

DELIA GARZA, in her official	§	In the District Court
capacity as Travis County Attorney;	§	
JOSÉ P. GARZA, in his official	§	
capacity as Travis County District	§	
Attorney; TRAVIS COUNTY;	§	
JAMES MONTOYA, in his official	§	
capacity as El Paso County District	§	
Attorney; CHRISTINA SANCHEZ,	§	
in her official capacity as El Paso	§	
County Attorney; and	§	
EL PASO COUNTY,	§	459 <sup>th</sup> Judicial District
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
KEN PAXTON, in his official capacity as	§	
Attorney General for the State of Texas,	§	
and the OFFICE OF THE	§	
ATTORNEY GENERAL FOR	§	
THE STATE OF TEXAS,	§	
<i>Defendants.</i>	§	Travis County, Texas

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**PLAINTIFFS’ SUPPLEMENT AND BRIEF IN SUPPORT  
OF APPLICATION FOR TEMPORARY  
AND PERMANENT INJUNCTION**

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Travis County Attorney Delia Garza, Travis County District Attorney José P. Garza, Travis County, a political subdivision of the State of Texas, El Paso County District Attorney James Montoya, El Paso County Attorney Christina Sanchez, and El Paso County, a political subdivision of the State of Texas (collectively “Plaintiffs”) file this Supplement and Brief in Support of Application for Temporary and Permanent Injunction in order to halt the enforcement of Chapter 56 of the Texas Administrative Code (the “Challenged Rules”) promulgated by Attorney General Ken Paxton (“Paxton”) and the Office of the Attorney General for the State of Texas (“OAG”) (collectively “Defendants”). Defendants’ creation of the Challenged Rules violated the Texas Constitution and the Administrative Procedure Act. Adoption and enforcement of the Challenged

Rules by Defendants immediately and irreparably harms Plaintiffs and the public for which they seek immediate relief. Plaintiffs incorporate by reference, as though set out fully, the allegations and authorities in their verified Original Petition for Declaratory Judgment and Injunctive Relief.

## I. BACKGROUND

1. The Challenged Rules unconstitutionally expand the authority of the Office of the Attorney General to the detriment of crime victims and taxpayers of Texas. The Challenged Rules require only certain Texas prosecutors<sup>1</sup> to disclose entire case files, expressly including confidential and privileged information, and to provide initial, quarterly, and annual reports to Defendants at the considerable expense of the chosen counties and, necessarily, their taxpayers. In doing so, Defendants violated the Texas Constitution's separation of powers between the Executive and Judicial Branches and the Executive and Legislative Branches. Their adoption further violates the Administrative Procedure Act in their adoption.

2. Defendants' stated objective for the Challenged Rules, as stated in Defendants' press release, conflicts with the relied upon statutory basis to gather prosecutorial data for reporting requirements. The press release reads, the Challenged Rules are intended to, "... assist citizens in determining whether their local elected officials are inadequately prosecuting certain categories of crime, releasing dangerous criminals back into the community, engaging in selective prosecutions, or otherwise failing to uphold their obligations." The press release further reads, "[t]his rule will enable citizens to hold rogue DA's accountable." *See Exhibit A* to Plaintiffs' Original Petition. Gathering and disseminating confidential information, purportedly to solicit citizen complaints, is not the role of the OAG.

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<sup>1</sup> Those in counties of population over 400,000. 1 Tex. Admin. Code § 56.1.

3. The consequence contained in the Challenged Rules is the purported ability to declare any non-compliance as “official misconduct” within the meaning Chapter 87 of the Texas Local Government Code. Tex. Loc. Gov’t Code § 87.011,<sup>2</sup> 1 Tex. Admin. Code § 56.8(1). The Texas Legislature did not authorize any such declaration. In fact, the legislature went to some length to carefully define “official misconduct,” and it did not include noncompliance with an administrative rule. The Challenged Rules would require Plaintiffs to commit violations of law, including violations of victims’ privacy and confidentiality rights, divulging confidential grand jury information, and unlawfully disclosing criminal history information protected under federal and state law. In Chapter 87 removal proceedings, the presiding judge holds discretion whether any citation issues for service of the petition. Tex. Loc. Gov’t Code § 87.016.<sup>3</sup> Ignoring the codified definition of “official misconduct,” the Challenged Rules assert that any violation of the Challenged Rules “without limitation” may be construed by the OAG as “official misconduct.” 1 Tex. Admin. Code § 56.8(1).

4. Similarly, section 56.8(2) of the Challenged Rules purport to authorize the OAG to file a petition for quo warranto under Chapter 66 of the Texas Civil Practice and Remedies Code for the performance of an act that “by law causes the forfeiture of the County or District Attorney’s office.” 1 Tex. Admin. Code § 56.8(2); Tex. Civ. Prac. & Rem. Code § 66.001(2). Again, the legislature has vested in district judges the discretion to decide whether a quo warranto petition proceeds. The Challenged Rules simply declare any violation sufficient action for forfeiture of office. Quo warranto proceedings do not order compliance. Tex. Civ. Prac. & Rem. Code § 66.003.

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<sup>2</sup> Chapter 87 authorizes filing a sworn petition to seek removal of a public official by a “resident” of the state who has lived for at least six months in the county where the petition is to be filed. Tex. Loc. Gov’t Code § 87.015. The Texas Legislature expressed a clear preference that such actions are to be initiated by residents of a county under the authority of the accused official and not the Attorney General.

<sup>3</sup> “If the judge refuses to issue the order for citation, the petition shall be dismissed at the cost of the person filing the petition.” Tex. Loc. Gov’t Code § 87.016(c).

5. The section following “Compliance” is section 56.9 addressing the “Oversight Advisory Committee.” Section 56.9 represents one of the most concerning encroachments under the Challenged Rules. That section creates an “oversight committee” of OAG employees. The Challenged Rules allow this committee to request “**entire case files**” based on submitted reports or “**any other information that the Oversight Advisory Committee desires** relating to criminal matters and the interests of the state on a case-by case basis.” 1 Tex. Admin. Code § 56.9(3)(c) (emphasis added). Such “case files,” by express definition in section 56.2(1) would include, “work product and other privileged or confidential information.” 1 Tex. Admin. Code § 56.2(1). The disclosure requirements also encompass materials related to historic and *ongoing* law enforcement investigations and criminal prosecutions, including victim information, grand jury information, and health information protected from disclosure under state and/or federal laws. There is an explicit lack of authority under the Texas Constitution to require these disclosures and reports and Plaintiffs’ and others’ expressed concerns of that disclosure of such protected information carrying both civil and criminal penalties were casually disregarded. 50 Tex. Reg. 2176-77, March 28, 2025.

6. The more subtle but even greater immediate harm involves the need to allocate significant funds to prepare to comply with any part of the Challenged Rules if they are not enjoined. The mandatory “initial report” under the Challenged Rules requires the compilation of the same 12 categories of information required under the “quarterly reports” obligation but dating back to January 1, 2021. 1 Tex. Admin. Code § 56.3(a)&(b). Even a cursory glance at the 12 categories suggests an incredibly time-consuming and costly effort to verify whether responsive materials may exist. 1 Tex. Admin. Code § 56.3(a)(1)-(12). Notably, and contrary to the express language of the Challenged Rules, Defendants have offered no guidance on their website to explain the process

to “submit reports electronically” of the information, nor do they have any portal, much less an encrypted one, for safeguarding these electronic submissions.<sup>4</sup>

7. Another undefined term in the Challenged Rules is the requirement to disclose the number of “prosecutorial decisions based on Title 9 of the Penal Code.” 1 Tex. Admin. Code § 56.3(a)(3). This required category appears to relate to possible justification for discharge of a firearm under *Chapter 9* of the Penal Code, but as written, the rule pertains to “*Title 9*” (an unexplained change from the proposed rules made by Defendants without opportunity for further comment). Title 9 encompasses all offenses against the public order and decency. Ascertaining how many cases dating back to January 2021 involved such charges and then determining if they involved firearm discharge would be extraordinarily difficult and time consuming and would absorb tremendous resources that could otherwise be used to prosecute cases. As written, due to this and other vagaries, compliance within 90 days from the effective date of the Challenged Rules is extremely difficult to achieve with sufficient degree of certainty when the purported consequence of noncompliance is so extreme and without legal authority. 1 Tex. Admin. Code § 56.5(a)(4).

8. Because of the consequences for noncompliance, Plaintiffs have begun allocating resources to fulfill the reporting requirements, pulling numerous attorneys and staff away from their ordinary responsibilities to delve into four years of data and coordinate the process for fulfilling reporting obligations. This has the added consequence of impacting the other substantive operations of the prosecutors’ offices. Plaintiffs had to mobilize fully to mitigate the risk of non-compliance with the Challenged Rules.

9. Notwithstanding Defendants’ unsupported contentions in their Fiscal Impact statement that any associated cost to local governments is “minimal,” the cost for compliance by the only offices

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<sup>4</sup> 1 Tex. Admin. Code § 56.5(b).

affected – large urban prosecutors’ offices – will run into the millions of dollars in just the first year. Depending on the number of entire “case files” that may be requested by the Oversight Advisory Committee, that number would grow exponentially. Put simply, the cost for compliance cannot possibly be “absorbed” into Plaintiffs’ ongoing operations as Defendants contend. 50 Tex. Reg. 2174, March 28, 2025. Plaintiffs have already been required to pursue substantial additional funds with their respective governing bodies to prepare for compliance with the Challenged Rules, including, but not limited to, increased personnel resources, specialized software, equipment, and data storage costs.<sup>5</sup>

10. For the reasons set out herein, and in Plaintiffs’ Original Petition, Plaintiffs respectfully request a declaratory judgment and injunctive relief against Defendants to enjoin the implementation and enforcement of the Challenged Rules, thereby maintaining the separation of powers, requiring compliance with the APA, acknowledging prosecutorial and judicial discretion, protecting privileged, private, and confidential information, and leaving the evaluation of the performance of duly elected prosecutors in the hands of their local voters.

## **II. SUPPORT FOR TEMPORARY AND PERMANENT INJUNCTION**

11. Plaintiffs request the Court find the Challenged Rules were adopted outside of the Attorney General’s lawful authority, through ultra vires acts, and find Defendants are without authority to adopt any of the Challenged Rules. The adoption of the Challenged Rules violated the constitutional separation of powers and the APA. If the Court were to determine the Defendants only stated statutory basis (Government Code section 41.006) authorized adoption of the Challenged Rules, then Plaintiffs’ request the Court also find that section is unconstitutional and/or

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<sup>5</sup> It is also difficult to imagine how Defendants can assert there will be little to no fiscal impact on their own (i.e., the State’s) resources required to establish a new secure electronic data transfer portal and to then review and analyze numerous Petabytes (thousands of Terabytes) of electronic data that will be transmitted to them initially, and thereafter on a quarterly basis, by prosecutors in the 13 largest counties subject to the Challenged Rules.

that Defendants exceeded the scope of their legislative grant of authority, rendering the Challenged Rules invalid.

12. Compliance with the Challenged Rules will substantially disrupt the daily operations of the prosecutors' offices in the largest jurisdictions in the state, creating legal uncertainty regarding compliance with confidentiality laws. If not enjoined, the Challenged Rules will erode prosecutorial independence, delay justice for victims, and impose severe financial costs on counties. The burdens, costs, and constitutional violations are immediate, ongoing, and irreparable, necessitating quick judicial intervention and the provision of injunctive relief, well before the first reporting deadline of June 30, 2025.<sup>6</sup> The unavoidable nature of the harm began with the effective date of the Challenged Rules and is ongoing.

#### **A. Evidence Supporting Application**

13. In addition to the facts with the verified Original Petition, Plaintiffs offer the declarations from the following witnesses:

Exhibit 1: Declaration of Danny W. Smith, Jr. the Assistant Director of the Family Violence Division for the Office of the Travis County Attorney;

Exhibit 2: Declaration of Holly Taylor the Director of the Public Integrity and Complex Crimes Division for the Office of the Travis County District Attorney; and

Exhibit 3: Declaration of Alma Trejo, Assistant County Attorney for the Office of the El Paso County Attorney.

Exhibit 4: Declaration of Amy Lechuga the Chief of Staff for the Office of the El Paso County District Attorney.

These declarations are attached hereto and incorporated by reference as though set out fully.

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<sup>6</sup> Technically, it appears, although this too is unclear, that the "quarterly" report for the third reporting quarter is due June 30, 2025, before the "initial" report. 1 Tex. Admin. Code § 56.5(a)(1)-(2).

## **B. Argument and Authorities**

14. Plaintiffs have a probable right to injunctive relief, and they, along with victims of crime whose interests they also seek to preserve, will suffer probable, imminent, and irreparable harm without temporary and permanent injunctive relief. Disruption of fundamental rules of confidentiality, privilege, and prosecutorial discretion cannot be usurped through contrived regulatory or oversight authority. Plaintiffs seek a temporary injunction and a permanent injunction to enjoin application and enforcement of the Challenged Rules.

15. A temporary injunction is necessary to preserve the status quo during the pendency of this litigation. Under the Challenged Rules, the Plaintiffs' initial report is due on July 1, 2025. Plaintiffs seek to enjoin application and enforcement of the Challenged Rules in advance of the deadline to produce the initial report, on or about July 1, 2025, and the quarterly report potentially due June 30, 2025. 1 Tex. Admin. Code § 56.5(a)(2)(c) & (4).

### ***1. Jurisdiction and Injunction Standards***

16. Jurisdiction over Plaintiffs' challenges to the Texas Administrative Code Chapter 56 and/or Texas Government Code section 41.006 is proper in this Court under the Uniform Declaratory Judgment Act ("UDJA"). The UDJA waives governmental immunity when the plaintiff is challenging the validity of a statute or rule. *See* Tex. Civ. Prac. & Rem. Code §§ 37.004, 37.006; *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 n. 6 (Tex. 2009); *Tex. Ed. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994). Jurisdiction over Plaintiffs' challenges to Texas Administrative Code Chapter 56 is also proper in this Court under the Administrative Procedures Act. The Administrative Procedures Act waives governmental immunity when the plaintiff is challenging the validity of an agency's rule. Tex. Gov't Code § 2001.038(b).

17. A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Plaintiffs must prove three elements to obtain a temporary injunction: (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.* Plaintiffs are not required to establish that they will prevail at trial to obtain a temporary injunction. *Id.* at 211.

18. 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. *Id.*, at 204. If Defendants are permitted to enforce the Challenged Rules, the initial reports alone will unduly interfere with the Prosecutor Plaintiffs' spheres of authority under the Judicial Branch of the Texas Constitution so that their ability to exercise their constitutionally assigned powers is unconstitutionally impacted, by requiring the Plaintiff Prosecutors to disclose their core work product, non-core work product, privileged communications, protected grand jury information, and evidence or potential evidence containing immensely private (and protected) information of law enforcement officers, crime victims, witnesses, and criminal defendants, in both completed and ongoing law enforcement investigations and criminal prosecutions. Preparing for and making the initial reports will also result in significant financial harm to all the Plaintiffs, as well as harm beyond redress due to reduction or withdrawal of resources from core prosecutorial responsibilities and county governance. If not enjoined, damages will not be available as a remedy and could not compensate Plaintiffs for the reasons discussed herein and in the verified Original Petition. *See State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020).

19. The Texas Supreme Court has held that, in a temporary injunction hearing, the only question before the Court is the right to preserve the status quo pending trial on the merits. *Transp.*

*Co. of Tex. v. Robertson Transp., Inc.*, 261 S.W.2d 549, 552 (Tex. 1953). Plaintiffs “need only show a probable right and probable injury;” it is not required to prove it will prevail at trial. *Id.* The Austin Court of Appeals held that the “status quo can never be a course of conduct which is a prima facie violation of law.” *DeNoie v. Bd. of Regents of Univ. of Tex. Sys.*, 609 S.W.2d 601, 603 (Tex. Civ. App.—Austin 1980, no writ). Indeed, “courts are not required to bide their time and wait until the parties see fit to discontinue their unlawful acts.” *Magnolia Petroleum Co. v. State*, 218 S.W.2d 855, 860 (Tex. Civ. App.—Austin 1949, writ ref’d n.r.e.). Rather, they have a duty to issue prohibitive or mandatory injunctive relief to restrain the illegal conduct. *Houston Compressed Steel Corp. v. State*, 456 S.W.2d 768, 773 (Tex. Civ. App.—Houston [1st Dist.] 1970, no writ).

20. The Texas Supreme Court has said repeatedly that the legislature is in the best position to waive or abrogate immunity, “because this allows the Legislature to protect its policymaking function.” *Heinrich* at 370, (quoting *Tex. Nat. Res. Conservation Comm’n v. IT–Davy*, 74 S.W.3d 849, 853 (Tex.2002)). “A state official’s illegal or unauthorized actions are not acts of the State. Accordingly, an action to determine or protect a private party’s rights against a state official who has acted without legal or statutory authority is not a suit against the State that sovereign immunity bars.” *Id.*, (quoting *Fed. Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 405 (Tex.1997)). “From this rationale, it is clear that suits to require state officials to comply with statutory or constitutional provisions are not prohibited by sovereign immunity .... To fall within this *ultra vires* exception, a suit must not complain of a government officer’s exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.” *Id.* at 372. Here, Defendants violated their constitutional functions infringing on those of Plaintiffs, a matter about which there is no discretion. Regardless, the UDJA waives

immunity and even authorizes the award of costs and attorney's fees when plaintiffs challenge the validity of a statute or rule. *See* Tex. Civ. Prac. & Rem. Code §§ 37.004, 37.006; *Heinrich*, at 373 n. 6; *Tex. Ed. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994).

## **2. Bases for Injunctive Relief.**

21. Based on Plaintiffs' Original Petition, and as demonstrated by the attached exhibits, Plaintiffs can satisfy each of the three requirements of a temporary injunction. The first requirement is met because the action is brought against the agency that adopted the rules Plaintiffs seek to be declared invalid, and against Defendant Paxton as the head of that agency. The second requirement is met because, as set out in detail in the verified Original Petition, Plaintiffs have a probable right to recover on their claims that: (1) Defendants lack statutory authority to adopt the Challenged Rules; (2) the Challenged Rules exceed the scope of Defendants' rule-making authority; (3) Defendants did not comply with the APA's rulemaking procedures in adopting the Challenged Rules; and (4) the Challenged Rules and/or Texas Government Code section 41.006 violate separation of powers under the Texas Constitution in numerous ways.

22. The third requirement is met because Plaintiffs will suffer probable, imminent, and irreparable injury absent a temporary injunction. The Texas Supreme Court has held that "[a]n 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." *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020). Here, money damages are not available to Plaintiffs because the APA and the Uniform Declaratory Judgment Act only waive sovereign immunity for a suit seeking a declaratory judgment and/or injunctive relief. It is well settled that the invasion or violation of a

constitutional right is not redressable in monetary damages.<sup>7</sup> Moreover, production of the initial report would be time-consuming, costly, unduly burdensome, and would disrupt the ongoing work and operations of the affected offices by diverting key personnel away from their core prosecutorial responsibilities. At this time, the Travis County Plaintiffs, in collaboration with the County's Planning and Budget office have estimated that it will cost \$740,000.00 in added expense to Travis County to respond and comply with the Challenged Rules in the remainder of fiscal year 2025, and cost approximately \$1,970,000.00 just for fiscal year 2026. Defendants' statements of negligible fiscal impact are incorrect and reflect the same cursory and conclusory approach taken by Defendants in response to all of the public comments against the Challenged Rules. 50 Tex. Reg. 2174, 2176, March 28, 2025.

23. The Challenged Rules also presume to create records retention requirements that not only go beyond those created by the Texas State Library and Archives but also create undefined and entirely unpredictable retention responsibilities. Rule 56.6 requires reporting entities "implement document retention policies reasonably designed to preserve all documents which are, *or may be*, subject to the requirements of this chapter." 1 Tex. Admin. Code § 56.6. (emphasis added). Under these rules, adoption of the appropriate retention schedules as promulgated by the Texas State Library and Archives provides no safe harbor. The further requirement to "preserve documents for at least two years after they are to be reported" assumes prosecutors can know when things are to be reported. *Id.* Because Rule 56.9(c) allows the Oversight Advisory Committee to request "entire

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<sup>7</sup> *E.g., Operation Rescue-National v. Planned Parenthood of Houston*, 937 S.W.2d 60, 77 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1996) ("Under Texas law, a violation of a constitutionally guaranteed right inflicts irreparable injury warranting injunctive relief. In addition, disruption of business constitutes the type of harm for which an injunction may issue.") (internal citations omitted), *aff'd as mod.*, 975 S.W.2d 546 (Tex. 1998). *Accord, Ex parte Perry*, 483 S.W.3d 884, 898 (Tex. Crim. App. 2016) ("If a statute violates separation of powers by unconstitutionally infringing on a public official's own power, then the mere prosecution of the public official is an undue infringement on his power. And given the disruptive effects of a criminal prosecution, pretrial resolution of this type of separation of powers claim is necessary to ensure that public officials can effectively perform their duties.").

case files based on the submitted reports or any other information that the Oversight Advisory Committee desires related to criminal matters or the interests of the state,” there is no way to anticipate whether, when, and what information will be requested. This uncertainty makes it virtually impossible to determine any date to begin counting an additional two-year retention period for such unknown, and unknowable, records. Moreover, Plaintiffs had no prior notice such an expectation might be imposed.<sup>8</sup>

*a. Cause of Action*

24. “To constitute a justiciable controversy, there must exist a real and substantial controversy involving genuine conflict of tangible interests and not merely a theoretical dispute.” *Bexar-Medina-Atascosa Ctys. Water Control & Imp. Dist. No. 1 v. Medina Lake Prot. Ass’n*, 640 S.W.2d 778, 779–80 (Tex. App.—San Antonio 1982, writ refused n.r.e.). In the present case the Plaintiffs have the right to seek court resolution of the validity and enforceability of the Challenged Rules. Parties may have the right to relief from “uncertainty and insecurity” with respect to their status regarding regulations. *Id.* at 780. Ripeness and standing are issues closely related to the presence of a justiciable controversy. *Texas Ct. Reps. Certification Bd. v. Esquire Deposition Servs., L.L.C.*, 240 S.W.3d 79, 92 (Tex. App.—Austin 2007, no pet.). As some of the prosecutors and counties directly affected by the Challenged Rules, Plaintiffs possess standing to assert these claims and pursue appropriate relief. Ripeness analysis involves whether, at the time a lawsuit is filed, the facts have developed sufficiently to determine if an injury has occurred or is likely to occur, rather than being contingent or remote. 13A WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE, § 3532.1, at 130 (2d ed.1984). Ripeness focuses on whether the case involves

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<sup>8</sup> Pronouncements requiring retroactive retention of records have been held to be subject to challenge under section 2001.038. *Badger Tavern, L.P. v. Hegar*, No. 03-18-00291-CV, 2018 Tex. App. LEXIS 7457, at \*9 (Tex. App.—Austin Sep. 11, 2018, pet. denied).

“uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Id.* at § 3532, at 112. Here the constitutional injury has occurred, is ongoing, and will soon substantially grow with the ever-increasing reduction in prosecutorial resources and costs and required release of private and confidential information. In considering ripeness, courts must “consider whether, when a lawsuit is filed, the facts are sufficiently developed ‘so that an injury has occurred or is likely to occur, rather than being contingent or remote.’” *Patel v. Tex. Dep’t of Licensing & Regulation*, 469 S.W.3d 69, 78 (Tex.2015) (quoting *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851–52 (Tex.2000) (citations omitted)). There is no debate that under Chapter 56, the reports are due imminently, and Defendants have conceded “it will take some time for employees to compile the required reporting data.” 50 Tex. Reg. 2176, March 28, 2025.

25. The *Heinrich* case, and many others have made clear that a party can maintain a suit to determine its rights without legislative permission when challenging an official’s illegal or unauthorized actions that are not acts of the State. *Heinrich*, at 370. Plaintiffs do not complain of a government officer’s exercise of *discretion*; instead, they alleged and have a substantially likelihood of proving that Defendant acted without legal authority entitling Plaintiffs to a declaration that authority was exceeded and order of injunctive relief. *Id.* at 372; *accord*, *T.L. v. Cook Children’s Med. Ctr.*, 607 S.W.3d 9, 35 (Tex. App.—Fort Worth 2020, n.r.e.), cert. denied, \_\_\_ U.S., \_\_\_, 141 S.Ct. 1069 (2021). Plaintiffs’ complaints do not consist of a mere attack on a particular order, and nothing in the Original Petition displaces the district court’s ability to determine the scope of Defendants’ authority through this action for declaratory judgment. *Abbott v. G.G.E.*, 463 S.W.3d 633, 655 (Tex. App.—Austin 2015, pet. denied).<sup>9</sup>

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<sup>9</sup> The *G.G.E.* case makes clear that the narrow appeal available through the APA does not displace a district court’s “ability to determine the scope of an agency’s authority” under the UDJA. *Id.* (quoting *Texas Mun. Power Agency v. Public Util. Comm’n*, 100 S.W.3d 510, 519–20 (Tex.App.—Austin 2003, pet. Denied)). Jurisdiction exists under the

26. The Declaratory Judgment Act confers on Texas courts the authority to “declare rights, status, and other legal relations whether or not further relief is or could be claimed.” *Texas Dep’t of Pub. Safety v. Moore*, 985 S.W.2d 149, 153 (Tex. App.—Austin 1998, no pet.) (quoting Tex. Civ. Prac. & Rem. Code Ann. § 37.003). “The Legislature intended the UDJA to be remedial, to settle and afford relief from uncertainty and insecurity with respect to rights, and to be liberally construed.” *Id.* (citing Tex. Civ. Prac. & Rem. Code Ann. § 37.002).

27. “Moreover, the determination of the constitutionality of a statute is unquestionably an issue fit for judicial review...” See *Juliff Gardens, L.L.C. v. Texas Comm’n on Env’t Quality*, 131 S.W.3d 271, 277–78 (Tex. App.—Austin 2004, no pet.) citing *Moore*, 985 S.W.2d at 153 (observing that refusing entertain a challenge to the constitutionality of a statute that would require unnecessary expense of resources when a determination would render proper characterization of the challenges law unnecessary). Because Plaintiffs assert that Defendants have acted ultra vires and the UDJA allows a cause of action for the requested relief, and the issues of standing and ripeness cannot be reasonably disputed, the Court should next assess Plaintiffs’ probable right to recover.

***b. Probable Right to Relief***

28. Constitutional challenges typically take two forms: facial and as-applied. *Tenet Hosps. Ltd. v. Rivera*, 445 S.W.3d 698, 702 & n.7 (Tex. 2014). In a facial challenge, the party challenging the statute claims that the statute always operates unconstitutionally. *Id.* at 702 (citing *United States v. Salerno*, 481 U.S. 739, 745 (1987); *Tex. Workers’ Comp. Comm’n v. Garcia*, 893 S.W.2d 504, 518 (Tex. 1995)). An as-applied challenge contends that the statute may be generally constitutional but asserts the same law operates unconstitutionally against plaintiff, specifically because of its application in particular circumstances. *Id.* & n.8 (citing *City of Corpus Christi v. Pub. Util.*

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UDJA when the substance of a plaintiff’s complaint challenges more than the validity of administrative rule governed exclusively by the APA and instead seeks construction and declaration of other rights. *Id.*

*Comm'n of Tex*, 51 S.W.3d 231, 240 (Tex. 2001); *Garcia*, 893 S.W.2d at 518 n. 16). Plaintiffs herein assert that the Challenged Rules are both facially invalid and will always operate unconstitutionally. Plaintiffs assert that section 41.006 is facially valid, although its purpose has long been extinguished, but any reading of it that authorizes the creation of the Challenged Rules constitutes an as-applied constitutional violation. A district court has original jurisdiction to issue an injunction prohibiting unlawful executive action. *Whitt v. Whitehead*, 900 S.W.2d 374, 375-76 (Tex. App.—Austin 1995, writ denied) (holding that district court has jurisdiction to enjoin enforcement of unlawful delegation).

29. As set forth in detail in the Original Petition, Defendants' claim of authority to enact the Challenged Rules fails any reasonable construction of the separation of powers under the Texas Constitution. The authority and functions of the Attorney General and the state's elected prosecutors are well-defined under the Executive and Judicial Departments of the State respectively, and have been analyzed at length by Texas courts, most particularly in *State v. Stephens*, 663 S.W.3d 45 (Tex. Crim. App. 2021), *Sadano v. State*, 70 S.W.3d 873 (Tex. Crim. App. 2002) (en banc), *Meshell v. State*, 739 S.W.2d 246 (Tex. Crim. App. 1987) (en banc). In these cases, as well as in *Hill County v. Sheppard*, 178 S.W.2d 261 (Tex. 1944), Texas' highest courts have held that the Texas Legislature may not reassign, abridge or impair the exclusive constitutional duties assigned to county and district attorneys. To the extent that Texas Government Code section 41.006 may confer any authority upon Defendants to impose rules that permit them to review the Plaintiff Prosecutors' decisions and seek to remove them based upon the manner in which they exercise their prosecutorial discretion, the statute is unconstitutional.

30. Similarly, the legislature has exclusive authority to empower the executive with rule-making authority, and it has not done so concerning the Challenged Rules. The legislature has on

numerous occasions clearly and reasonably extended such authority to the Attorney General, but it did not do so under section 41.006. of the Government Code. In fact, that section is the only remaining provision of a set of laws initiated over a century ago to permit the Attorney General to prepare a purely statistical report regarding prosecutions. That function now rests entirely with the Office of Court Administration. Tex. Gov't Code Ann. § 72.011.<sup>10</sup> In 2003, the legislature removed nearly all of the Attorney General's criminal reporting requirements.<sup>11</sup> The House Committee on Judicial Affairs eliminated those reporting requirement because this information "is collected by the Office of Court Administration rather than the attorney general's office" as well as stating the bill does not grant rulemaking authority.<sup>12</sup> House Comm. on Judicial Affairs, Bill Analysis, Tex. H.B. 2676, 78th Leg., R.S. (2003). Courts will not imply additional authority to agencies beyond the authority expressly conferred upon them by statute, nor may agencies create for themselves any excess powers. *Buddy Gregg Motor Homes, Inc. v. Marathon Coach, Inc.*, 320 S.W.3d 912 (Tex. App.—Austin 2010, no pet.); *Hunt v. City of Diboll*, 574 S.W.3d 406 (Tex. App. Tyler 2017, pet. denied). An agency may not exercise what is effectively a new power, or a power contradictory to the statute, on the theory that such a power is expedient for administrative purposes. *Southwestern Elec. Power Co. v. Public Utility Com'n*, 419 S.W.3d 414 (Tex. App. Amarillo 2011). Here, Defendants have taken an archaic statute, which confers no rule-making authority and a legislative purpose that is now defunct, as a springboard to craft new powers that would assume supervisory authority over prosecutors and/or unduly interfere with the Plaintiff Prosecutors'

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<sup>10</sup> Notably, when private information maintained by that Office is deemed appropriate for access by the Attorney General, the legislature specifically includes the Attorney General. *See* Tex. Gov't Code Ann. § 72.155 (giving the Attorney General access to protective order applications in the Protective Order Registry).

<sup>11</sup> Act of May 20, 2003, 78th Legis., R.S., ch. 691, §1, 2003 Tex. Gen. Laws 620, 620 (codified Tex. Gov't Code § 402.003).

<sup>12</sup> House Comm. on Judicial Affairs, Bill Analysis, Tex. H.B. 2676, 78th Leg., R.S. (2003).

effective exercise of their constitutionally assigned powers. Plaintiffs are entitled to an injunction to stop such an unconstitutional overreach.

31. Even if the Court found Defendants possessed the authority to promulgate the Challenged Rules under section 41.006, the Texas Supreme Court has spoken with great clarity on the issue of work product in the context of criminal prosecutions. *See State ex rel. Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994) (conditionally granting a writ of mandamus to prevent production of a district attorney's entire litigation file and noting the work product privilege applies to litigation files in criminal as well as civil litigation). "[T]he privilege extends to the entire litigation file, not only to documents which, considered individually, are attorney work product. *Id.* citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex.1993, orig. proceeding).<sup>13</sup> By purporting to authorize Defendants access to entire case files, the Challenged Rules clearly exceed the limits of what prosecutors may be required to release based on work product (particularly core work product) alone. As such, Plaintiffs have a probable right to relief.

32. Just as compelling, if not more so, is the purported override of numerous carefully crafted state and federal laws and regulations designed to protect the privacy and confidentiality of interested parties who are not before this Court. The laws and regulations are outlined to some extent in the verified Original Petition and the attached evidence. It would be nearly impossible to provide the entire set of protective laws that Defendants have simply ignored, claiming that they somehow fit within the same exceptions that govern prosecutors, despite lacking any prosecutorial role or authority. Plaintiffs have a probable right to relief from the Challenged Rules' requirement

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<sup>13</sup> The *Walker* court also relied on the observations of the United States Supreme Court: "Although the work product doctrine most frequently is asserted as a bar to discovery in civil litigation, its role in assuring the proper functioning of the criminal justice system is even more vital. The interests of society and the accused in obtaining a fair and accurate resolution of the question of guilt or innocence demand that adequate safeguards assure the thorough preparation and presentation of each side of the case." *Id.* at 381 (quoting *United States v. Nobles*, 422 U.S. 225, 238 (1975)).

that Plaintiffs ignore all potential legal impediments governing release of any information requested by Defendants based solely on the strength of the Defendants' inaccurate observation that, "The OAG is required to comply with the same confidentiality statutes for which the reporting entities are required to comply."<sup>14</sup> 50 Tex. Reg. 2176, March 28, 2025. Despite this representation in response to comments, the Challenged Rules place no restriction on Defendants' release of information. Defendants' further justification for disclosing confidential, sensitive, private, and privileged information lies in the claim that, "[r]eporting entities routinely submit their entire case files including all of the types of information specified in the comments...." Defendants may receive "entire case files" in response to an invitation from certain elected prosecutors to assist with specific cases after being duly deputized and appointed as assistants to that elected prosecutor, or receive portions of case files in limited situations involving potential gubernatorial pardons or federal habeas corpus review, the sharing of such information is confined to these or other very limited circumstances and is either driven solely by the discretion of the elected prosecutor or by very specific statutes enacted by the Texas Legislature dictating what information can be shared and how it must be handled. Plaintiffs herein have not been "routinely" sharing protected information with Defendants in the absence of such statutory protections.

33. Finally, commenters to Defendants' proposed rules explained that some of these protected categories of information can only be shared with those who possess a legitimate law enforcement purpose. Commenters noted that because Defendants have no original jurisdiction to prosecute state criminal offenses no legitimate purpose could exist. Defendants merely responded that there is no requirement of a legitimate law enforcement purpose "to receive information under Government Code § 41.006." This ignores the plain text of myriad state and federal statutes

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<sup>14</sup> The fallacy of this position is made clear by Defendants press release that the Challenged Rules will permit members of the public to use the gathered information to seek removal of certain prosecutors deemed to be "rogue".

governing the disclosure of protected information. 50 Tex. Reg. 2175, March 28, 2025. But a state agency, such as Defendants, may not enact regulations that are inconsistent with statutes other than those under which the regulations are issued. *State v. Jackson*, 376 S.W.2d 341 (Tex. 1964); *Railroad Com'n of Texas v. ARCO Oil and Gas Co.*, 876 S.W.2d 473 (Tex. App.—Austin 1994, writ denied). This dismissive approach to statutory requirements protecting the information and records required under the Challenged Rules compels injunctive relief and Plaintiffs have shown a likelihood of prevailing on this claim.

34. As discussed in greater detail below, Plaintiffs also have a probable right to relief based on the extraordinary and unauthorized imposition of cost in both staff time and monetary resources to fulfill the unconstitutional reporting requirements, just one hallmark of the many ways in which the Challenged Rules unduly interfere with the Plaintiff Prosecutors' ability to effectively exercise their constitutionally assigned prosecutorial powers. Commenters argued that the onerous and vague requirements represent an unfunded mandate, requiring diversion of resources and millions of dollars for compliance efforts, and necessitating case-by-case determinations of whether the circumstances fall within the requirements. 50 Tex. Reg. 2176, March 28, 2025. Defendants declined to make any changes, conceding “the OAG could not predict the exact cost amounts,” yet insisting without any analysis that such costs should be “minimal.” *Id.* The attached evidence confirms the burdens and costs will not be “minimal.”

35. This Court possesses jurisdiction to issue an injunction prohibiting unlawful executive action. *Canales v. Paxton*, No. 03-19-00259-CV, 2020 WL 5884123, at \*2 (Tex. App.—Austin Sept. 30, 2020) (citing *Witt v. Whitehead*, 900 S.W.2d 374, 375-76 (Tex. App.—Austin 1995, writ denied)). An unconstitutional statute is void from its inception and is to be considered no statute at all. *Id.* (citing *Ex parte E.H.*, 602 S.W.3d 486, 494 (Tex. 2020)). Because Defendants lack the

statutory authority to adopt the Challenged Rules; the rules exceed the scope of any of Defendant's rule-making authority; Defendants violated the Administrative Procedure Act; and the Challenged Rules and/or Government Code section 41.006 violate the separation of powers contained in the Texas Constitution, Plaintiffs have established a probable right to relief.

***i. Defendants lack statutory authority to adopt the rules***

36. According to Defendants, Chapter 56 was “necessary to implement Texas Government Code section 41.006,” which provides that “[a]t the times and in the form that the attorney general directs, the district and county attorneys shall report to the attorney general the information from their districts and counties that the attorney general desires relating to criminal matters and the interests of the state.” As noted above, nothing in section 41.006 contains authority for the Attorney General to review any and all criminal case files elected prosecutors possess or authority to second-guess prosecutorial discretion and internal employment decisions made by elected prosecutors. Contrary to the Challenged Rules’ stated justification to “ensure county and district attorneys are consistently complying with statutory duties....” Chapter 41 of the Texas Government Code does not place elected prosecutors under the supervision or direction of Defendants nor could it under the Texas Constitution.

37. The history of section 41.006 contains no legislative intent or authority for Defendants’ oversight of prosecutorial discretion or employment decisions. The critical factor in determining whether a state agency has exceeded its rule making powers is whether the rule is in harmony with the general objectives of the statute. In making this determination, a reviewing court must look not merely to a particular provision of the act, but to all applicable provisions. *Williams v. Texas State Bd. of Orthotics & Prosthetics*, 150 S.W.3d 563 (Tex. App.—Austin 2004, no pet.); *Chrysler Motors Corp. v. Texas Motor Vehicle Com’n*, 846 S.W.2d 139 (Tex. App.—Austin 1993, no writ);

*Hollywood Calling v. Public Utility Com'n of Texas*, 805 S.W.2d 618 (Tex. App.—Austin 1991, no writ). As discussed above, section 41.006 of the Texas Government Code seems to have originated with the first legislature in 1846 as part of three related statutes related to a statistical report on criminal prosecutions to the Texas Governor. However, it appeared in its current location in 1985 when the Texas Government Code was created as part of the State’s overall codification program without conferring any rulemaking authority. Importantly, the statute has remained inactive for over 150 years and was enacted prior to the creation of the Office of Court Administration (an arm of the Judicial Branch of government) that now collects the type of statistical data section 41.006 describes; the other provisions have been repealed. If it was permissible and “necessary” to adopt the Challenged Rules to implement section 41.006, why has it taken 150 years for Defendants to accomplish this necessity? The statutory text—directed simply toward “the district and county attorneys”—contains no basis for imposing voluminous, invasive, and costly records production requirements for entire case files and all communications with prosecutors, and only on the prosecutors from certain counties.

***ii. The rules exceed the scope of Defendants’ rule-making authority.***

38. As noted in the Original Petition, the Texas Legislature knows how to confer rule-making authority, and it did not do so in section 41.006 to permit the imposition of the requirements contained in the Challenged Rules. The duties and statutory authority of the Attorney General are set out in Texas Government Code Chapter 402. Consistent with the Constitution, the Texas Government Code provisions governing the Attorney General do not provide the Attorney General any authority over criminal prosecutions or appeals or district or county attorneys. Under Texas Government Code section 402.028, the Attorney General “may provide assistance in the

prosecution of all manner of criminal cases” but only “[a]t the request of a district attorney, criminal district attorney, or county attorney.”

39. Texas Government Code Chapter 402 does not confer broad rulemaking authority on the Attorney General. Defendants’ rulemaking authority, as conferred by the Texas Legislature, is confined to a few discrete areas, none of which applies to the subject matter of the Challenged Rules.<sup>15</sup> In contrast to statutes that confer rulemaking authority upon Defendants, section 41.006 contains no similar language that Defendants “may adopt rules” – a glaring distinction considering the legislature’s clear ability to include such provisions when it desires to confer rulemaking authority upon a state agency such as Defendants.<sup>16</sup> Had the legislature intended to award the rule-making authority asserted through adoption of the Challenged Rules it could and would have said so clearly, although to do so would have run afoul of the Texas Constitution.

***iii. Adoption of the rules did not comply with the APA.***

40. Agencies have only the authority delegated to them by statute. An agency rule is invalid if the agency has no statutory authority to promulgate it. Neither Texas Government Code section 41.006, nor any other law, grants rulemaking authority to Defendants to promulgate the Challenged Rules. Defendants have violated the Administrative Procedures Act (“APA”) by promulgating the Challenged Rules without statutory authority.

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<sup>15</sup> See, e.g., Texas Gov’t Code § 402.0212(f) (regarding provision of legal service to a state agency by outside counsel, “[t]he attorney general may adopt rules as necessary to implement and administer this section”); *id.* § 402.035(f-3) (“The attorney general may adopt rules to administer the submission and collection of information under this section,” which governs the establishment of a human trafficking prevention task force); *id.* § 402.0351(b) (providing that “[t]he attorney general by rule shall prescribe the design and content of a sign required to be posted under this section,” which governs “required posting of human trafficking signs by certain entities); *id.* § 402.036(e) (“The attorney general by rule shall establish: (1) guidelines for the expenditure of money credited to the Support Adoption account; and (2) reporting and other mechanisms necessary to ensure that the money is spent in accordance with this section.”).

<sup>16</sup> See e.g., Tex. Gov’t Code §§ 20.011 and 420.108. Rules (authorizing AG rulemaking for Sexual Assault Prevention and Crisis Services); Tex. Gov’t Code § 2107.002 (authorizing AG rulemaking for Collection of Delinquent Obligations to State); Tex. Bus. & Com. Code § 102.101 (authorizing AG rulemaking related to Notice Requirements on Premises of Sexually Oriented Businesses); and. Tex. C.C.P. Art. 56B.460 (authorizing AG rulemaking for Appropriation for Other Crime Victim Assistance), to name only a few such instances.

41. Even if Texas Government Code section 41.006 were construed to confer rule-making authority, the Challenged Rules are invalid because they contravene the specific statutory language of Texas Government Code section 41.006 and impose additional burdens, conditions, or restrictions in excess of or inconsistent with the statute. Specifically, the Challenged Rules impose additional burdens, conditions or restrictions in excess of or inconsistent with that statute by:

- requiring district and county attorneys to not simply provide a “report” to the OAG of prosecution statistics but also to provide entire case files, correspondence files, internal legal analysis, and internal office files on employees, internal policies, and use of funds;
- targeting only those jurisdictions with populations of 400,000 or more because Texas Government Code section 41.006 does not draw any distinction based on population;
- defining “violent crime” to include non-violent crimes, including all thefts, all automobile thefts, and all attempts at those offenses;
- defining what constitutes “official misconduct” for purposes of Local Government Code section 87.011, authorizing the OAG to pursue the removal of district and county attorneys through quo warranto proceedings, and authorizing the OAG to initiate civil proceedings against district and county attorneys;
- imposing new document retention obligations on district and county attorneys;
- requiring district and county attorneys to review and produce records dating back to January 1, 2021, despite the absence of legislative authority for such retroactive reporting.; and
- creating an Oversight Advisory Committee, which can request entire case files at its discretion for any reason.

Moreover the Oversight Advisory Committee’s authority to “issue notifications of overdue reports,” 1 Texas Administrative Code section 56.9(b), and to “waive any provision of this chapter if a reporting entity demonstrates that compliance would impose an undue hardship,” 1 1 Texas Administrative Code section section 56.9(d), violates the Separation of Powers Clause, from which the nondelegation doctrine is also derived. *City of Hous. v. Hous. Prof’l Fire Fighters Ass’n, Loc.*

341, 664 S.W.3d 790, 797 (Tex. 2023). Section 2001.038(a) of the Government Code waives Defendants’ immunity for the District and County Attorneys’ challenge to Chapter 56 of the Texas Administrative Code because “the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.” *Tex. Dep’t of Transp. v. Sunset Transp., Inc.*, 357 S.W.3d 691, 700 (Tex. App.—Austin 2011, no pet.). Plaintiffs have probable right to relief for these violations, even if a delegation of rule-making authority could be shown.

***iv. The rules and/or section 41.006 violate the separation of powers under the Texas Constitution and violate other due course of law interests.***

42. Plaintiffs do not believe that section 41.006 confers rule-making authority and the Attorney General’s *ultra vires* act in adopting Chapter 56 is a constitutional violation requiring injunctive relief. The Original Petition sets forth the bases for identifying the immediate and irreparable constitutional harms caused by the Challenged Rules. Nevertheless, if the Court were to find section 41.006 conferred Defendants the authority to adopt the rules, that section runs afoul of the constitution.

43. To the extent section 41.006 granted the authority Defendants claim, it violates the separation of powers between the Executive Branch and the Judicial and Legislative Branches. Tex. Const. Art. II, § 1. A separation of powers violation occurs “when one branch of government assumes, or is delegated, to whatever degree, a power that is more ‘properly attached’ to another branch.” *Martinez v. State*, 503 S.W.3d 728, 733 (Tex. App.—El Paso 2016, pet. ref’d) (quoting *Armadillo Bail Bonds v. State*, 802 S.W.3d 237, 239 (Tex. Crim. App. 1990)). It may also occur “when one branch unduly interferes with another branch so that the other branch cannot effectively exercise its constitutionally assigned powers.” *Id.* (quoting *Martinez v. State*, 323 S.W.3d 493, 501 (Tex. Crim. App. 2010)).

44. Defendants violated the separation of powers clause by enacting the Challenged Rules which improperly transfer judicial power to Defendants by imposing oversight, review, and potential discipline over district and county attorneys. Defendants have also violated the separation of powers clause by enacting rules that unlawfully interfere with Plaintiffs' sphere of authority by requiring them to produce burdensome initial, quarterly, and annual reports to Defendants. In doing so, Defendants impinge on district and county attorney's ability to exercise their core prosecutorial functions. *Ex parte Lo*, 424 S.W.3d 10, 29 (Tex. Crim. App. 2013) (per curiam) (explaining when one branch attempts to impinge on another's exercise of its "core powers," it is less the degree of interference but "the fact of the attempted interference at all" that raises a separation-of-powers problem). The Challenged Rules unduly interfere with Plaintiffs' duties under the Judicial Branch so they cannot effectively perform their constitutionally delegated powers if the Challenged Rules are not enjoined. The administrative burdens of the Challenged Rules will divert resources away from Plaintiffs' core function of prosecuting crimes, unduly interfering with the effective exercise of their constitutionally assigned powers.

45. If section 41.006 permits the Executive Department to provide or revise the details of the law, it clearly and unconstitutionally transfers Legislative power. "Legislative power includes the power to provide the details of the law, to promulgate rules and regulations to apply the law, and to ascertain conditions upon which existing laws may operate." *FM Properties Operating Co. v. City of Austin*, 22 S.W.3d 868, 878 (Tex. 2000). A delegation occurs when an entity is given a public duty and the discretion to set public policy, promulgate rules to achieve that policy, or ascertain conditions upon which existing laws will apply.<sup>17</sup> *Id.* at 880. Section 41.006 is

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<sup>17</sup> Although the legislature has the authority to delegate its powers to agencies, it must establish reasonable standards to guide the agency in exercising those powers. *Texas Workers' Compensation Com'n v. Patient Advocates of Texas*, 136 S.W.3d 643 (Tex. 2004); *Texas Advocates Supporting Kids with Disabilities v. Texas Educ. Agency*, 112 S.W.3d

unconstitutional if it allows Defendants to expand the scope of Defendants' constitutional or statutory powers through administrative rules that purport to confer unconstitutional regulatory authority upon Defendants, including alleged authority to encourage or pursue removal of district and county attorneys far beyond the scope of Texas Local Government Code Chapter 87 or Texas Civil Practice and Remedies Code Chapter 66.

46. Similarly, section 41.006 remains unconstitutional if it permits Defendants to exercise legislative power by altering or contradicting multiple statutes enacted by the Texas Legislature which prescribe the content, procedures and penalties for certain information that Plaintiffs must provide to Defendants, including but not limited to, Texas Code of Criminal Procedure articles 2A.205, 2A.213, 59.06, Texas Government Code section 402.035, and Texas Natural Resources Code section 11.071, to name but a few. The same violation arises if section 41.006 authorizes Defendants to alter or contradict multiple statutes enacted by the Texas Legislature and the U.S. Congress that protect the privacy of certain information, including but not limited to, grand jury materials, crime victim's rights, confidential informants, law enforcement investigations and prosecutions that have not resulted in a conviction or deferred adjudication, core attorney work product, confidential attorney-client communications, medical privacy laws, mental health privacy laws, substance abuse treatment privacy laws, and the rights of an arrestee or criminal defendant to a fair and impartial jury trial.

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234, 180 Ed. Law Rep. 348 (Tex. App.—Austin 2003, no pet.); *Texas Bldg. Owners and Managers Ass'n, Inc. v. Public Utility Com'n of Tex.*, 110 S.W.3d 524 (Tex. App.—Austin 2003, pet. denied). The single sentence contained in Texas Government Code section 41.006 provides no standards, much less reasonable ones, to guide Defendants in promulgating any rules. Courts may imply that the legislature intended that an agency would have whatever power would be reasonably necessary to fulfill a function or perform a duty that the legislature has expressly placed in the agency. *Cities of Corpus Christi v. Public Utility Com'n of Texas*, 188 S.W.3d 681 (Tex. App.—Austin 2005, pet. denied); *Schade v. Texas Workers' Compensation Com'n*, 150 S.W.3d 542 (Tex. App.—Austin 2004, pet. denied). But here, section 41.006 fails to place any legislative duty upon Defendants; that is because the legislative duty which originally provided a basis for this statute is now defunct, as argued more particularly above.

47. If section 41.006 authorizes the infringement of the privacy and confidentiality laws protecting crime victims and others of their right to privacy and denies Plaintiffs their corresponding right and duty to enforce the rights of crime victims, such delegation violates the due course of law provisions of the Texas Constitution. Tex. Const. art. I, § 30. The same is true for any authorization to deprive the Prosecutor Plaintiffs of the right to due course of law by permitting removal of the Prosecutor Plaintiffs from their elected offices based on a mere technical violation of an arbitrary requirement with no opportunity for administrative or judicial review or clear and non-arbitrary criteria to ascertain compliance.

***c. Probable, Imminent, and Irreparable Injury in the Interim***

48. Absent injunctive relief from this Court, Plaintiffs will suffer imminent and irreparable injury. As described in the verified Original Petition, this Supplement and Brief, and the attached evidence, the injury is ongoing. Plaintiffs had to begin diverting resources immediately upon publication of the rules and had been engaged in assessment of needed steps and concerns prior to formal publication.

49. Without court action, Plaintiffs will continue to be subject to Defendants' unconstitutional interference with their constitutionally assigned prosecutorial duties, Defendants' unconstitutional assumption of oversight and/or "veto" authority over their prosecutorial decisions and must continue siphoning off staff time and budgeted dollars to endeavor to comply with the reporting requirements. For any perceived non-compliance, Plaintiffs are threatened with three potential forms of legal action to remove them from office or order compliance. Plaintiffs cannot wait until Defendants choose to exercise their claimed authority to demand turnover of further entire case files.

50. The attached evidence explains the undue burden and expense imposed by the Challenged Rules. The declarations also describe numerous privacy and confidentiality requirements that are in direct and irreconcilable conflict with the Challenged Rules. Plaintiff prosecutors' offices must prepare, and have been preparing, for the possibility of having to turn over four years of data and certain entire case files, in twelve categories or information, by July 1, 2025. Many of the categories require electronic searches, the results of which implicate thousands of cases that must be reviewed in detail to establish whether they include information required to be reported. The vague language of some categories requires assumptions about meanings and conjecture about whether those interpretations would even achieve compliant reporting. When the stakes are removal from office, an injunction is necessary to provide certainty concerning the legitimacy of the Challenged Rules and, if any exists, their permissible scope.

51. Even the preliminary efforts toward compliance take Plaintiffs' employees away from the customary duties and core prosecutorial functions they undertake to serve genuine public interests. The additional threat of unfettered access to criminal case files creates an immediate threat to confidentiality and privacy that cannot be cured by monetary damages, even if such relief were available.

52. Plaintiffs reasonably anticipate public awareness of the required turnover of the entire case files in closed and ongoing prosecutions or investigations will result in underreporting of crime and produce an immeasurable chilling effect on victims. In addition to prosecutors' work product, such information will include the victim impact statements, results of rape kits, graphic photos, autopsy information, statements of all victims and witnesses, including confidential informants, criminal history information, detailed medical information, and all correspondence of any kind related to the files. Without a meaningful, accessible process for contesting these case file requests,

Plaintiffs need injunctive relief to block any such request before the Oversight Advisory Committee is formed.

53. Some additional examples of the protected information subject to submission to Defendants under the rules include: criminal history records protected under court orders of nondisclosure; records subject to expungement orders; grand jury materials; school records protected by FERPA; attorney work product; unfiled case information; victim contact information, statements, and pseudonyms; health records concerning treatment for drug and alcohol abuse or mental illness; communications with non-profit organization containing sexual assault crisis service records; voluntary drug and alcohol abuse treatment records; emergency medical, HIV, or other protected health information; communications between victims and victim advocates regarding protective orders concerning family violence; jail recordings; disclosure of DFPS records relating to child victims; juvenile records; autopsy and crime scene photos; and numerous other types of confidential and statutorily protected information. For certain felony matters, a request for the entire case file could include child pornography, both the transmission and possession of which are crimes without any defense based on an Attorney General request. This list is far from exhaustive, but it should convey the immediate and irreparable harm that is substantially likely to occur without temporary and permanent injunctive relief and declaratory judgment confirming the Challenged Rules were adopted without authority and in violation of the Texas Constitution and various other laws.

54. There is no need for factual development to decide the issue of constitutional violation created by the Challenged Rules. The rules speak for themselves, and Defendants' press release reinforces the intent to serve as the "oversight" authority for prosecutors in counties over 400,000 populations. When a pre-enforcement challenge is discrete and well-defined and all necessary facts

already exist, nothing bars that claim from moving forward. *Gonzales v. Carhart*, 550 U.S. 124, 167 (2007). Here, Plaintiffs have identified clear, existing injuries and likely harms they, and the public at large, will suffer before and after the looming deadlines for the reports under the Challenged Rules.

### ***3. No Hardship on Defendant and No Need for Bond***

55. The entry of a temporary injunction will place no hardship on the OAG, and there is no financial consequence to Defendants through maintaining the status quo. In fact, it may save the State money by not requiring Defendants' processing, review, and protection of any of the reports required under the rules.

56. As Plaintiffs are all public officials acting in their official capacities or local governments, the Court may grant Plaintiffs' requested injunctive relief without requiring more than a nominal bond. Tex. Rule Civ. Pro. 684. Moreover, Counties are exempt from bond requirements for most extraordinary writs. Tex. Civ. Prac. & Rem. Code § 6.001(b)(4); *see also West v. Ellis County*, 241 S.W.2d 344 (1951) (finding to reason to differentiate between injunctions and other extraordinary writs in excluding counties from bond requirements).

57. Plaintiffs also request, upon a final hearing, a permanent injunction prohibiting the Defendants from implementing or enforcing the Challenged Rules.

### **III. SPECIFIC INJUNCTIVE RELIEF SOUGHT**

58. Plaintiffs specifically request the Court make the necessary findings and enter a temporary injunction and, ultimately, a permanent injunction requiring:

1. Defendants take no further steps to implement or enforce Chapter 56 of the Texas Administrative Code;
2. Defendants take no action and make no statements to construe that any of the Plaintiff prosecutors have engaged in official misconduct by filing this action or by refusing to submit reports or provide other information pursuant to Chapter 56;

3. Defendants make no requests of Plaintiffs or their offices for any case files or correspondence not previously authorized by law other than Chapter 56 or Texas Government Code section 41.006;
4. Defendants require no reporting by Plaintiffs prior to any final hearing in this matter and specific court authorization to do so;
5. Defendants not to request disclosure by Plaintiffs or their offices of any attorney work product, attorney-client privileged, or otherwise confidential or private information;
6. Defendants take no action to reform or sever portions of the rules under Chapter 56 until after any final hearing and judgement in this matter; and,
7. Defendants make no public comments during the pendency of this lawsuit regarding the legitimacy, enforceability, or constitutionality of the rules under Chapter 56, or their authority to adopt them.

It is essential that the Court immediately and temporarily enjoin Defendants from any effort to enforce the Challenged Rules to avoid immediate and irreparable harm. Paxton has acted outside the scope of his authority and Defendants adopted Chapter 56 in violation of the Texas Constitution and other laws. Plaintiffs have a probable right to injunctive relief, and they, along with victims of crime whose interests they also seek to preserve, will suffer probable, imminent, and irreparable harm without temporary and permanent injunctive relief. Disruption of fundamental rules of confidentiality, privilege, and prosecutorial discretion cannot be usurped through contrived regulatory or oversight authority.

59. Plaintiffs ask the Court to set their request for injunctive relief for hearing promptly. After the hearing, Plaintiffs ask the Court to issue a temporary injunction preserving the status quo and exempting them from all requirements imposed by Defendants' Rules.

#### **IV. PRAYER**

Plaintiffs respectfully request the Court grant a temporary injunction, and following final hearing, a permanent injunction that prevents Defendants from enforcing and implementing Texas Administrative Code Chapter 56.

Respectfully submitted,

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4. I am an active member of the Texas District and County Attorneys Association (TDCAA) and have volunteered and was chosen to serve TDCAA as a Faculty Advisor for the Association's Prosecutor Trial Skills Course and as a Speaker at its Key Personnel and Victim Assistance Coordinators Conference. I have tried over forty cases, as a first or second chair, on felony criminal charges to conclusion before jury, and I have handled over two dozen felony criminal appeals. I am also Board Certified in Criminal Law by the Texas Board of Legal Specialization since 2017.

5. By virtue of my background, training, experience, and education, I possess the information needed to confirm the statements made in this declaration, and they are all true and correct. I am over eighteen years of age and fully competent to make this declaration.

6. As a dedicated public servant and prosecutor, I value transparency and efficiency in government, equity in justice, and protecting the community. I also understand the need for prosecutorial discretion, and the importance of working closely with victims to protect their interests at every stage of the prosecutorial process. In my current role I supervise misdemeanor prosecutors in seven Travis County Courts at Law in cases involving family violence, including assault and violation of protective orders. As a result of this work and by virtue of my history with many types of cases, I am particularly troubled by the overreach apparent in the new rules adopted by the Attorney General and his office under Chapter 56 of the Texas Administrative Code ("Challenged Rules").

7. The Challenged Rules identified in Plaintiffs' petition represent the exact type of overreach that I believe prosecutors and courts have a responsibility to prevent. After scrutiny of the Rules, I began collaborating with other attorneys and staff in our office as part of a compliance team to prepare for application of the Challenged Rules and to compile information related to the potential legal consequences of the rules. After careful study, I believe no reasonable alternative existed to filing this lawsuit to prevent the immediate and irreparable harm caused by adoption of the Challenged Rules.

8. While the legal bases for injunctive relief are set out in the verified Original Petition and Application for Temporary Injunction, as well as the Plaintiffs' accompanying brief, this declaration is intended to set out the practical factual basis for the requested relief and to confirm the immediate and irreparable harm caused to our office and to Travis County, as well as harm to other prosecutors, county plaintiffs, and our communities.

9. First, in my opinion, the Challenged Rules are beyond the constitutional and statutory authority of the Attorney General, and as such, violate the separation of powers clause found in the Texas Constitution at article II, section 1. While the court will decide that legal issue, it is a matter of indisputable fact that the holder of the position of Attorney General is a member of the Executive Department of the State under article IV, section 1, while county and district attorneys are part of the Judicial Department of the State under article V, section 21. Put simply, it is the

citizens of Travis County who serve to judge the performance of our County and District Attorneys.

10. The only authority stated by Defendants to support the Challenged Rules is a vestigial statute, Texas Government Code section 41.006, under which there are no reported cases. As explained in this suit, section 41.006 appears to have originated with the first legislature in 1846, and was ultimately codified in Article 40 of the 1879 code along with directly related sections 29 and 30. Together, those three sections required the Attorney General to prepare a statistical report on prosecutions for the Governor, authorized the Attorney General's retrieval of only the data necessary to prepare that statistical report, and directed prosecutors to provide such data. Now, the statistical reporting function has been completely overtaken by the Office of Court Administration, part of the Judicial Branch, and former article 30 that authorized the AG to obtain statistical information from prosecutors for the limited purposes of reporting them to the Governor was repealed in 1925. There is no authority to invade the province of the Legislative Branch concerning rulemaking authority or preserving the confidentiality of numerous categories of very sensitive records made the subject of the Challenged Rules. Most importantly, even under the previous statutes and section 41.006, there is no authority to compel entire case files and protected communications.

12. Nevertheless, our office must prepare, under consequence of removal from office, for the possibility of having to turn over four years of data, correspondence, and certain case files, in twelve categories, by July 1, 2025. Many of the categories require electronic searches, the results of which implicate thousands of cases that must be reviewed in detail to establish whether they include required information and records. Moreover, the vague language of some of these 12 categories makes it impossible to know if our assumptions about their meaning would even achieve compliant reporting.

13. In working with information technology professionals employed by our office, including our Applications Manager and alongside numerous prosecutors and staff, we have estimated that completing the initial report will take hundreds of hours of staff and attorney time and will likely implicate at least one hundred thirty terabytes of data retrieval and consideration of well over ten thousand case files, just to ascertain potential responsiveness. These are hours that could and should have been spent prosecuting cases. This estimate of data volume does not include email or other related communications, archival information, tangible items, or application data anywhere other than from our TechShare platform used to facilitate information and evidence sharing in criminal matters, nor does it include information contained in other systems of record such as Odyssey and Tiburon that contain data available to our office related to clerk records and Sheriff's office records. We cannot estimate the volume of additional information implicated by communications and other sources outside TechShare.

14. Obviously, these preliminary compliance efforts take our employees away from the customary duties and core prosecutorial functions they undertake to serve genuine public

interests. The ongoing quarterly and annual compliance requirements will continue to compromise our resources.

15. To reduce some of these negative and irreversible effects, our office and the Travis County District Attorney's office have sought approval of additional funding from the Travis County Commissioners Court to ensure adequate staffing to comply with the Challenged Rules while still performing our prosecutorial functions effectively. To date, in working with the Travis County Planning and Budget Office, and the District Attorney's Office, we have projected over \$740,000.00 in added expense to Travis County to respond and comply with the Challenged Rules in the remainder of fiscal year 2025, and approximately \$1,970,000.00 just for fiscal year 2026 to satisfy ongoing annual costs.

16. The soon-to-be-created Oversight Advisory Committee's unlimited ability under the Challenged Rules to demand complete case files in matters outside the scope of the 12 categories already identified by Defendants raises the anticipated future costs exponentially in an unpredictable manner. In each such case, our office is left to evaluate the risk of noncompliance with privacy rights, confidentiality laws, and other statutory and regulatory provisions prohibiting release of certain case information and communications and weigh the risks associated with compliance against the threat of a removal action, quo warranto proceeding, or other Attorney General-initiated lawsuit for alleged noncompliance, based entirely upon Defendants' unilateral opinions. Section 56.8 of the Challenged Rules concerning "Compliance" makes this a very real threat. The Challenged Rules place only elected prosecutors in counties of over 400,000 in population in this position to have to weigh the possibility of being determined to have violated the Challenged Rules or violating long-standing state and federal laws and regulations that protect the privacy of crime victims, witnesses, law enforcement officials and accused defendants, as well as the integrity of criminal prosecutions. Either way, the people of Texas lose. Similarly, prosecutors who fully comply with the Challenged Rules as written subject themselves to allegations of violations of ethics rules and both civil and criminal penalties for violating state and federal laws and regulations. In short, the Challenged Rules place prosecutors in a situation where failing to comply with the Challenged Rules may be used as grounds for removal from office and complying with the Challenged Rules may be used as grounds for removal from office.

17. Once the public is aware of the ability of Defendants to require turnover of correspondence and entire case files, including all evidence and potential evidence, in all closed and ongoing prosecutions or investigations and communications, whether privileged or not, this will unquestionably result in underreporting crime and produce an immeasurable chilling effect on criminal prosecutions. There is nothing in the Challenged Rules that permits prosecutors to first comply with existing statutory procedures, designed to prevent them from disclosing such information, and thereby avoid facing criminal and civil penalties. Such information will include victim impact statements; results of rape kits; graphic photos, including child pornography; statements of all victims and witnesses, including confidential informants; criminal history

information; detailed medical and mental health information and records; detailed substance abuse treatment information and records; and all correspondence of any kind related to the files.

18. Given the obvious sensitivity of so much of this data, I am also concerned at the apparent lack of preparedness of the Office of the Attorney General to demand, receive, process, and secure the data required to be produced by prosecutors in counties of greater than 400,000 population under the Challenged Rules. Despite the looming deadline of July 1, 2025, to produce information related to over four years of data, and the language in Rule 56.5(b) that information on how to submit reports electronically can be found on the OAG's website, it cannot. I have been unable to find any guidance at all on the OAG website related to required report submission. The OAG website also has no information about the nature of any portal for such submissions or the security measures that exist related to any such portal.

19. Nothing in the new rules requires the OAG to secure the information reported. Instead, based on the OAG press release, it appears the OAG and Attorney General's intent is to assure that the public has access to the reported information. While I strongly believe in, and am committed to, public access to public information, the rules make no provision for securing the confidential and highly sensitive nature of the information contained in our case files related to closed and pending prosecutions and investigations. The release of many of the categories of information included in our case files would implicate civil and criminal penalties. It is unclear how a reporting entity can fully comply with the rules as written and comply with other existing legal requirements that establish specific procedures to access such information.

20. One example of the vagueness of the Challenged Rules involves charging instruments. Due to the references to "indictments" in the rule, and other factors, the District Attorney's data set is even larger than the one for the County Attorney. Our office uses "informations" as the charging instruments for misdemeanors. Whether this distinction was intended by the OAG and Attorney General Ken Paxton is entirely unknown. Our team must plan for the possibility that any guidance eventually offered from the OAG may include any charging instrument under the rules' definition of "indictment," if one is ever offered.

21. Adding to the difficulty of the new tasks is the requirement of Rule 56.6 to "implement document retention policies reasonably designed to preserve all documents which are, or may be, subject to the requirements of this chapter." Our office follows the appropriate retention schedules as promulgated by the Texas State Library and Archives. The seemingly innocuous requirement to "preserve documents for at least two years after they are to be reported" assumes we can know when things are to be reported. This is impossible because Rule 56.9(c) allows the Oversight Advisory Committee to request "entire case files based on the submitted reports or any other information that the Oversight Advisory Committee desires related to criminal matters or the interests of the state." This means we do not know what information will be requested, or when, or what the date would be to begin counting an additional two-year retention period from when it might be required to be reported.

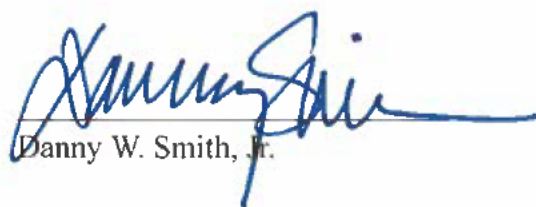
22. The Challenged Rules offer no recourse and no avenue for administrative appeal of any decision made by Defendants or the Oversight Advisory Committee. They only provide the oversight committee may waive any provision if a reporting entity “demonstrates” an undefined “undue hardship” without any opportunity for an independent administrative review or hearing, as is the case with other state agency rules. The only realistic option, therefore, would be to seek judicial review in each instance. Injunctive relief is necessary to prevent a continuous stream of litigation for every case file requested by Defendants that contains confidential information, the release of which is prohibited by law or would otherwise infringe upon the rights of victims, witnesses, grand jury participants, law enforcement officials, or accused defendants.

23. Some additional examples of the protected information subject to submission to Defendants under the Challenged Rules include: criminal history records protected under court orders of nondisclosure; records subject to expungement orders; grand jury testimony and materials; school records protected by FERPA; attorney work product; unfiled case information; victim contact information, statements, and pseudonyms; health records concerning treatment for drug and alcohol abuse or mental illness; communications with non-profit organization containing sexual assault crisis service records; voluntary drug and alcohol abuse treatment records; emergency medical, HIV, or other protected health information; communications between victims and victim advocates regarding protective orders concerning family violence; jail recordings; disclosure of DFPS records relating to child victims; juvenile records; autopsy and crime scene photos; sexual assault examinations and photos; and numerous other types of intensely private, confidential, and statutorily protected information. These examples only touch on a portion of the protected interests and information that Defendants presume to collect that are protected under existing federal and state laws.

24. The Challenged Rules represent a violation of diverse privacy interests, a current and incurable drain on county resources, a profound and intentional infringement on prosecutorial discretion, and presumption of an Executive Department oversight role over the Judicial Department where none exists.

25. I declare under the penalty of perjury that the foregoing is true and correct.

Executed in Travis County, State of Texas, on the 15th day of May, 2025.



Danny W. Smith, Jr.

Cause No. \_\_\_\_\_

DELIA GARZA,	§	In the District Court
in her official capacity as	§	
Travis County Attorney,	§	
JOSÉ P. GARZA,	§	
in his official capacity as	§	
Travis County District Attorney,	§	
TRAVIS COUNTY,	§	
JAMES MONTOYA, in his	§	
official capacity as El Paso	§	
County District Attorney;	§	
CHRISTINA SANCHEZ,	§	
in her official capacity as El Paso	§	
County Attorney; and	§	
EL PASO COUNTY,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	_____ Judicial District
	§	
KEN PAXTON,	§	
in his official capacity as	§	
Attorney General for the	§	
State of Texas, and the	§	
OFFICE OF THE ATTORNEY	§	
GENERAL for the State of	§	
Texas,	§	
<i>Defendants.</i>	§	Travis County, Texas

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**DECLARATION OF HOLLY TAYLOR**

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1. My name is Holly Taylor, and I am an employee of the following governmental agency: Travis County, Texas. I am executing this declaration as part of my duties and responsibilities in my capacity as a director with the Travis County District Attorney's Office (TCDAO).

2. I hold a Bachelor's degree from Rice University, a J.D. from the University of Texas School of Law, and a master's degree from the LBJ School of Public Affairs. I am Board Certified in Criminal Appellate Law by the Texas Board of Legal Specialization.
3. I currently serve as the Director of the Public Integrity and Complex Crimes Division of TCDAO. In this position, I oversee TCDAO's White Collar Crime Unit, Public Integrity Unit, and the Appeals and Complex Litigation Support Team. Previously, I worked for the Texas Court of Criminal Appeals (Court) as a staff attorney, the Court's Rules Attorney, and a Rules Advisory Committee member. I assisted the Court in evaluating proposed rules from all over the State and assessing their legality and impact on the Criminal Justice System.
4. I am leading a team working to comply with new administrative reporting requirements adopted by the Office of the Attorney General of Texas (OAG) in Chapter 56 of Title One of the Texas Administrative Code (hereafter 1 TAC Ch. 56, or "Challenged Rules"). Recently, I have dedicated most of my working hours to implementing methods for data and document collection and retention to comply with the Challenged Rules.
5. I possess the information needed to confirm the statements made in this declaration, and they are all true and correct. I am over eighteen years of age and competent to make this declaration.
6. The Challenged Rules impose initial, quarterly, and annual reporting requirements.<sup>1</sup> The initial reporting requirements retroactively require prosecutors to submit information and records dating back to January 1, 2021, but Texas prosecutors had no preexisting legal obligation to track much of the data the OAG

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<sup>1</sup> The first quarterly report is due June 30, 2025, and the initial report including records back to January 1, 2021, is due the very next day (90 days from the effective date: July 1, 2025). 1 TAC §56.5.

now desires. Producing the required information in the required timeframe will be difficult. TCDAO has assigned several employees (attorneys, technical staff, paralegals, and administrative staff) to work on compliance. For some, this work has eclipsed their ability to do their normal jobs.

7. 1 TAC 56.5(b) provides that “A reporting entity submit all reports under this chapter electronically. Information on how to submit reports electronically can be found on the OAG's website.” 1 TAC §56.5(b). No information about submitting these records has yet been found on the OAG’s website nor has the TCDAO received any instruction from the OAG about how to turn over these materials.
8. There are twelve categories of data set out in 1 TAC §56.3 which must be produced. A failure to comply with any part of these rules can be considered “official misconduct” and can result in a suit seeking removal from office. *See* 1 TAC §56.8; *see also* Tex. Local Gov’t Code §§87.012, 87.013. Some of the most significant and burdensome of the new rules include:
  9. “The number of prosecutions involving a defendant's discharge of a firearm resulting in any prosecutorial decision based on Title 9 of the Penal Code.” 1 TAC §56.3(3). Prosecutors had no preexisting legal duty to track this information, and the terminology used is ambiguous and confusing. Compliance will necessitate retroactive examination of records, a review of the facts of each case, and some amount of speculation. In sum, §56.3(3) will require hours of labor, taking TCDAO prosecutors and staff away from their normal duties.
  10. “The case file for instances a recommendation made by the Reporting Entity is made to a judicial body that a person subject to a final judgment of conviction be released from prison before the expiration of their sentence; resentenced to a lesser sentence; or granted a new trial based on a confession of error.” 1 TAC

§56.3(4). Chapter 56 defines the term “case file” broadly to include “all documents, notes, memoranda, and correspondence, in any format such as handwritten, typed, electronic, or otherwise, including drafts and final copies, that were produced within or received by the reporting entity's office, including work product and otherwise privileged and confidential matters.” 1 TAC §56.2(1). It defines “correspondence” equally broadly. 1 TAC §56.2(2). This rule compels the production of voluminous file materials, work product, and correspondence. TCDAO staff have spent numerous hours scanning boxes of internal documents and reviewing digital case files—taking prosecutors and staff away from their normal duties. This rule also forces prosecutors to disclose protected confidential information and privileged sensitive communications with crime victims and vulnerable witnesses, among others. *See* Tex. Const. Art. I, § 30.

11. “The number of instances that an arrest was made for a violent crime, but no indictment was issued, the case was resolved by deferred prosecution or a similar program, or all charges were dropped.” 1 TAC §56.3(7). Chapter 56 defines the term “violent crime” to include common nonviolent crimes, such as theft and automobile theft. 1 TAC §56.2(7). Thousands of cases are likely to meet the OAG’s broad and arbitrarily defined category of “violent crime” cases. Also, the Challenged Rules do not provide a definition of terms such as “charges were dropped.” Because the criteria are vague and do not reflect statutes, rules, case law, or commonly used criminal law terminology, TCDAO staff will spend hours reviewing cases to determine if they are responsive.
12. “All correspondence with any employee of a federal agency” and “with any non-profit organization” regarding “a decision whether to indict an individual.” 1 TAC §56.3(10), (11). Due to routine communication and collaboration with federal agencies (including criminal justice partners such as the FBI, DEA, and ATF) and

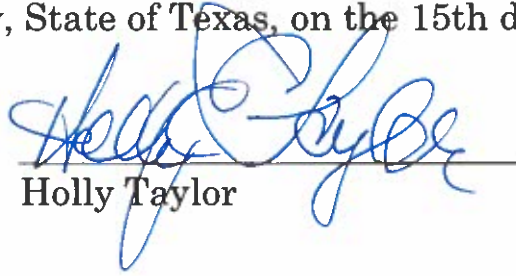
nonprofit organizations (including organizations such as the Center for Child Protection), this rule will require careful and time-consuming review of thousands of communications.

13. Further, the Challenged Rules grant the Committee the power to “request entire case files based on submitted reports or any other information that the Oversight Advisory Committee desires relating to criminal matters and the interests of the state on a case-by-case basis.” 1 TAC §56.9; *see also* 1 TAC §56.3(6), (8). This Rule gives the OAG’s Committee unfettered discretion to mandate the production of voluminous materials at any time without reasoned justification, reasonable time to comply, or advance notice. Because of the broad authority this grants the OAG and because there is no notice requirement to the reporting entity, it is not possible to estimate how many staffing hours or resources this part of the process may require of TCDAO. The rules further provide no process by which a reporting entity can appeal such a request by the OAG. Losing the TCDAO employees’ hours will be damaging to TCDAO’s ability to do its work prosecuting crime and working to protect our community.
14. Moreover, the Challenged Rules compel the disclosure of much information protected by confidentiality laws and privileges. Yet the Rules do not expressly assign any duty to the OAG and its agents to protect against the disclosure—or limit the dissemination of—sensitive data that is commonly found in such files, such as: victim contact information, statements, and pseudonyms; DNA testing of rape kits; graphic photos; grand jury testimony; identities of confidential informants; criminal history information; mental health and substance abuse treatment records; CPS records; and defense counsel’s confidential communications with prosecutors. To the contrary, the OAG has promised to make information from reporting entities available to “assist citizens” to “hold rogue DA’s accountable.”

15. Collectively, the above factors are likely to have a chilling effect—hindering criminal prosecutions, interfering with the exercise of prosecutorial duties, and making our community less safe.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed in Travis County, State of Texas, on the 15th day of May, 2025.



Holly Taylor

Cause No. \_\_\_\_\_

DELIA GARZA,	§	In the District Court
in her official capacity as	§	
Travis County Attorney,	§	
JOSÉ P. GARZA,	§	
in his official capacity as	§	
Travis County District Attorney,	§	
TRAVIS COUNTY,	§	
JAMES MONTOYA, in his official	§	
capacity as El Paso County District	§	
Attorney; CHRISTINA SANCHEZ,	§	
in her official capacity as El Paso	§	
County Attorney; and	§	
EL PASO COUNTY,	§	
<i>Plaintiffs,</i>	§	
v.	§	_____ Judicial District
	§	
KEN PAXTON,	§	
in his official capacity as	§	
Attorney General for the	§	
State of Texas, and the	§	
OFFICE OF THE ATTORNEY	§	
GENERAL for the State of Texas,	§	
<i>Defendants.</i>	§	Travis County, Texas

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**DECLARATION OF ALMA TREJO**

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1. My name is Alma Trejo, I am an Assistant County Attorney in the office of the duly elected El Paso County Attorney, Christina Sanchez. I currently serve as the Senior Division Chief of the Criminal Unit. I am executing this declaration as part of my duties and responsibilities as an employee of this office. I have been licensed to practice law since 1991.

2. I have extensive experience as an attorney, a prosecutor, and a judge. Prior to my current role I served as the Judge of County Criminal Court #1 for 21 years.

3. By virtue of my background, training, experience, and education, I possess the information needed to confirm the statements made in this declaration, and they are all true and correct. I am over eighteen years of age and fully component to make this declaration.

4. As a dedicated public servant and prosecutor, I value transparency and efficiency in government, equity in justice, and protecting the community. I also understand the need for prosecutorial discretion, and the importance of working closely with victims to protect their interests at every stage of the prosecutorial process.

5. In my current role I supervise the Juvenile and Criminal Divisions of the County Attorney's office with five prosecutors in the Juvenile Unit and three attorneys in the Criminal Division. As a result of this work and by virtue of my history with many types of cases, I am particularly troubled by the overreach apparent in the new rules adopted by the Attorney General and his office under Chapter 56 of the Texas Administrative Code ("Challenged Rules").

6. The Challenged Rules identified in Plaintiffs' petition represent the exact type of overreach that I believe prosecutors and courts have a responsibility to prevent. After scrutiny of the Rules, I began collaborating with other attorneys and staff in our office to prepare for compliance with the Challenged Rules and to compile information related to the potential legal consequences of the rules.

7. While the legal bases for injunctive relief are set out in the verified Original Petition and Application for Temporary Injunction, as well as the Plaintiffs' accompanying brief, this declaration is intended to set out the practical factual basis for the requested relief and to confirm the immediate and irreparable harm caused to our office and to El Paso County, as well as harm to other prosecutors, county plaintiffs, and our communities.

8. Based on my extensive legal experience, the Challenged Rules are beyond the constitutional and statutory authority of the Attorney General, and in so doing, violate the separation of powers clause found in the Texas Constitution at article II, section 1.

9. A plain language reading of the Texas Constitution identifies the Texas Attorney General as a member of the Executive Department of the State under article IV, section 1, while county and district attorneys are part of the Judicial Department of the State under article V, section 21.

10. The Texas Constitution places the power to judge the performance of El Paso County and District Attorneys in the hands of the voters of El Paso County.

11. Upon information and belief, the Attorney General has no authority to issue the Challenged Rule; the Challenged Rule is an attempt to invade the province of the Legislative Branch concerning rulemaking authority or preserving the confidentiality of numerous categories of very sensitive records made the subject of the Challenged Rules. There is no authority to invade the province of the Legislative Branch concerning rulemaking authority or preserving the confidentiality of numerous categories of very sensitive records made the subject of the Challenged Rules.

12. Nevertheless, our office must prepare, under threat of removal from office, for the possibility of having to turn over four years of data, correspondence, and certain case files, in twelve categories, by July 1, 2025. The County Attorney's office does not handle most criminal cases in El Paso County, that would be the El Paso District Attorney's office. However, even then, many of the categories require electronic searches, the results of which implicate approximately 1500 cases that must be reviewed in detail to establish whether they include required information and records. Moreover, the vague language of some of these 12 categories

makes it impossible to know if our assumptions about their meaning would even achieve compliant reporting.

13. Our office has already been injured by the Challenged Rules as it has had to dedicate considerable staff resources to read, review, and decipher the vague language of the Challenged Rules to be prepared if the Challenged Rules are allowed to go into effect. Even though there was a comment period where hundreds of comments were made to the Challenged Rules seeking clarity of its scope and application, it is still unclear exactly what type of information needs to be included in the numerous reports.

14. Based on my extensive experience and familiarity with the justice system, I estimate it will be extremely burdensome and time-intensive to comply with the Challenged Rules. This time and resources could and should have been spent prosecuting cases.

15. Further, any attempt to prepare for and comply with the Challenged Rules take our employees away from the customary duties and core prosecutorial functions they undertake to serve genuine public interests. This harm will be ongoing, as the ongoing quarterly and annual compliance requirements will continue to compromise our resources.

16. The Challenged Rules mandate the creation of an Oversight Advisory Committee, whose members are selected by the Attorney General. This Committee has the unlimited ability to demand complete case files for whatever reason the Committee provides. The unlimited scope of information the Challenged Rules covers creates an unpredictable cost to Plaintiffs that can increase exponentially at any given time. This unpredictability creates a requirement for our office to have staff and resources available at any given time to evaluate the risk of noncompliance with the Challenged Rules while at the same time potentially failing to meet the requirements of numerous privacy rights, confidentiality laws, and other statutory and regulatory provisions prohibiting release of certain case information and communications.

17. Under Section 56.8 of the Challenged Rules, Defendants have the extraordinary power to unilaterally decide if any prosecutor is in violation of the Challenged rules and possess the unilateral power of initiating a removal action, quo warrant proceeding, or other lawsuit to force Plaintiffs to produce the requested information regardless of any other legal restriction that may counsel against disclosure.

18. The Challenged Rules target only elected prosecutors in counties of over 400,000 in population. The Challenged Rules place an extraordinary burden on the prosecutors of these counties to continuously weigh the possibility of being determined to have violated the Challenged Rules or violating long-standing state and federal laws and regulations that protect the privacy of crime victims, witnesses, law enforcement officials and accused defendants, as well as the integrity of criminal prosecutions.

19. A non-exhaustive list of Texas statutes and rules that the Challenge Rules conflict with are:

- Texas Public Information Act;
- Texas Code of Criminal Procedure;
- Texas Medical Records Privacy Act;
- Texas Penal Code;
- Texas Family Code; and Texas Rules of Evidence.

20. The Challenged Rules thus place prosecutors who fully comply with them to subject themselves to allegations of violations of ethics rules and both civil and criminal penalties for violating state and federal laws and regulations. In short, the Challenged Rules place prosecutors in a paradox, where failing to comply with the Challenged Rules may be used as grounds for removal from office and complying with the Challenged Rules may be used grounds for removal from office.

21. There is nothing in the Challenged Rules that permits prosecutors to first comply with existing statutory procedures, designed to prevent them from disclosing such information, and thereby avoid facing criminal and civil penalties. A non-exhaustive list of this information includes:

- Victim impact statements;
- Results of rape kits;
- Graphic photos, including child pornography, and autopsy photographs;
- Statements of all victims and witnesses, including confidential informants;
- Criminal history information;
- Detailed medical and mental health information and records;
- Detailed substance abuse treatment information and records; and
- All correspondence of any kind related to case files, including privileged attorney work-product.

22. Upon information and belief, once the public is aware of the ability of Defendants to require turnover of correspondence and entire case files, including all evidence and potential evidence, in all closed and ongoing prosecutions or investigations and communications whether privileged or not, this will unquestionably result in underreporting of crime and produce an immeasurable chilling effect on criminal prosecutions.

23. The Challenged Rules offer no recourse and no avenue for administrative appeal of any decision made by Defendants or the Oversight Advisory Committee. They only provide the oversight committee may waive any provision if a reporting entity “demonstrates” an undefined “undue hardship” without any opportunity for an independent administrative review or hearing, as is the case with other state agency rules. The only realistic option, therefore, would be to seek judicial review in each instance. Injunctive relief is necessary to prevent a continuous stream of litigation for every case file requested by Defendants that contains confidential information, the

release of which is prohibited by law or would otherwise infringe upon the rights of victims, witnesses, grand jury participants, law enforcement officials, or accused defendants.

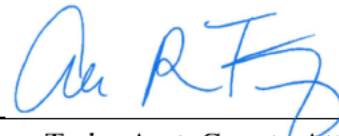
24. A non-exhaustive list of examples of protected information subject to submission to Defendants under the Challenged Rules include:

- Criminal history records protected under court orders of nondisclosure;
- Grand jury testimony and materials;
- Attorney work product;
- Unfiled case information;
- Health records concerning treatment for drug and alcohol abuse or mental illness;
- Communications with non-profit organization containing sexual assault crisis service records;
- Voluntary drug and alcohol abuse treatment records.

25. The Challenged Rules represent a violation of diverse privacy interests, a current and incurable drain on county resources, a profound and intentional infringement on prosecutorial discretion, and presumption of an Executive Department oversight role over the Judicial Department where none exists.

26. I declare under the penalty of perjury that the foregoing is true and correct.

Executed in El Paso County, State of Texas, on the 15th day of May 2025.



Alma Trejo, Asst. County Attorney

Cause No. \_\_\_\_\_

DELIA GARZA,	§	In the District Court
in her official capacity as	§	
Travis County Attorney,	§	
JOSÉ P. GARZA,	§	
in his official capacity as	§	
Travis County District Attorney,	§	
TRAVIS COUNTY,	§	
JAMES MONTOYA, in his official	§	
capacity as El Paso County District	§	
Attorney; CHRISTINA SANCHEZ,	§	
in her official capacity as El Paso	§	
County Attorney; and	§	
EL PASO COUNTY,	§	
<i>Plaintiffs,</i>	§	
v.	§	_____ Judicial District
	§	
KEN PAXTON,	§	
in his official capacity as	§	
Attorney General for the	§	
State of Texas, and the	§	
OFFICE OF THE ATTORNEY	§	
GENERAL for the State of Texas,	§	
<i>Defendants.</i>	§	Travis County, Texas

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**DECLARATION OF AMY LECHUGA**

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1. My name is Amy Lechuga, and I am the Chief of Staff to Mr. James Montoya, the elected District Attorney of the 34<sup>th</sup> Judicial District, which includes El Paso County, Texas.
2. I graduated with a Bachelor of Arts in Organizational Communication/Public Relations with a minor in Criminal Justice from the University of Texas at El Paso. I also obtained a Masters of Public Administration from the University of Texas at El Paso.
3. I have extensive experience in public administration. Prior to my current role as Chief of Staff, I worked as the County Court Administrator for the County of El Paso for more than 8 years; a Court Coordinator for various County and District Courts in El Paso for over 7 years; and as an Executive Assistant for the County Judge’s Office.

4. As the Administrator for the County Courts, which includes 8 criminal courts, 3 civil courts, 2 family courts and 2 probate courts, I was responsible for a monthly and annual Court Performance Review that consisted of filings and dispositions, time to disposition, and clearance rates. I was responsible for ensuring that monthly State reporting that is submitted to the Office of Court Administration by the County Clerk and District Court was correct. I provided weekly inmate reports to the criminal courts to facilitate bond hearings and decrease the number of unnecessary jail days. I prepared statistics upon request from the courts for cases without a future hearing and scrubbed cases to ensure accuracy. I also responded to public records requests made to the County Administration related to county court statistics. I also have extensive experience working with the County Administration's Information and Technology department to ensure judicial metrics statistics were accurate.

5. By virtue of my background, training, experience, and education, I possess the information needed to confirm the statements made in this declaration, and they are all true and correct. I am over eighteen years of age and fully competent to make this declaration.

6. As a dedicated public servant, I value transparency and efficiency in government, equity in justice, and protecting the community. I also understand the sensitive nature of the information that the El Paso District Attorney's office and different state courts hold and the importance to protect that information and follow relevant state and federal laws concerning their storage and transmission.

7. My responsibilities as the Chief of Staff include project management, statistical data collection, policy development, staff supervision, budget and financial management, and acting as the chief liaison with other county departments.

8. As a result of educational and work experience, I am concerned with the apparent overreach in the new rules adopted by the Attorney General and his office under Chapter 56 of the Texas Administrative Code (“Challenged Rules”).

9. This declaration is intended to set out the practical factual basis for the requested relief and to confirm the immediate and irreparable harm caused to our office and to El Paso County.

10. Based on my understanding of the Challenged Rules, complying with them will create a large burden on myself, other staff members of the El Paso District Attorney’s Office, and the County of El Paso. Further, any attempt to prepare and comply with the Challenged Rules take our employees away from their customary duties and core prosecutorial functions they undertake to serve genuine public interests. This harm will be ongoing, as the ongoing quarterly and annual compliance requirements will continue to compromise our resources.

11. Based on my combined work and educational experience, I estimate that accurately completing the initial report will take over 12,000 hours of staff and attorney time. Further, these requirements will likely create the need for additional funds to hire new staff and implement new information and technology systems to categorize, store, and transmit the required information.

12. At this time, I have determined that the following steps will be necessary, at least, to attempt to comply with the initial report set out by the Challenged Rules:

- Me and other staff from the El Paso District Attorney’s Office would need to work with County Operations Department, which is responsible for the administration of the County’s criminal justice case management software, Enterprise Justice – Tyler Technologies, to identify (a) what data elements are available for extraction, and (b) the location of these data elements within the Enterprise Justice database;

- Me and other staff from the El Paso District Attorney's Office would need to establish and identify how our current classifications of how we handle and dispose of cases presented to our Office for prosecution comport with the requirements of the Challenged Rules;
- I will have to work with the County's Information and Technology Department to create new computer code to extract data from relevant databases as well as extract potentially responsive correspondence and case annotations;
- I will need to work with our Quality Assurance Team to test the extracted data to ensure accuracy and completeness and identify anything that doesn't meet those requirements. Even then, I would have to work again with the code developer to test this new process until the Quality Assurance Team is satisfied with the accuracy of the data, before including it in any report required under the Challenged Rules. In my experience, this is an ongoing process that may take up to a year until the Quality Assurance Team approves of the accuracy of the data output.

13. One example from my previous work experience that I think is relevant to determine the length of time it will take us to comply with the Challenged Rules was when the County of El Paso was developing a Judicial Management Report in 2016. It was a project designed to gauge the efficiency and effectiveness of the county and district criminal courts operational process. I believe similar steps would be needed to comply with any report required under the Challenged Rules – it took us approximately two years before we were able to submit a finished product.

14. Based on the steps that I have determined are needed to comply with the Challenged Rules, I have determined we would likely need to hire, at minimum, one software developer, two secretaries, one attorney, and one functional data analyst permanently on staff to accurately report the initial and ongoing requirements required by the Challenged Rules.

15. I am also concerned that the Challenged Rules conflict with other state and federal laws that the District Attorney's Office must comply with.

16. The Challenged Rules represent a current and incurable burden on county resources.

28. I declare under the penalty of perjury that the foregoing is true and correct.

Executed in El Paso County, State of Texas, on the 15th day of May, 2025.



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AMY LECHUGA  
DECLARANT