrough are appointed class counsel under FRCP 23(g). The class claim is:

Whether the defendants' administration of the Title X program violates the constitutional rights of parents to control and direct the upbringing of their children.

Dated: _____, 2021

MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE