



over 13%. Compared to the budget for the current seven-month fiscal year, the proposed budget *increases* funding for Harris County Constables both in absolute dollars and as a percentage of the total county budget. That resolves the dispute. Far from defunding the police, the County's proposed budget would allocate more to law enforcement than at any other time in the history of Harris County.

Apparently unwilling to let the facts get in the way of a good soundbite, the Governor and Comptroller have falsely and recklessly claimed that Harris County is reducing funding for its Constables. The Governor's and Comptroller's public statements to the contrary on Twitter and in press releases have had the desired effect: a quick, politically charged soundbite. Media outlets have reported, and concerned citizens have believed, that Harris County is proposing to reduce law enforcement spending, which is plainly not true. Worse yet, even though SB23 only permits the Comptroller to determine whether an "adopted" and "implemented" budget complies with the law, the public and even a Harris County Commissioner have been led to believe that the Comptroller has made a final ruling that the County's proposed budget violates SB23.<sup>1</sup> The law does not permit such a final ruling before a budget has been adopted and implemented.

The confusion and uncertainty caused by the Governor and Comptroller have placed Harris County's ability to pass its proposed budget, which must be done in the coming weeks, in serious jeopardy. Indeed, The Governor's and Comptroller's actions appear to have been timed for this very purpose. Their statements have placed Harris County Commissioners and other officials in the difficult position of voting to adopt a budget that the Comptroller has purported to determine reduced law enforcement funding under SB23 even though he has no power to make such a

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<sup>1</sup> Chaz Miller, *Harris County votes to file lawsuit against Texas over 'defunding' law enforcement allegations*, ABC 13 (Sept. 1, 2022 7:08 PM) <https://abc13.com/harris-county-proposed-budget-defunding-law-enforcement-texas-laws-on-budgets/12183785/>.

determination. If these state officials are permitted to continue playing political games, ignoring the facts, and exceeding their legal authority, there will be real and grave consequences for Harris County residents, law enforcement, and public servants. In short, unless the Governor and Comptroller are enjoined from improperly interfering with Harris County's budgeting process, that process will likely grind to a halt. If the County is not permitted to adopt a budget in the required time, it will be forced to revert to old tax rates that cannot sustain the basic level of services its residents need. This will cost millions of dollars and thousands of jobs, ironically reducing expenditures for law enforcement officers—contrary to the stated goals of the Governor and Comptroller.

As will be shown below, Defendants' actions are plainly without legal authority for several reasons. These include: (1) the Comptroller is not permitted to investigate and make determinations under SB23 about proposed, unadopted budgets, but he has nevertheless done so here; (2) the Comptroller is only permitted to investigate and make determinations about a budget under SB23 when a complaint about that budget has been referred to him by the Governor's Office, but there has been no complaint about the County's proposed budget; and (3) the Governor's Office's and Comptroller's findings are plainly wrong and based on statutorily impermissible factors. If Harris County's proposed budget were adopted and implemented, it would increase funding to law enforcement, including the Constables. The Governor and Comptroller have acted unlawfully in purporting to determine otherwise.

Harris County therefore files this lawsuit against Glenn Hegar, in his official capacity as Texas Comptroller of Public Accounts, Greg Abbott, in his official capacity as Governor of Texas, and Aimee Snoddy, in her official capacity as Director of the Criminal Justice Division of the Office of the Governor. Harris County asserts that that the Comptroller, Governor, and Director

are acting *ultra vires* and seeks an injunction against their illegal actions under Texas Local Government Code Sections 120.002, 120.006-.007. Plaintiff seeks declaratory relief, a temporary restraining order, temporary injunction, and permanent injunction, and would respectfully show the following:

#### DISCOVERY LEVEL

1. Discovery should occur under a Level 3 plan, pursuant to Texas Rule of Civil Procedure 190.4.

#### PARTIES

2. Plaintiff Harris County, Texas is the largest county in Texas and operates through the Harris County Commissioners Court, the County's principal governing body.

3. Defendant Glenn Hegar ("the Comptroller" or "Comptroller Hegar" or "Hegar") is the Texas Comptroller of Public Accounts and is sued in his official capacity. Harris County alleges the Comptroller committed *ultra vires* acts by undertaking investigations and making determinations that are outside of his legal authority. He may be served at 111 East 17th Street Austin, Texas 78774.

4. Defendant Greg Abbott ("the Governor" or "Governor Abbott" or "Abbott") is the Governor of Texas and is sued in his official capacity. Harris County alleges Governor Abbott committed *ultra vires* acts by referring a manifestly invalid complaint to the Comptroller, which is outside of the Governor's legal authority. Governor Abbott may be served at 1100 San Jacinto Blvd., Austin, Texas 78701.

5. Defendant Aimee Snoddy ("the Director" or "Director Snoddy" or "Snoddy") is the Director of the Criminal Justice Division of the Office of the Governor and is sued in her official capacity. Harris County alleges Snoddy committed *ultra vires* acts by referring a manifestly invalid

complaint to the Comptroller, which is outside of the Director's legal authority. Director Snoddy may be served at 1100 San Jacinto Blvd., Austin, Texas 78701.

#### JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over the matter pursuant to Tex. Const. art. V, § 8 and Tex. Civ. Prac. & Rem. Code § 37.003.

7. This Court has personal jurisdiction over each Defendant because the Defendants reside in Texas.

8. Venue is proper in Travis County pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1).

#### BACKGROUND FACTS

##### A. Senate Bill 23

9. In June 2021, Governor Abbott signed into law Senate Bill 23 ("SB23"), compelling, under specific circumstances, large counties to obtain voter approval to reduce or reallocate funding for certain law enforcement agencies. The statute became effective January 1, 2022. Act of May 30, 2021 (S.B. 23), 87th Leg., R.S., Ch. 201, § 2, 2021 Tex. Sess. Law Serv. Ch. 201 (West).

10. The stated purpose of SB23 was to address concerns over counties "responding to certain demands to defund the police." It was codified in Chapter 120 of the Local Government Code.

11. To determine whether a county has reduced law enforcement funding, SB23 requires a comparison between two successive, adopted budgets: the adopted budget for a fiscal year and the adopted budget for the preceding fiscal year. Tex. Loc. Gov't Code § 120.002(a) (applicable for comparison between adopted budgets: "if the county *adopts* a budget for a fiscal

year that, compared to the budget *adopted* by the county for the preceding fiscal year” (emphasis added)). SB23 does not permit consideration of anything outside the two adopted budgets.

12. As relevant to this dispute, if the “overall amount of the budget” increases over the preceding fiscal year, SB23 asks if the newer adopted budget “reduces . . . the appropriation” for a law enforcement agency compared to the preceding fiscal year. Tex. Loc. Gov’t Code § 120.002(a)(1)(A). If the “overall amount” of the newer budget decreases compared to the prior fiscal year, then SB23 asks if the newer budget “reduces . . . the appropriation to the agency *as a percentage* of the total budget.” *Id.* § 120.002(a)(1)(B) (emphasis added). In other words, if the comparison between total budgets shows an increase over the prior fiscal year, compare absolute dollar amounts for specific departments; if the comparison between total budgets shows a decrease from the prior fiscal year, compare percentages for specific departments.

13. SB23 states the proper means of investigating and enforcing compliance with the statute. First, SB23 permits a resident “who believes that a county *has implemented* a proposed reduction or reallocation described by” the law “without the required voter approval” to “file a complaint with the criminal justice division of the office of the governor.” Tex. Loc. Gov’t Code § 120.006(a) (emphasis added). The statute then empowers the Governor’s Office—through the Criminal Justice Division—to determine whether such a complaint is “potentially valid or frivolous or false.” *Id.* § 120.006(a)-(b). The Governor must then provide “written notice of a potentially valid complaint . . . to the county that is the subject of the complaint” and allow the county an “opportunity to correct the action that is the subject of the complaint before referring the complaint to the comptroller.” *Id.* § 120.006(c).

14. Accordingly, the Legislature placed the power to raise concerns about compliance with SB23 in the first instance with the residents of the counties to which it applies. The plain

language of the statute then only permits the Governor's Office to refer a matter to the Comptroller when the Governor receives a "potentially valid complaint" that a county "has implemented" a reduction in law enforcement funding.

15. The Governor's Office has no statutory authority for investigating or making findings regarding *proposed* budgets or referring matters *sua sponte* to the Comptroller, without first receiving a "potentially valid complaint" from a resident of the county.

16. SB23 next empowers the Comptroller, "[o]n request by the criminal justice division of the office of the governor," to "determine whether a county *has implemented* a proposed reduction or reallocation described by Section 120.002(a) without the required voter approval." Tex. Loc. Gov't Code § 120.007(a) (emphasis added). "The comptroller shall issue a written determination to the governor, lieutenant governor, speaker of the house of representatives, and governing body of the county." *Id.* And "if the comptroller determines that a county *implemented* a proposed reduction" without voter approval, the county may not adopt "an ad valorem tax rate that exceeds the county's no-new-revenue tax rate" until the Comptroller finds that the funding reduction has been reversed or an election is held. *Id.* § 120.007(c) (emphasis added).

17. The plain language of the statute therefore only permits the Comptroller to investigate and determine whether a county "has implemented" a reduction in law enforcement funding upon referral of a complaint from the Governor's Office. The Comptroller has no statutory authority for investigating or making determinations regarding *proposed* budgets or investigating and making findings *sua sponte* without first receiving referral of a potentially valid complaint from the Governor's Office.

#### **B. Harris County's Adopted and Proposed Budgets**

18. The Texas Local Government Code generally provides for a county fiscal year to be a "one-year period." Tex. Loc. Gov't Code § 112.010(b). However, it also provides for an

“interim fiscal year” that is shorter should a county decide to transition the start date of its fiscal year. *Id.* § 112.010(c). Namely, a commissioners court “may by order adopt as the county fiscal year a one-year period that begins on October 1 or March 1 of each year. In the order, the commissioners court may provide for the transition from one fiscal year to another by designating an interim fiscal year that may be longer or shorter than a 12-month period.” *Id.*

19. As permitted by state law, and to align the adoption of the budget with the process of setting property tax rates, Harris County opted to change its fiscal-year start date from March 1 to October 1. To accomplish that change, it designated an interim fiscal year of seven months, the Short Fiscal Year 2022 (“SFY22”), which lasts from March 1 to September 30, 2022.

20. Thus, Harris County has an adopted budget for Fiscal Year 2021-2022 (“FY21-22”) (March 1, 2021-February 28, 2022), Ex. 1; an adopted budget for SFY22 (March 1, 2022-September 30, 2022), Ex. 2; and proposed budgets for Fiscal Year 2022-2023 (“FY23”) (October 1, 2022-September 30, 2023). The fiscal year preceding FY23 is the Short Fiscal Year 2022, SFY22. Under Local Government Code Chapter 111, counties are required to adopt fiscal-year budgets and should not operate without an adopted budget.

21. In February 2022, Harris County adopted its budget for SFY22 and announced a planning budget for FY23. The SFY22 budget increased funding for all law enforcement agencies, including Constables Precincts, on an annualized basis, when compared to the adopted budget for FY21-22.

22. Harris County’s Offices of County Administration and of Management and Budget have continued to revise the FY23 planning budget. Harris County announced a new proposed budget for FY23 on August 17, 2022 (Ex. 3) and the most recent proposal on September 6, 2022 (Ex. 5). Harris County made no changes to the proposed funding for the Constables between the

August 17 and September 6 proposed budgets. Collectively, the August 17 proposal and the latest proposal from September 6 are referred to herein as the "FY23 Proposed Budget."

23. The FY23 Proposed Budget, if adopted and implemented, would increase the amount of the appropriation for all Constable Precincts by comparison to the budget adopted by the county for the preceding fiscal year of SFY22 (the "SFY22 Adopted Budget"). The chart below shows the appropriation for the different constable precincts in the FY23 Proposed Budget and the SFY22 Adopted Budget:

	<u>SFY22 Adopted Budget</u>	<u>FY23 Proposed Budget</u>
Constable Precinct 1	\$27,687,202	\$46,219,426
Constable Precinct 2	\$7,203,497	\$12,144,327
Constable Precinct 3	\$12,215,262	\$20,927,851
Constable Precinct 4	\$38,725,117	\$66,031,605
Constable Precinct 5	\$28,554,047	\$48,383,796
Constable Precinct 6	\$6,998,207	\$11,723,213
Constable Precinct 7	\$9,582,988	\$16,065,906
Constable Precinct 8	\$6,157,362	\$10,455,408
<b>Total Constables</b>	<b>\$137,123,682</b>	<b>\$231,951,532</b>

24. The appropriation for Constable Precinct 4 increases from \$38,725,117 in the SFY22 Adopted Budget to \$66,031,605 in the FY23 Proposed Budget.

25. The appropriation for Constable Precinct 5 increases from \$28,554,047 in the SFY22 Adopted Budget to \$48,383,796 in the FY23 Proposed Budget.

26. The total appropriation for all Constables increases from \$137,123,682 in the SFY22 Adopted Budget to \$231,951,532 in the FY23 Proposed Budget. Thus, on an absolute basis, the amount of the appropriations for Precinct 4, for Precinct 5, and for all Constable Precincts in

the FY23 Proposed Budget is larger than those for the preceding fiscal year, the SFY22 Adopted Budget.

27. The FY23 Proposed Budget, if adopted and implemented, would increase the appropriation for each Constable Precinct as a percentage of the total county budget compared to the SFY22 Adopted Budget. The chart below shows the appropriation for the different Constable Precincts in the FY23 Proposed Budget and the SFY22 Adopted Budget as a percentage of the total budget:

	<b>SFY22 Adopted Budget</b>	<b>SFY22 Percentage of Total Budget</b>	<b>FY23 Proposed Budget</b>	<b>FY23 Percentage of Total Budget</b>
Constable Precinct 1	\$27,687,202	1.55%	\$46,219,426	1.85%
Constable Precinct 2	\$7,203,497	0.40%	\$12,144,327	0.49%
Constable Precinct 3	\$12,215,262	0.69%	\$20,927,851	0.84%
Constable Precinct 4	\$38,725,117	2.17%	\$66,031,605	2.64%
Constable Precinct 5	\$28,554,047	1.60%	\$48,383,796	1.94%
Constable Precinct 6	\$6,998,207	0.39%	\$11,723,213	0.47%
Constable Precinct 7	\$9,582,988	0.54%	\$16,065,906	0.64%
Constable Precinct 8	\$6,157,362	0.35%	\$10,455,408	0.42%
<b>Total Constables</b>	<b>\$137,123,682</b>	<b>7.70%</b>	<b>\$231,951,532</b>	<b>9.29%</b>
<b>Total Budget</b>	<b>\$1,780,665,984</b>	<b>100%</b>	<b>\$2,496,735,687</b>	<b>100%</b>

28. As a percentage of the total county budget, the appropriation for Constable Precinct 4 increases from 2.17% in the SFY22 Adopted Budget to 2.64% in the FY23 Proposed Budget.

29. As a percentage of the total county budget, the appropriation for Constable Precinct 5 increases from 1.60% in the SFY22 Adopted Budget to 1.94% in the FY23 Proposed Budget.

30. As a percentage of the total county budget, the appropriation for all Constable Precincts increases from 7.70% in the SFY22 Adopted Budget to 9.29% in the FY23 Proposed Budget. Thus, on a percentage basis, the appropriations for Precinct 4, Precinct 5, and all Constable Precincts in the FY23 Proposed Budget is larger than those for the preceding fiscal year, the SFY22 Adopted Budget.

31. Thus, compared to the adopted budget for the preceding fiscal year, the FY23 Proposed Budget increases the appropriation for all Constable Precincts on both an absolute basis and a percentage basis.

32. Even if annualized, the SFY22 Adopted Budget has a lower appropriation for each Constable Precinct compared to the FY23 Proposed Budget. The proper method for annualizing the SFY22 Adopted Budget is Harris County's method detailed in its SFY22 Adopted Budget.<sup>2</sup> The chart below shows the appropriations for the SFY22 Adopted Budget, the SFY22 amounts properly annualized, and the FY23 Proposed Budget:

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<sup>2</sup> To meaningfully annualize the SFY22 adopted budget for comparison to the FY23 Proposed Budget, the SFY22 budget must be scaled up to cover the same number of weeks of expenditures. The FY23 Proposed Budget is based on 52 weeks of labor costs (26 biweekly pay periods). The SFY22 budget is based on 32 weeks of labor costs (16 biweekly pay periods). Therefore, scaling up the labor portion of the SFY22 budget to a full 52 weeks requires multiplying by 52/32 or 26/16. Labor costs account for more than 90% of the total SFY22 Adopted Budget. It is reasonable to scale the SFY22 non-labor budget by the number of months, since these expenditures are commonly invoiced monthly, rather than paid biweekly like labor costs. Therefore, accurate annualization of the SFY22 Adopted Budget requires multiplying the labor portion (~94%) of the budget by 52/32 (or 26/16) and the non-labor portion (~6%) of the budget by 12/7. Harris County made clear to its departments in February 2022, long before any party ever raised a complaint about the FY23 Proposed Budget, that this was the proper way to compare SFY22 to any future budget. See SFY22 Adopted Budget, Ex. 2 at 103-104.

	<b>SFY21 Adopted Budget</b>	<b>SFY22 Properly Annualized</b>	<b>FY23 Proposed Budget</b>
Constable Precinct 1	\$27,687,202	\$45,251,907	\$46,219,426
Constable Precinct 2	\$7,203,497	\$11,774,839	\$12,144,327
Constable Precinct 3	\$12,215,262	\$19,952,277	\$20,927,851
Constable Precinct 4	\$38,725,117	\$63,344,247	\$66,031,605
Constable Precinct 5	\$28,554,047	\$46,664,970	\$48,383,796
Constable Precinct 6	\$6,998,207	\$11,429,679	\$11,723,213
Constable Precinct 7	\$9,582,988	\$15,669,717	\$16,065,906
Constable Precinct 8	\$6,157,362	\$10,050,869	\$10,455,408
<b>Total Constables</b>	<b>\$137,123,682</b>	<b>\$224,138,505</b>	<b>\$231,951,532</b>

33. Harris County is aware that the Comptroller's Office contends another method of annualizing the SFY22 budget should be used. SB23 does not address annualizing at all. It thus provides no guidance, much less a mandate, on whether to annualize at all or the proper method of annualizing a budget for a short fiscal year. Accordingly, any debate over how the SFY22 budget should be annualized is one about accounting practices, not compliance with SB23.

34. In any event, even under the Comptroller's preferred method of annualization, the County's FY23 Proposed Budget would comply with SB23. The Comptroller has stated that the entire SFY22 Adopted Budget must be multiplied by 12/7 rather than the County's method described above in footnote 2. Even if the Comptroller's method is accepted, this would require the budgets to be analyzed on a percentage basis under Local Government Code Section 120.002(a)(1)(B), because the total annualized SFY22 budget using a 12/7 multiplier (\$3,052,570,258) is larger than the total FY23 Proposed Budget (\$2,496,735,687). That provision requires the budgets be compared by looking at the "appropriation to the agency as a percentage of the total budget." As shown above in paragraphs 27-30, each Constable Precinct's percentage of the total budget increased from the SFY22 Adopted Budget to the FY23 Proposed Budget.

Accordingly, using either the County's or the Comptroller's method of annualizing the SFY22 Adopted Budget, Harris County's FY23 Proposed Budget does not require voter approval under Local Government Code Section 120.002(a).

35. Thus, if the FY23 Proposed Budget were adopted, the comparison dictated by the plain language of SB23—prior adopted budget versus new adopted budget—would show perfect compliance with the law. *See* Tex. Loc. Gov't Code § 120.002(a) (no election is required “if the county adopts a budget for a fiscal year that, compared to the budget adopted by the county for the preceding fiscal year” shows no reduction in law enforcement appropriations). No other comparison is permissible under the statutory language.<sup>3</sup>

**C. Two Constables Submit Narrow Complaints**

36. In May 2022, the Constables for Precincts 4 and 5 wrote letters of complaint to Governor Abbott's criminal justice division about Harris County's budget. The Constables alleged that Harris County's decision to end its “rollover” budget policy deprived their precincts of the ability to rollover funds from the previous fiscal year into their current year budgets. The Constables alleged this change in policy reduced their funding in contravention of SB23. Undisputed facts refute this theory.

37. Beginning 2012, years before SB23 became effective, Harris County had provided departments and agencies, including Constable Precincts, the ability to carry forward unspent balances from prior years (the “Rollover Policy”). These “rollover” funds were never included within adopted budgets, but instead available to be used as adjustments several months after a budget was adopted.

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<sup>3</sup> Although not legally relevant, the FY23 Proposed Budget also increases funding for Constable Precincts by comparison to the budget adopted by the county for FY21-22, which is not the preceding fiscal year, but is the last 12-month fiscal year budget adopted by the County.

38. On March 9, 2021, nearly a year before SB23 became state law and before that bill was even introduced in the Senate, the Harris County Commissioners Court approved changes to the County's budget rollover policy. Ex. 4. As revised, Harris County no longer mandates that unspent funds automatically rollover for use in the next budgetary year. Instead, departments are allowed to request that unspent funds be carried forward to meet specific needs after a budget has been adopted. This change brought Harris County's budgeting practices in line with how other local governments budget. Upon information and belief, no other sizable local governments have a practice of allowing departments to rollover any unspent funds from year to year. The State of Texas similarly does not use automatic rollover budgeting.

39. These changes became effective during the implementation of the FY21-22 budget, which was adopted before SB23 took effect. The Constables' letters specifically complain that the changes reduced funding from their FY21-22 budget appropriations. Exs. 6-7.

40. Because Harris County's rollover policy was revised before SB23 became effective, it cannot be the subject of a valid complaint under SB23. Similarly, because the purportedly reduced budgets the Comptrollers cite were adopted before SB23 became effective, the adoption of those budgets cannot be the proper subject of a SB23 complaint. Finally, the rollover amounts under the old policy were never part of adopted budgets, which is all that can be compared under the plain language of SB23. The Constables' "rollover" budget concerns could therefore never be valid complaints under SB23.

#### **D. Governor Abbott and Comptroller Hegar Wrongly Interfere**

41. Nevertheless, two weeks after receiving the Constables' complaints, the Governor's Office, through Defendant Aimee Snoddy, Director of the Criminal Justice Division, provided written notice to Harris County that it had deemed the complaints "potentially valid."

The letter excerpted certain portions of the Constable's allegations regarding the rollover change and its effect on the Constables' FY21-22 appropriations. Ex. 8.

42. Harris County responded to the Governor's Office's letter in June 2022. Harris County explained that the complaints do not allege a decrease in one adopted budget as compared to the preceding adopted budget, which is what the statute addresses. Instead, the complaints alleged that Harris County had chosen not to rollover unspent funds from one fiscal year to the next. But the Constables' complaints about this rollover issue have nothing to do with comparing adopted budgets, which is what SB23 requires. SB23 certainly does not contemplate analysis of extra-budgetary considerations. And in any event, the rollover policy was changed in March 2021, long before SB23 took effect. Ex. 9.

43. In early July 2022, the Governor's Office, through Director Snoddy, nevertheless referred the complaints from Constable Precincts 4 and 5 to Comptroller Hegar.

44. More than six weeks later, on August 22, 2022, Comptroller Hegar wrote a letter to Harris County titled: "Re: Funding or Resources for Certain Primary Law Enforcement Agencies." Ex. 10.

45. In his letter, Hegar identified "three key allegations" against Harris County that the Comptroller was "continuing to investigate." First, Hegar stated that he was investigating an "abrupt[] end[]" to a policy allowing unused department funds to rollover from one year fiscal year to the next, which was explained in the Constables' letters. Second, Hegar claimed to be investigating alleged "budgeting practices of Harris County [that] may not provide the Constables Office with full authority to expend their allocated budget to meet public safety needs." This complaint from the Constables, which has nothing to do with SB23, focused on the Harris County auditors' commonly used practice of encumbering project expenditures. Hegar never claimed

SB23 prohibited the Harris County auditor from using such a method. Third, Comptroller Hegar stated for the first time that he was investigating Harris County's FY23 Proposed Budget representing "a \$3 million reduction in overall funding" to the Constables Offices.

46. Harris County is not aware of any referral to the Comptroller's office of complaints regarding any of its proposed budgets for FY23. Harris County has seen no correspondence making complaints to the Governor's Office about its FY23 Proposed Budget, and the Governor's Office has not notified Harris County of any such complaints.<sup>4</sup> The County should be aware of any complaints because SB23 requires that Director Snoddy's office provide notice of any "potentially valid" complaint to the County before referring it to the Comptroller. Harris County has not seen any correspondence referring any complaints to the Comptroller's office other than the Constables' complaints about the rollover policy. It is therefore unclear what triggered Comptroller Hegar to investigate complaints regarding Harris County's FY23 Proposed Budget. Comptroller Hegar appears to have expanded the scope of the matters referred to him on his own initiative.

47. Without explaining the investigation he had conducted or providing any basis for his findings, Comptroller Hegar asserted the following in his letter:

- a. Harris County had taken action that "significantly limited the funds available to the Harris County Constables Office for the 2021-2022 fiscal year and has proposed a 2023 fiscal year budget that will reduce funding available to the Constables."
- b. "Harris County will need voter approval before it can adopt its FY 2022-2023 budget because it implements a reduction described by Local Government Code, Section 120.002(a)."
- c. "If the county proceeds with the Constable budget as proposed without obtaining voter approval, the county may not adopt an ad valorem tax rate that exceeds the county's no-new-revenue tax rate."

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<sup>4</sup> The Governor's Office has notified Harris County about one additional complaint made by a former Harris County Commissioner, but that complaint contains the same allegations as the Constables' complaints and makes no mention of the FY23 Proposed Budget.

- d. Harris County “*must* reverse its proposal to reduce funding FY 2023 or it must allow its residents to voice their opinion through an election held for the purpose of approving these actions.”
- e. Harris County “should eliminate any excessive restrictions that prevent the Constables Office from accessing its budget.”
- f. Harris County should “restore funding lost due to the decision to end ‘rollover’ budgeting.”

48. In issuing this letter, Comptroller Hegar made purported determinations regarding a proposed budget that is neither adopted nor implemented, and he did so without having been referred any complaint about that proposed budget. Comptroller Hegar similarly made determinations about the rollover policy by considering matters other than one adopted budget versus another adopted budget. Comptroller Hegar thus has no authority under SB23 to make such determinations.

49. Shortly after sending his August 22 letter, Comptroller Hegar discussed his letter and SB23 in a public forum. His comments show that his letter was based on improper criteria other than a comparison of adopted budget to adopted budget: “it does appear as though the processes are set up in place to whether maybe they cannot spend the money even if they have the money budgeted, and I do think that’s a legitimate issue. If there’s somehow hurdles put into place . . . .” The ability to spend money budgeted is simply not addressed by SB23, so his comments admit improper considerations. Further, his comments also showed that he does not know how SB23 is supposed to operate: “I don’t understand if its court’s decision, I don’t know if it’s processes, I don’t know. But I think we’re going to find out. . . .” The Comptroller has therefore purported to make official determinations under SB23 without understanding the impact of his actions.

### **E. The Comptroller's Findings Threaten the Proposed Budget**

50. The Comptroller's statements have been viewed by the media, the citizens of Harris County, and at least one Harris County Commissioner as a legally effective determination under SB23. Numerous local, state, and national media outlets have reported that the Comptroller has already made a determination that Harris County's FY23 Proposed Budget violates SB23.<sup>5</sup> Governor Abbott's own press release, issued the day after the close-of-business circulation of Hegar's letter, says "[t]he Comptroller recently released its finding that the Harris County Commissioners Court acted to significantly reduce resources available to the county Constables Office" and notes that "Harris County may now be subject to penalties." And even Harris County Commissioner Cagle, who will be tasked with voting on the proposed budget, has referred to the Comptroller's decision as a "ruling" regarding the FY23 Proposed Budget.<sup>6</sup>

51. The confusion surrounding the Comptroller's letter is understandable. Although the Comptroller has been coy about his intent, in several ways, the Letter purports to be a determination pursuant to Local Government Code Section 120.007 that Harris County has reduced law enforcement funding under SB23. It contains several indicia of compliance with Section 120.007, including:

- Copying the Governor, Lieutenant Governor, and Speaker of the House of Representatives, as required by Section 120.007(a).

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<sup>5</sup> Associated Press, *Harris County accused of violating state defunding police law*, KHOU 11 (Aug. 25, 2022, 3:45 PM), <https://www.khou.com/article/news/local/harris-county-accused-violation-state-defunding-police-law/285-6ee33b7b-df09-474a-8987-ff3da16500b2>; Joshua Fetcher, *Texas officials accuse Harris County of slashing constables' budgets — but they're actually going up*, TEXAS TRIBUNE (Aug. 23, 2022, 7:00 PM), <https://www.texastribune.org/2022/08/23/texas-harris-county-constables-budget-hegar/> ("Comptroller Glenn Hegar said the state could block the approval of Harris County's budget...").

<sup>6</sup> Chaz Miller, *Harris County votes to file lawsuit against Texas over 'defunding' law enforcement allegations*, ABC 13 (Sept. 1, 2022 7:08 PM), <https://abc13.com/harris-county-proposed-budget-defunding-law-enforcement-texas-laws-on-budgets/12183785/>.

- Referring to complaints referred by the Governor's office, as described in Section 120.007(a); and
- Stating that the County may not adopt a new ad valorem tax rate, as contemplated by Section 120.007(c).

52. Unless corrected, the perception that Comptroller Hegar has made a legally effective determination under SB23 concerning the FY23 Proposed Budget is highly likely to have a significant impact on the County's budgeting process. Harris County needs to adopt a budget to coincide with the adoption of a tax rate for the new fiscal year. There is a lengthy process that must be followed for adopting a tax rate that requires an initial tax rate proposal, finalizing a budget that is based on that proposal, holding a public hearing on the proposed tax rate, and definitively adopting a budget based on the approved tax rate. These steps require the participation of Harris County Commissioners and members of the public, many of whom have been led to believe the Comptroller has ruled that Harris County cannot adopt its FY23 Proposed Budget.

53. Harris County's new fiscal year begins on October 1, and the County needs to have a new budget in place before that date to avoid jeopardizing the continuity of its operations. In practice, the budget needs to be adopted by September 20. And for these deadlines to be met, public meetings need to be held in the first full week of September. Because of Comptroller Hegar's public statements suggesting he has determined the current proposed budget cannot be adopted, these deadlines are in significant danger of not being met.

54. Should Harris County fail to adopt a budget by these deadlines, it will be forced to revert to old tax rates and old spending levels. This would force Harris County to reduce spending, resulting in severe budget shortfalls for essential projects and place in jeopardy the County's ability to meet payroll with its existing labor force. The County would be forced to immediately terminate employees, including law enforcement personnel. This would be a horrible result and clearly

contrary to the Governor's and Comptroller's publicly stated goals of ensuring appropriate law enforcement funding.

55. On August 30, 2022, Harris County asked Comptroller Hegar to clarify that he had "not made or issued a determination that Harris County's proposed budget violates" SB23. Ex. 12. Harris County explained that the confusion created by Comptroller Hegar's definitive statements, which he was not authorized to make at that time, placed the County's "budget process . . . at risk of being grounded to a halt."

56. Comptroller Hegar's responded the following day and made clear that his office purportedly "determined that the Harris County *proposed* budget published on Aug. 17, 2022, represented a reduction in funding to the Constables Office when compared to the annualized short fiscal year budget . . . ." Ex. 13. While the Comptroller acknowledged that "Local Government Code, Chapter 120, specifically relates to a comparison of *adopted* budgets," he nevertheless claimed the ability to "provide[] advance notice to the County Judge and Commissioners Court" of his determination "to provide the opportunity to resolve the issue before proceeding with budget adoption."

57. Comptroller Hegar's response ignores the limited scope of his authority. The Comptroller may not investigate and determine whether a budget complies with SB23 until after that budget is adopted and implemented, and he may only do so upon referral of a "potentially valid" complaint from the Governor's Office. To date, the Governor's Office has not referred a complaint regarding the FY23 Proposed Budget to Comptroller Hegar, nor has Harris County adopted or implemented its FY23 Proposed Budget. Even if it had, Comptroller Hegar would have no grounds to issue a determination that the FY23 Proposed Budget reduces law enforcement funding under SB23, because it does not.

58. Comptroller Hegar's continued public, purported determinations regarding the FY23 Proposed Budget and his ongoing investigation plain lack legal authority and pose a significant threat to Harris County's ability to adopt a proposed budget that will, in fact, *increase* funding for law enforcement. Even worse, his continued *ultra vires* conduct severely hinders Harris County's efforts to pass a budget, resulting in dire consequences for Harris County's citizens and law enforcement personnel.

#### FIRST CAUSE OF ACTION

#### **Declaratory Judgment: Governor Abbott's, Director Snoddy's, and Commissioner Hegar's actions pursuant to Texas Local Government Code § 120 are *ultra vires***

59. Plaintiff incorporates by reference and re-alleges the facts and allegations contained in the foregoing paragraphs 1 through 58, as if set forth verbatim herein.

60. Under the Uniform Declaratory Judgments Act ("UDJA"), a person "whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the [ ] statute . . . and obtain a declaration of rights, status, or other legal relations thereunder." Tex. Civ. Prac. & Rem. Code § 37.004(a). The UDJA is properly used to "settle and afford relief from uncertainty and insecurity with respect to rights, and [is] to be liberally construed." *City of Waco v. Tex. Nat. Res. Conservation Comm'n*, 83 S.W.3d 169, 177 (Tex. App.—Austin 2002, pet. denied).

61. A declaratory judgment action may be brought to seek "declaratory relief against official state actors who allegedly act without legal or statutory authority in attempt to compel the state officials to act within their official capacity." *Hawkins v. El Paso First Health Plans, Inc.*, 214 S.W.3d 709, 718 (Tex. App.—Austin 2007, pet. denied) (citing *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002)).

62. Harris County—through its Offices of County Administration and Management and Budget—is responsible for drafting and proposing the County's annual budget. Defendants'

actions have unlawfully threatened, interfered with, and severely disrupted the County's budgeting process, and the County seeks relief from the uncertainty and insecurity caused by their actions. For this reason, Harris County is entitled to declaratory relief to establish the illegality of Governor Abbott's, Director Snoddy's, and Commissioner Hegar's actions under SB23.

63. Harris County—through its Commissioners Court—is responsible for adopting the County's annual budget. Defendants' actions have unlawfully threatened and interfered with the County's adoption of its budget. For this reason, Harris County is entitled to a declaration from this Court that is entitled to adopt the proposed budget in compliance with Texas Local Government Code Section 120.002 without incurring the Governor's and Director's unlawful and premature determination and referral of an investigation; that the Comptroller's purported determination is unlawful, incorrect, and premature; and that the defendants' assertions cannot, as a matter of law, trigger the voter-approval requirement or prohibition of an ad valorem tax rate.

**A. The Comptroller acted *ultra vires* in making determinations that Harris County's proposed budget reduces law enforcement funding under Tex. Loc. Gov't Code § 120.002(a)**

64. The Governor's Office and Comptroller may investigate and make determinations concerning compliance with SB23 only for adopted and implemented budgets. Neither office has authority to investigate and making findings concerning proposed budgets.

65. The statute provides that the Governor's Office—through his Criminal Justice Division Director Aimee Snoddy—may determine whether a complaint that a county "*has implemented* a proposed reduction" of law enforcement funding under SB23 is "potentially valid or frivolous or false." Tex. Loc. Gov't Code § 120.006(a)-(b). The Governor's Office must then provide "written notice of a potentially valid complaint . . . to the county that is the subject of the complaint" and give the county an "opportunity to correct the action that is the subject of the complaint before referring the complaint to the comptroller." Tex. Loc. Gov't Code § 120.006(c).

A complaint about a proposed budget, which has not been implemented, cannot be “potentially valid” because it speaks to a budget that does not exist. Therefore, the Governor and his Office have no legal authority to refer a complaint regarding a *proposed* budget to the Comptroller. The Governor’s Office only has one legal option: affirmatively confirm the premature complaint’s invalidity.

66. Similarly, on referral of a complaint from the Governor’s Office, the statute says the Comptroller “shall determine whether a county *has implemented* a proposed reduction” under SB23. *Id.* § 120.007(a) (emphasis added). The law provides no authority for the Comptroller to make determinations about proposed, unadopted budgets other than that they have not been implemented.

67. Contrary to his statutory authority, Comptroller Hegar began investigating “allegations that the Harris County Commissioners Court has moved to reduce funding available to the Harris County Constables Office” before Harris County implemented—or even adopted—its FY23 Proposed Budget. While this investigation was “continuing” Comptroller Hegar also determined that “Harris County will need voter approval before it can adopt its FY 2022-2023 budget because it implements a reduction” and concluded “without obtaining voter approval, the county may not adopt an ad valorem tax rate that exceeds the county’s no-new-revenue tax rate.” Shortly after the Comptroller issued these purported determinations, the Governor made similar accusations in press releases and on Twitter concerning Harris County’s proposed budget. Comptroller Hegar thereby abused and exceeded his statutory powers and acted *ultra vires* by investigating and making findings regarding Harris County’s *proposed* budget before it has been adopted or implemented. The law precludes these purported determinations.

68. Accordingly, pursuant to the UDJA, Harris County seeks the following declaration from the Court:

- a. Comptroller Hegar acted *ultra vires* by investigating and purportedly determining that Harris County's FY23 Proposed Budget "represented a reduction in funding to the Constables Office" because the statute does not permit the Comptroller to investigate or make determinations before "a county has implemented" a reduction in law enforcement appropriation. *See* Tex. Loc. Gov't Code § 120.007. The statute does not permit the Comptroller to make any determinations concerning a proposed, unadopted, unimplemented budget (other than that such a budget has not been implemented). The Comptroller, as a public official, has no discretion or authority to misinterpret the law. *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 163 (Tex. 2016).

**B. The Comptroller acted *ultra vires* by investigating and making determinations about Harris County's proposed budget *sua sponte***

69. Under SB23, a resident of a county "who believes that a county has implemented a proposed reduction or reallocation described by Section 120.002(a) . . . may file a complaint with the criminal justice division of the office of the governor." Tex. Loc. Gov't Code § 120.006(a). If the Governor's Office determines the complaint is "potentially valid," it may then "refer[] the complaint to the comptroller" after notifying the county and giving it an opportunity to correct the relevant action. *Id.* § 120.006(b)-(c).

70. And only then, "[o]n request by the criminal justice division of the office of the governor," is the Comptroller authorized to "determine whether a county has implemented a proposed reduction or reallocation" under SB23. *Id.* § 120.007. Thus, the Comptroller cannot investigate and make findings under SB23 *sua sponte*; the Comptroller must first be referred a "potentially valid" complaint from the Governor's Office.

71. The Governor's Office has not notified Harris County of any complaint concerning Harris County's FY23 Proposed Budget. Accordingly, no such complaint has been lawfully referred to the Comptroller, and the Comptroller lacks any legal authority to make a determination

regarding that budget. Comptroller Hegar therefore acted *ultra vires* in investigating and purportedly making determinations regarding Harris County's FY23 Proposed Budget.

72. Accordingly, pursuant to the UDJA, Harris County seeks the following declaratory judgment from the Court:

- a. Comptroller Hegar acted *ultra vires* by investigating and making determinations about Harris County's FY23 Proposed Budget because he was not referred a complaint concerning the FY23 Proposed Budget from the Governor's Office. *See* Tex. Loc. Gov't Code § 120.006-.007. The statute does not permit the Comptroller to make determinations concerning budgets without having first been referred a complaint by the Governor's Office made by a resident of the affected county. The Comptroller, as a public official, has no discretion or authority to misinterpret the law. *Houston Belt & Terminal Ry. Co.*, 487 S.W.3d at 163.

**C. The Governor's Office and Comptroller acted *ultra vires* by incorrectly applying SB23 and wrongly finding Harris County implemented a reduction in law enforcement appropriation.**

73. Under SB23, an election is required if the county "*adopts* a budget for a fiscal year that, compared to the budget *adopted* by the county for the preceding fiscal year . . . reduces" the appropriation for a law enforcement agency on either an absolute or percentage basis. Tex. Loc. Gov't Code § 120.002(a)(1)(A)-(B) (emphasis added). Accordingly, SB23 requires comparing one adopted budget to the adopted budget for the preceding fiscal year.

74. As explained above in paragraphs 23-31, compared to the adopted budget for the preceding fiscal year, the FY23 Proposed Budget *increases* the appropriation for each Constable Precinct, including Precincts 4 and 5, on both an absolute basis and a percentage basis.

75. Even if Section 120.007 allowed the Comptroller to issue a determination regarding proposed budgets—which it does not—Comptroller Hegar acted outside his authority and contrary to the law in purporting to determine that Harris County's "proposed budget published on Aug. 17, 2022, represented a reduction (actual or proposed) in funding to the Constables Office when

compared to the annualized short fiscal year budget” and that such budget “implements a reduction described by Local Government Code, Section 120.002(a).”

76. Similarly, complaints about budgetary “rollover” policies are not valid under SB23 because the rollover amounts available in Harris County’s pre-2021 budgeting policy were not part of any “budget adopted by the county.” The amount of rollover funds were unknown at the time of each adoption and only made available later to departments several months after each year’s budget was adopted.

77. Comptroller Hegar, Governor Abbott, and Director Snoddy all acted outside their authority and contrary to the law in purporting to determine that Harris County’s 2021 decision to end its “rollover” budget practice constituted a reduction in law enforcement appropriations under SB23 because their determination did not rely on comparing two adopted budgets.

78. Harris County’s rollover policy changed in March 2021, long before SB23 was drafted and enacted, and almost a year before Chapter 120 was effective. In fact, the rollover policy was amended before SB23 was even introduced in the Senate. Similarly, the Constables’ complaints about the “rollover” funds were expressly limited to their FY21-22 budgets, which were adopted before Chapter 120 became effective (or even existed).

79. Comptroller Hegar, Governor Abbott, and Director Snoddy therefore all acted outside their authority and contrary to the law in determining that Harris County’s 2021 decision to end its “rollover” budget practice and the corresponding impact on FY21-22 spending constituted a reduction in law enforcement appropriations under SB23.

80. Accordingly, pursuant to the UDJA, Harris County seeks the following declaratory judgments from the Court:

- a. Comptroller Hegar acted *ultra vires* in purporting to determine that Harris County’s FY23 Proposed Budget would reduce law enforcement funding

under SB23 because the FY23 Proposed Budget, if adopted and implemented, would comply with the requirements of Texas Local Government Code Section 120.002(a).

- b. Comptroller Hegar acted *ultra vires* by determining Harris County's change to its rollover policy constitutes a reduction in law enforcement funding under SB23 because Comptroller Hegar's conclusion relies on comparing figures other than those in an adopted budget versus an adopted budget, which is all the statute permits to be compared.
- c. Governor Abbott acted *ultra vires* by deeming "potentially valid" and referring to the Comptroller a complaint that Harris County's change to its rollover policy constitutes a reduction in law enforcement funding under SB23 because the Governor's conclusion relies on comparing figures other than those in an adopted budget versus an adopted budget, which is all the statute permits to be compared.
- d. Director Snoddy acted *ultra vires* by deeming "potentially valid" and referring to the Comptroller a complaint that Harris County's change to its rollover policy constitutes a reduction in law enforcement funding under SB23 because the Director's conclusion relies on comparing figures other than those in an adopted budget versus an adopted budget, which is all the statute permits to be compared.
- e. Comptroller Hegar, Governor Abbott, and Director Snoddy acted *ultra vires* by determining Harris County's change to its rollover policy potentially or actually constitutes a reduction of law enforcement funding under SB23 because the change occurred before SB23 was effective and the Constable's complaints addressed the FY21-22 budget, which was also adopted before SB23 became effective.

#### SECOND CAUSE OF ACTION

#### **Declaratory Judgment: Commissioner Hegar's statements do not constitute a determination under SB23**

81. Plaintiff incorporates by reference and re-alleges the facts and allegations contained in the foregoing paragraphs 1 through 80, as if set forth verbatim herein.

82. As explained above, Harris County is entitled to declaratory relief to establish the impact, if any, of Comptroller Hegar's actions and statements under SB23.

83. Comptroller Hegar has no authority under SB23 to make determinations concerning proposed budgets.

84. Accordingly, pursuant to the UDJA, Harris County requests that the Court declare any actions or statements from Comptroller Hegar prior to the adoption and implementation of Harris County's FY23 budget have no effect under SB23 on Harris County's FY23 budget.

#### **ATTORNEY'S FEES**

85. Plaintiff incorporates by reference and re-alleges the facts and allegations contained in the foregoing paragraphs 1 through 84, as if set forth verbatim herein.

86. Under the UDJA, "the court may award costs and reasonable and necessary attorney's fees as are equitable and just." Tex. Civ. Prac. & Rem. Code § 37.009.

87. It was necessary for Plaintiff to secure the services of the undersigned counsel to prepare and prosecute this suit. Judgment for costs and attorney's fees through final judgment after appeal should be granted against Defendants Comptroller Hegar, Governor Abbott, and Director Snoddy and in favor of Plaintiff for the use and benefit of Plaintiff's counsel.

#### **APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION**

88. Harris County requests that the court issue a temporary restraining order ("TRO") and a temporary injunction against Defendants Comptroller Hegar, Governor Abbott, and Director Snoddy to prevent imminent and irreparable harm to the County. Harris County further requests that upon final hearing, the court award a permanent injunction against Defendants. In support of this application for TRO, temporary injunction, and permanent injunction (collectively, "injunctive relief"), Harris County respectfully shows the Court as follows:

#### **GROUND FOR INJUNCTIVE RELIEF**

89. Plaintiff incorporates by reference and re-alleges the facts and allegations contained in the foregoing paragraphs 1 through 8884, as if set forth verbatim herein.

90. Plaintiff also incorporates by reference the attached affidavits of Adrian Garcia and David Berry, and the evidence attached thereto, in support of this application for temporary and permanent injunctive relief.

91. Temporary injunctive relief is necessary here to preserve the status quo prior to a hearing on a temporary injunction. The “purpose of a TRO is to preserve the status quo.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (footnote omitted). The status quo is the “last, actual, peaceable, non-contested status which preceded the pending controversy.” *Id.* (quoting *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589 (Tex. 1962)). The last, actual, peaceable, non-contested status was Harris County’s ability to propose, adopt, and implement a fiscal year budget without unlawful interference from Defendants. *See generally* Tex. Loc. Gov’t Code ch. 111.

92. The decision to grant a temporary injunction falls within the trial court’s sound discretion. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). To be entitled to a temporary injunction in Texas, a party must show: “(1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.” *Id.* at 204. In evaluating these elements, courts also balance the equities and consider the public interest. *Reliant Hosp. Partners, LLC v. Cornerstone Healthcare Grp. Holdings, Inc.*, 374 S.W.3d 488, 503 (Tex. App.—Dallas 2012, pet. denied). For the reasons set forth below, Harris County establishes all of these elements, and the Court should enter a TRO followed by a temporary injunction.

93. First, Harris County has properly pleaded a cause of action against Defendants, subject to Texas’s liberal notice-pleading standard. *See Butnaru*, 84 S.W.3d at 204. As shown above, Harris County asserts a cause of action for declaratory judgment. This cause of action is well pleaded and is sufficient because it “gives fair and adequate notice of the facts upon which

the pleader bases [its] claims.” *Stokes v. Ferris*, 2004 WL 1065756, at \*6 (Tex. App.—Austin May 13, 2004, pet. denied) (quoting *Troutman v. Traeco Bldg. Sys., Inc.*, 724 S.W.2d 385, 387 (Tex. 1987)).

94. Second, Harris County has a probable right to relief and recovery against Defendants. To satisfy this element, Harris County “need not prove that [it] will ultimately prevail in the litigation; rather, the applicant must show [it] has a cause of action for which relief may be granted.” *Topheavy Studios, Inc. v. Doe*, 2005 WL 1940159, at \*3 (Tex. App.—Austin 2005, no pet.). As detailed above, Harris County has furnished evidence that supports a probable right to relief for declaratory judgment because Defendants’ actions do not comply with the relevant statute and exceeded Defendants’ lawful authority. A “claimant who successfully proves an ultra vires claim is entitled to prospective injunctive relief, as measured from the date of injunction.” *City of El Paso v. Heinrich*, 284 S.W.3d 366, 376 (Tex. 2009).

95. Third, Harris County will suffer probable, imminent, and irreparable harm without a temporary injunction. “An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru*, 84 S.W.3d at 204. There is no adequate remedy at law that will give Harris County complete, final, and equitable relief because, absent court action, Governor Abbott, Director Snoddy, and Comptroller Hegar will continue to exceed their legal authority at the cost of Harris County’s ability to negotiate and determine its budget and provide for the needs of its residents. Unless Defendants are immediately enjoined and restrained, Harris County will be unable to adopt and implement its FY23 Proposed Budget (or any other budget that might displease the Comptroller). As explained above, this could result in irreparable harm to the County and its

citizens in the form of drastic spending cuts, layoffs, inability to fund important projects, and reduction in law enforcement appropriations.

96. And finally, the Court should consider the relative effects of an injunction on the parties and the public at large. *See Reliant Hosp. Partners*, 374 S.W.3d at 503. An injunction would greatly benefit the four-and-a-half million residents of Harris County by allowing the county budget—and its accompanying increase in law enforcement funding therein—to be adopted and implemented without premature and unlawful interference by Defendants. In contrast, Defendants have no vested interest in the immediate implementation of their erroneous and unlawful determinations.

97. For these reasons, Harris County requests that the Court issue a TRO immediately enjoining Defendants from the acts below to protect the County from the irreparable harm described above and to maintain the status quo in the interim before the application for temporary injunction may be heard. Harris County requests that the Court enter a TRO enjoining the following specific acts:

- a. The Governor and Director Snoddy from referring under Local Government Code § 120.006 any complaint to the Comptroller or determining a complaint is “potentially valid” if it is based on a Harris County proposed budget that has not been adopted and implemented—including any of Harris County’s proposed, unimplemented budgets for FY23;
- b. The Comptroller from making any determination under Local Government Code § 120.007 regarding a Harris County proposed budget before that budget has been adopted or implemented—including any of Harris County’s proposed, unimplemented budgets for FY23—other than the determination that the proposed budget has not been implemented;
- c. The Comptroller from investigating or making any determination under Local Government Code § 120.007 regarding any of Harris County’s budgets for FY23 until the Governor’s Office refers to the Comptroller a complaint from a Harris County resident about Harris County’s FY23 budget;

- d. The Governor, Director Snoddy, and the Comptroller from making any determination pursuant to Local Government Code Chapter 120 that Harris County's FY23 Proposed Budget (issued September 6, 2022), if adopted and implemented, would reduce the appropriations for Harris County Constables under Local Government Code § 120.002; and
- e. The Governor, Director Snoddy, and the Comptroller from making any determination pursuant to Local Government Code Chapter 120 that Harris County's elimination of its Rollover Policy reduced the appropriations for Harris County Constables under Local Government Code § 120.002.

98. Plaintiff further requests that, after a hearing on its request for temporary injunction, the Court temporarily enjoin Defendants from these acts until the trial of this cause and that, after final hearing, the Court permanently enjoin Defendants upon entry of final judgment.

#### **REQUEST FOR HEARING**

99. Harris County requests that the Court set its applications for TRO and temporary injunction for hearings, and after hearing the applications, issue a TRO and temporary injunction against Defendants Comptroller Hegar, Governor Abbott, and Director Snoddy enjoining them from the acts described above.

100. Plaintiff further requests that the Court set this matter for trial and, upon final hearing, permanently enjoin Defendants Comptroller Hegar, Governor Abbott, and Director Snoddy.

#### **BOND**

101. Plaintiff is exempt by law from the requirement to file a bond for a request for an injunction. *See* Tex. Civ. Prac. & Rem. Code § 6.001(c).

#### **PRAYER FOR RELIEF**

102. For these reasons, Plaintiff Harris County respectfully prays that Defendants Comptroller Hegar, Governor Abbott, and Director Snoddy be cited to appear and answer herein, and that the Court:

- a. Immediately hear this application for a TRO and after the hearing issue a TRO enjoining Defendants from the date of the TRO and for 14 days thereafter from the specific acts described above;
- b. Set a hearing on this application for a temporary injunction and after the hearing issue a temporary injunction enjoining Defendants from the specific acts described above;
- c. Order that Plaintiff Harris County recover from Defendants the reasonable costs and expenses Plaintiff incurred in obtaining the TRO and temporary injunction;
- d. Set a trial date and, upon final hearing, enter a permanent injunction that enjoins Defendants, and their officers, agents, servants, and employees, from performing the acts described above, and order that Plaintiff have judgment against Defendants, for:
  - i. the declaratory relief requested more specifically above;
  - ii. attorney's fees as requested herein;
  - iii. costs of court;
  - iv. post-judgment interest; and
  - v. and such other and further relief to which Plaintiff may be entitled.

Dated: September 6, 2022

Respectfully submitted,

*/s/ Justin P. Tschoepe*

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**Certificate of Service**

I certify that, for the purpose of the hearing on the temporary restraining order, this Verified Original Petition and Application for a Temporary Restraining Order, Temporary Injunction, and Permanent Injunction was served on counsel in the Office of the Attorney General of Texas via email on September 6, 2022.


*/s/ Bonnie C. Fraase*

Bonnie C. Fraase

**VERIFICATION**

My name is David Berry, and I am an employee of the following governmental agency: Harris County. I am executing this declaration as part of my assigned duties and responsibilities. I am the Harris County Administrator and Budget Officer. Based on my experience, my assigned duties and responsibilities, and through my review of County records and correspondence and other public records, I have personal knowledge of the facts contained in the attached Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Comptroller Hegar, Governor Abbott, and Director Snoddy. I declare under penalty of perjury that the facts stated therein are true and correct.

Executed in Harris County, State of Texas, on September 6, 2022.

  
\_\_\_\_\_  
David Berry