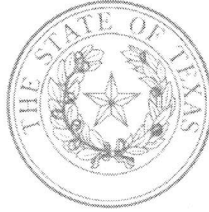


TEXAS HOUSE of REPRESENTATIVES



RQ-0458-KP

FILE# ML-49104-22

I.D.# 49104

COMMITTEE ON GENERAL INVESTIGATING

Chair Matt Krause • Vice Chair Victoria Neave

April 19, 2022

Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548
opinion.committee@oag.texas.gov

Re: Whether Texas law prohibits the possession, sale, and distribution of child-like sex dolls?

Dear General Paxton:

Recently, at least two states – Tennessee¹ and Florida² – have unanimously passed bipartisan laws to prohibit the possession, sale, and distribution of “child-like sex dolls” which are obscene anatomically correct dolls, mannequins, or robots that are used for sexual stimulation or gratification and that have the features of, or have features that resemble those of, a minor. Sex dolls are designed to resemble a human sexual partner.³ Such dolls are customizable to include accessories and equipped with settings to change facial expressions.⁴ Child-like sex dolls are made to look lifelike with prepubescent features and engineered to warm to the human touch.⁵ Sex dolls also make sexual noises and sounds.⁶

In 2018 the U.S. House of Representatives unanimously passed bipartisan legislation prohibiting the importation of child-like sex dolls.⁷ The Curbing Realistic Exploitative Electronic Pedophilic Robots Act of 2017 (CREEPER Act) would have been the first law preventing the selling and

¹ Tenn. Code Ann. § 39-17-910.

² Fla. Stat. § 847.011(5)(a)1.

³ Ally Donnelly, Child Sex Dolls: Why Aren't They Illegal?, NECN, (July 23, 2018), available at <https://www.necn.com/news/new-england/Child-Sex-Dolls-Why-Arent-They-Illegal-488937711.html>.

⁴ Alanna Vagianos, House Passes Bill Banning Sex Dolls That Look Like Children, Huffington Post (June 15, 2018), available at https://www.huffingtonpost.com/entry/house-passes-bill-banning-sex-dolls-that-look-likechildren_us_5b23c2f7e4b07cb1712dcc7d.

⁵ Alice B. Lloyd, Congressman: Child Sex Dolls Are Coming – And We're Not Ready, The Weekly Standard (March 15, 2018), available at <https://www.washingtonexaminer.com/weekly-standard/congressman-child-sex-dolls-are-coming-mdash-and-were-not-ready>.

⁶ Jon Lockett, Sex Robots Which Can ‘Groan And Pant’ Now Act Just ‘Like Real Humans’ Between The Sheets, The Sun (December 5, 2020), available at <https://www.thesun.co.uk/news/13391444/sex-robots-groan-and-pant-real-humans/>.

⁷ H.R. 4655, 115th Congress 2d Session (2017).

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Members: Stephanie Klick, Reggie Smith, John Turner

Darren Keyes, Committee Clerk & General Counsel

Darren.Keyes_hc@house.texas.gov

distributing of child-like sex dolls in the U.S. The legislative findings of the CREEPER Act expressed concern that the dolls make rape easier by teaching the rapist how to subdue the victim and overcome resistance.⁸ And child-like sex dolls can normalize a pedophile's behaviors and potentially shift society's norms to make pedophilia more socially acceptable.⁹

Texas Penal Code Section 43.23 states, "a person commits an offense, if, knowing its content and character...promotes or possesses with intent to promote any obscene material or obscene device."¹⁰ The offense is a felony if such person's activities are for purpose of resale¹¹ or if the obscene material is shown on trial to visually depict activities described by Section 43.21(a)(1)(B) engaged in by "an image that to a reasonable person would be virtually indistinguishable from the image of a child younger than 18 years or age; or an image created, adapted, or modified to be the image of an identifiable child."¹² "Obscene material" means "anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device."¹³ "Obscene device" is defined as "a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs."¹⁴ Section 43.21 defines terms used throughout the subchapter on obscenity and concludes with "If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein." Section 43.21 states, "'Patently offensive' means so offensive on its face as to affront current community standards of decency."

In 2004, obscene device retailers and sellers filed a declaratory action to challenge the constitutionality and enjoin the enforcement of the Texas statutory provisions criminalizing the promotion of obscene devices.¹⁵ In 2006, U.S. District Judge Lee Yeakel dismissed the suit ruling there was no constitutionally protected right to publicly promote obscene devices. The obscene device sellers appealed.¹⁶ On February 12, 2008, two judges of a three-judge panel of the United States Court of Appeals for the Fifth Circuit overturned the district court's ruling that the Texas statute was constitutional and held that under the Fourteenth Amendment the statute was unconstitutional.¹⁷

On October 29, 2008, District Judge Yeakel released a two-page document attached as Exhibit A in which he stated that the Texas Attorney General's Office notified him that they would not file a writ of certiorari with the Supreme Court. On November 13, 2008, Judge Yeakel filed a Joint

⁸ Id.

⁹ John F. Banzhaf, House Bans Child Sex Dolls – As Legal Expert Suggested, ValueWalk, (June 13, 2018), available at <https://www.valuewalk.com/2018/06/house-bans-child-sex-dolls/>.

¹⁰ Tex. Penal Code §43.23(c)(1).

¹¹ Tex. Penal Code § 43.23(a).

¹² Tex. Penal Code §43.23(h)(2)-(3).

¹³ Tex. Penal Code §43.23(a)(2).

¹⁴ Tex. Penal Code §43.21(a)(7).

¹⁵ Complaint, *Reliable Consultants, Inc. v. Earle*, No. A-04-CA-086-LY (W.D. Tex. Feb. 13, 2004).

¹⁶ *Reliable Consultants, Inc. v. Earle*, No. A-04-CA-086-LY (W.D. Tex. July 24, 2006).

¹⁷ *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738 (5th Cir.2008).

April 19, 2022

Status Report attached as Exhibit B that noted the parties had come to an agreement, “Texas Penal Code §§ 43.23, to the extent that it applies to ‘obscene devices’ as defined in Texas Penal Code § 43.21(a)(7), is declared to be facially unconstitutional and unenforceable throughout the State of Texas.”

Interestingly, on July 3, 2008, the Thirteenth District Court of Appeals – Corpus Christi, issued an opinion acknowledging the Fifth Circuit’s holding that section 43.23 was unconstitutional but stating, “This Court thus remains duty-bound, for better or worse, to follow the rulings of the court of criminal appeals, which has held – in contrast to the Fifth Circuit – that section 43.23 does not violate the due process clause of the Fourteenth Amendment.”¹⁸

Notwithstanding the aforementioned jurisprudence, I would like clarification whether “child-like sex dolls” are, as specified in Texas Penal Code § 43.21(a)(2), “anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of...observation, sound, or in any other manner” and if so, whether the possession, sale and distribution of such dolls may be prosecuted under Texas law? Section 43.21(a)(2)’s exception to “an actual three dimensional obscene device” does not appear to preclude a “child-like sex doll” from the meaning of “obscene material” because: 1) the reference to “obscene device” in the exception is arguably nullified due to Judge Yeakel’s final judgment in *Reliable*, and 2) if the clause is still in effect, “obscene device” is limited to “a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs” and should not include “child-like sex dolls.”

Alternatively, is there any other Texas law that prohibits the possession, sale, and distribution of child-like sex dolls?

Please expedite your response on this urgent matter for the safety and protection of Texas children. Thank you for considering this request.

Sincerely,



Matt Krause
Chairman
Texas House Committee on General Investigating

¹⁸ *Villarreal v. State*, 267 S.W.3d 204, 209 (Tex. App.-Corpus Christi 2008, no pet.).

EXHIBIT A

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this cause.

SIGNED this 29th day of October, 2008.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

:
RELIABLE CONSULTANTS, INC. :
d/b/a DREAMER'S and LE ROUGE BOUTIQUE, : Case No. A04-CA-086-LY
:
Plaintiff, :
:
PHE, INC. d/b/a ADAM & EVE, INC., :
:
Plaintiff-Intervenor, :
:
v. :
:
RONNIE EARLE, :
In His Official Capacity Only, :
Travis County District Attorney, :
:
Defendant, :
:
STATE OF TEXAS, :
:
Defendant-Intervenor. :

JOINT STATUS REPORT

Pursuant to the Court's October 29, 2008 Order, the parties hereby jointly submit this status report regarding what actions the parties believe remain to be taken in the above-captioned case. The parties agree that the only remaining issues in the case are (1) entry of final judgment, and (2) resolution of motions for attorneys' fees. The parties advise as follows:

1. The parties have discussed the proposed form of judgment in this case, and have attached a Proposed Judgment hereto as Exhibit A.

EXHIBIT B

2. The current status of motions for attorneys' fees is as follows: Plaintiff Reliable Consultants, Inc. has filed a motion for attorneys' fees, but expects to supplement that motion following entry of judgment; the Defendants have filed preliminary responses to that motion; and Plaintiff PHE, Inc. intends to file its motion for attorneys' fees following entry of judgment. To streamline resolution of issues related to attorneys' fees, the parties have agreed to the following. Within 14 days of the entry of final judgment, per Fed. R. Civ. P. 54(d)(2)(B), Reliable Consultants will file a revised motion for attorneys' fees with supplemental information, and PHE will file its motion for attorneys' fees. Responses and reply briefs will be filed consistent with the corresponding times set forth in the Local Rules. To the extent that Defendants request additional time for response, Plaintiffs will agree in good faith to permitting any such additional reasonable time. If the Court is amenable to this schedule, no further action on the Court's part, other than entry of final judgment, will be necessary at this time.

Respectfully submitted,

/s/

H. Louis Sirkin (*pro hac vice*)
Jennifer M. Kinsley (*pro hac vice*)
Sirkin Pinales & Schwartz LLP
105 West Fourth Street, Suite 920
Cincinnati, OH 45202
Phone: (513) 721-4876
Attorneys for Plaintiff Reliable Consultants, Inc.

/s/

Julie M. Carpenter (*pro hac vice*)
Duane C. Pozza (*pro hac vice*)
Jenner & Block LLP
1099 New York Avenue, N.W.
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Washington, DC 20001
Phone: (202) 639-6000
Fax: (202) 639-6066
Attorneys for Plaintiff-Intervenor PHE, Inc.

EXHIBIT B

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/s/

Elaine A. Casas (State Bar #00785750)
Travis County Attorney's Office
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Austin, TX 78767
Phone: (512) 854-9415
Fax: (512) 854-4808
Attorney for Defendant Ronnie Earle

/s/

James C. Todd
Assistant Attorney General
Office of the Attorney General
General Litigation Division
P.O. Box 12548
Austin, TX 78711-2548
Phone: (512) 463-2120
Fax: (512) 320-0677
Attorney for Defendant-Intervenor State of Texas

Dated: Nov. 13, 2008

EXHIBIT B

Case 1:04-cv-00086-LY Document 93 Filed 11/13/08 Page 4 of 4

CERTIFICATE OF SERVICE

I hereby certify that, this 13th day of November, 2008, a copy of the foregoing Joint Status Report was electronically submitted for filing in accordance with the ECF system for the Western District of Texas, which will send notification to the following:

Elaine A. Casas
Marion A. Damen
Travis County Attorney's Office
P.O. Box 1748
Austin, TX 78767

James C. Todd
Office of Attorney General of Texas
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548

Tim Poteet
Chamberlain & McHaney
301 Congress Avenue, Suite 1800
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105 West Fourth Street, Suite 920
Cincinnati, OH 45202

Gretchen A. Benolken
Benolken & Everett, P.C.
513 West Oak Street
Denton, TX 76201

I hereby certify that, this 13th day of November, 2008, a copy of the Joint Status Report was served by first class mail, postage prepaid, on the following non-ECF participants:

Candace C. Crouse
Sirkin Pinales & Schwartz LLP
105 West Fourth Street, Suite 920
Cincinnati, OH 45202

/s/ Duane C. Pozza
Duane C. Pozza

EXHIBIT B

Case 1:04-cv-00086-LY Document 93-1 Filed 11/13/08 Page 1 of 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

:
RELIABLE CONSULTANTS, INC. :
d/b/a DREAMER'S and LE ROUGE BOUTIQUE, : Case No. A04-CA-086-LY
:
Plaintiff, :
:
PHE, INC. d/b/a ADAM & EVE, INC., :
:
Plaintiff-Intervenor, :
:
v. :
:
RONNIE EARLE, :
In His Official Capacity Only, :
Travis County District Attorney, :
:
Defendant, :
:
STATE OF TEXAS, :
:
Defendant-Intervenor. :
:

[PROPOSED] FINAL JUDGMENT

The Court now renders final judgment as to all claims of Plaintiffs Reliable Consultants, Inc. and PHE, Inc. against Defendant Ronnie Earle, in his official capacity as the Travis County District Attorney, and the Defendant-Intervenor State of Texas. For the reasons given in the decision of the United States Court of Appeals for the Fifth Circuit in this case, it is hereby:

ORDERED, ADJUDGED and DECREED that Texas Penal Code §§ 43.23, to the extent that it applies to "obscene devices" as defined in Texas Penal Code § 43.21(a)(7), is declared to be facially unconstitutional and unenforceable throughout the State of Texas.

EXHIBIT B

Case 1:04-cv-00086-LY Document 93-1 Filed 11/13/08 Page 2 of 2

It is SO ORDERED.

Dated: _____, 2008

Judge Lee Yeakel
UNITED STATES DISTRICT COURT