Cause No. _____

JOHN CREUZOT, in his official capacity as Dallas County Criminal District Attorney; DALLAS COUNTY; JOE GONZALES, in his official capacity as Bexar County Criminal District Attorney; BEXAR COUNTY; SEAN TEARE, in his official capacity as Harris County District Attorney; and HARRIS COUNTY, *Plaintiffs*, v. THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS, and WARREN KENNETH PAXTON, JR., in his official capacity as the Attorney General of Texas, *Defendants.*	§ § § § § § § § § § § § § § § § § § §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 353rd JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL VERIFIED PETITION FOR DECLARATORY JUDGMENT AND APPLICATION FOR A TEMPORARY AND PERMANENT INJUNCTION

Plaintiffs John Creuzot, in his official capacity as Dallas County Criminal District Attorney; Dallas County; Joe Gonzales, in his official capacity as Bexar County Criminal District Attorney; Bexar County; Sean Teare, in his official capacity as Harris County District Attorney; and Harris County (collectively, "Plaintiffs"), file this Verified Petition for Declaratory Judgment and Application for a Temporary and Permanent Injunction ("Petition") against the Office of the Attorney General of Texas ("OAG") and Warren Kenneth Paxton, Jr., in his official capacity as the Attorney General of Texas ("Attorney General Paxton" or "Attorney General") (collectively, "Defendants"). In support of their Petition, Plaintiffs respectfully show the following:

PRELIMINARY STATEMENT

This declaratory judgment action challenges the validity of a final rule adopted by the OAG, creating a new Chapter 56 in Title 1 of the Texas Administrative Code, 1 Tex. Admin. Code

§§ 56.1–56.10 (the "Final Rule"). The Final Rule imposes sweeping reporting requirements on a narrow subset of district attorneys and county attorneys presiding in a district or county with a population of 400,000 or more persons. But the Attorney General, an executive branch official, has not been given any authority by the Texas Constitution or by statute to adopt rules regulating district or county attorneys, who are elected officers of the judicial department. The sole statute that the OAG cites as the authority for its rulemaking here, Section 41.006 of the Texas Government Code, does *not* give the OAG *any* administrative rulemaking authority. And even if Section 41.006 could be construed to confer the OAG with rulemaking authority—and it cannot—the OAG would not be authorized to adopt the Final Rule because the Final Rule contravenes and exceeds the specific statutory language of Texas Government Code Section 41.006. The Final Rule should therefore be declared invalid, and the OAG should be enjoined from implementing or enforcing it.

The OAG has been clear about the purpose behind the Final Rule: to "rein in" "rogue district attorneys."[1] According to Attorney General Paxton, "[t]his rule will enable citizens to hold rogue DA's accountable."[2] To achieve that political objective, the Final Rule burdens select district and county attorneys with onerous reporting and document production requirements, creates its own oversight committee staffed entirely by members of the OAG, and establishes consequences for those select district and county attorneys that the OAG determines, in its sole

[1] Press Release, Office of the Att'y General, *Attorney General Ken Paxton Announces New Reporting Requirement to Rein in Rogue District Attorneys and Ensure the Prosecution of Violent Criminals* (Mar. 31, 2025), https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-announces-new-reporting-requirement-rein-rogue-district-attorneys-and.

[2] *Id*.

discretion, have not complied with the rule. But the OAG lacks constitutional or statutory authority to regulate these district and county attorneys.

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The Final Rule was filed with the Office of the Secretary of State on March 13, 2025, and published in the Texas Register on March 28, 2025. 50 Tex. Reg. 2173–82 (Mar. 28, 2025) (Ex. A). The Final Rule became effective on April 2, 2025. *Id.* at 2182. The Final Rule requires those district and county attorneys covered by the rule to submit highly burdensome initial, quarterly, and annual "reports" electronically. 1 Tex. Admin. Code § 56.1. The first quarterly "report" required by the rule is due June 30, 2025. *Id*. § 56.5(a)(1) ("The quarterly report . . . is due within 30 days of the beginning of each new reporting quarter for all reporting events that occurred in the prior reporting quarter."); *id*. § 56.5(a)(2)(C) (identifying "March through May" as a reporting quarter). The initial "report" required by the rule is due July 1, 2025. *Id.* § 56.5(a)(4) ("The initial report under this Section is due within 90 days of the effective date of this rule."). The first annual "report" required by the rule is due September 30, 2025. *Id*. § 56.5(a)(3) ("The annual report . . . is due at the end of each reporting year and no later than September 30.").

Under the Final Rule, district and county attorneys must submit twelve categories of information and documents to the OAG initially and quarterly, including "case file[s]" for particular categories of cases, "all correspondence" on particular topics or with particular entities regarding decisions whether to indict an individual or category of offenses, "all correspondence written at any time by an assistant district attorney or assistant county attorney regarding the attorney's resignation under a formal or informal complaint process," and the number of times certain prosecution events occurred. *Id.* § 56.3. Beyond the initial and quarterly submissions, the Final Rule mandates that district and county attorneys submit five additional categories of

information and documents to the OAG annually, including internal policies, operating procedures, and records reflecting the use of funds received though civil asset forfeiture, foundations, or associations under Texas Government Code Section 41.108. 1 Tex. Admin. Code § 56.4. In addition, the Final Rule creates an Oversight Advisory Committee, which is empowered to request "entire case files" 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." *Id.* § 56.9(c).

The OAG asserts that the Final Rule is promulgated pursuant to Texas Government Code Section 41.006, which provides: "At 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." That provision does not empower the OAG to adopt rules. Unlike other statutes authorizing agency rulemaking, Section 41.006 does not state that the OAG "shall adopt" or "may adopt" rules.

Even if Texas Government Code Section 41.006 could be construed to confer rulemaking authority—and it cannot—the Final Rule exceeds the scope of any rulemaking authority because it imposes additional burdens far in excess of that contemplated by Section 41.006 by requiring the district and county attorneys to do more than simply provide a "report" to the Attorney General. Instead, the Final Rule requires the district and county attorneys to turn over "entire case files" and "correspondence" for review by an "Oversight Advisory Committee" to "ensure that county and district attorneys are consistently complying with statutory duties, including seeking justice for citizens who have been harmed by a criminal act, appropriately administering funds, and appropriately prosecuting crimes." Ex. A, 50 Tex. Reg. at 2173. The Final Rule also requires reporting on asset forfeiture and employee resignations, also ostensibly under Section 41.006.

Section 41.006, however, does not provide the OAG authority to impose burdensome document review and production requirements on district or county attorneys or to otherwise monitor, supervise, audit, or regulate district or county attorneys.

The Final Rule is invalid for the additional reason that the OAG's attempt to impose obligations on, supervise, and discipline the covered district and county attorneys violates the separation of powers required by Texas Constitution Article II, Section 1. The Texas Attorney General has no independent power to supervise district or county attorneys or impose burdens that interfere with the operation of their offices and performance of their prosecutorial duties, which are essential to the public safety and welfare.

Under the "Compliance" provisions of the Final Rule, if a district attorney or county attorney violates the reporting requirements, the "OAG may construe the violation to constitute 'official misconduct' under Local Government Code §87.011" and the "OAG may file a petition for quo warranto under Civil Practice and Remedies Code §66.002 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(1)–(2). Section 41.006 of the Texas Government Code contains no such authority, and in any event, only the legislature may constitutionally amend or enact new provisions to existing statutes. The OAG has no authority to define what constitutes "official misconduct" under Local Government Code Section 87.011 or to decide when a district or county attorney may be removed from office in a quo warranto proceeding.

The Final Rule is also invalid because the OAG failed to provide a "reasoned justification" as required under the Texas Administrative Procedure Act ("APA"). *See* Tex. Gov't Code § 2001.033(a)(1); *see also Nat'l Ass'n of Indep. Insurers v. Tex. Dep't of Ins.*, 925 S.W.2d 667, 669 (Tex. 1996) ("[T]he agency must explain how and why it reached the conclusions it did.").

The Final Rule fails to adequately address numerous comments detailing the extraordinary burden and cost imposed by the rule, the detrimental impact of the rule on the district and county attorneys' ability to perform their prosecutorial function, the infeasibility of compliance with several provisions, and legitimate concerns that the rule could force district and county attorneys to violate laws requiring non-disclosure of sensitive, confidential information, including federal privacy statutes, grand jury secrecy rules, and laws protecting the privacy rights of sexual assault victims, informants, and juveniles, among others.

The Final Rule is also not in technical compliance with the APA because it does not include "a summary of comments received from parties interested in the rule that shows the names of interested groups or associations offering comment on the rule and whether they were for or against its adoption," as required by Texas Administrative Code Section 2001.033(a)(1)(A).

Finally, by adopting the Final Rule without authority to do so, Attorney General Paxton has committed an *ultra vires* act.

DISCOVERY CONTROL PLAN

1. Plaintiffs contend that legal issues predominate in this lawsuit and that discovery, if any, should be conducted pursuant to a narrowly tailored discovery control plan under Level 3 pursuant to Texas Rule of Civil Procedure 190.4.

2. Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs seek only nonmonetary relief. Accordingly, this case is not governed by Texas Rule of Civil Procedure 169.

CONDITIONS PRECEDENT

3. All conditions precedent to Plaintiffs' claims for relief herein have been performed or have occurred.

PARTIES

4. Plaintiff John Creuzot is the elected Criminal District Attorney of Dallas County and brings this action in his official capacity. Because Dallas County has a population over 400,000, the Dallas County Criminal District Attorney's Office qualifies as a "reporting entity" under Section 56.2(6) of the Final Rule, *see* 1 Tex. Admin. Code § 56.2(6), and the Final Rule imposes mandatory reporting and compliance obligations on Plaintiff John Creuzot in his official capacity. 1 Tex. Admin. Code § 56.1 ("*District Attorneys and County Attorneys* presiding in a district or county with a population of 400,000 or more persons *must submit* an initial, and quarterly and annual reports . . . to the Office of the Attorney (OAG) . . . " (emphasis added)).

5. Plaintiff Dallas County is a political subdivision of the State of Texas and has a population over 400,000. It is responsible for funding and supporting the operations of its District Attorney's Office, which is subject to the Final Rule.

6. Plaintiff Joe Gonzales is the elected Criminal District Attorney of Bexar County and brings this action in his official capacity. Because Bexar County has a population over 400,000, the Bexar County Criminal District Attorney's Office qualifies as a "reporting entity" under Section 56.2(6) of the Final Rule, *see* 1 Tex. Admin. Code § 56.2(6), and the Final Rule imposes mandatory reporting and compliance obligations on Plaintiff Joe Gonzales in his official capacity. 1 Tex. Admin. Code § 56.1.

7. Plaintiff Bexar County is a political subdivision of the State of Texas and has a population of more than 400,000. It is responsible for funding and supporting the operations of its District Attorney's Office, which is subject to the Final Rule.

8. Plaintiff Sean Teare is the elected District Attorney of Harris County and brings this action in his official capacity. Because Harris County has a population over 400,000, the Harris County District Attorney's Office qualifies as a "reporting entity" under Section 56.2(6) of

the Final Rule, *see* 1 Tex. Admin. Code § 56.2(6), and the Final Rule imposes mandatory reporting and compliance obligations on Plaintiff Sean Teare in his official capacity. 1 Tex. Admin. Code § 56.1.

9. Plaintiff Harris County is a political subdivision of the State of Texas and has a population more than 400,000. It is responsible for funding and supporting the operations of its District Attorney's Office, which is subject to the Final Rule.

10. Defendant the Office of the Attorney General of Texas is the state agency responsible for promulgating and enforcing the Final Rule.

11. Defendant Warren Kenneth Paxton, Jr., is the Attorney General of Texas. He is sued in his official capacity as the head of the OAG, which promulgated the Final Rule and is responsible for its enforcement.

12. Defendants may be served with process by service on Attorney General Ken Paxton, Office of the Attorney General, Price Daniel, Sr. Building, 8th Floor, 209 West 14th Street, Austin, TX, 78701.[3]

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction under Texas Government Code Section 2001.038. Plaintiffs are challenging the validity of the Final Rule and allege that the Final Rule

[3] Upon filing this Original Petition, Plaintiffs will serve a copy, along with the citation, to the Office of the Attorney General—who happens to also be a named party in this action in compliance with the Texas Rules of Civil Procedure.

"interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff." Tex. Gov't Code § 2001.038(a).

14. This Court also has subject matter jurisdiction under Texas Constitution Article V, Section 8, and Texas Civil Practice and Remedies Code Section 37.003.

15. Plaintiffs John Creuzot, Joe Gonzales, and Sean Teare are district attorneys presiding in counties with population of 400,000 or more and thus are subject to the Final Rule's initial, quarterly, and annual reporting requirements and associated compliance provisions. *See* 1 Tex. Admin. Code §§ 56.1, 56.8. The Final Rule imposes onerous document review, document production, and reporting obligations on the district attorney Plaintiffs, disrupts the operation of their offices, and diverts their office staff and resources from prosecuting crimes to providing extensive documentation and reporting to an agency (the OAG) with no authority over criminal law enforcement. *Id.* §§ 56.3, 56.4. The Final Rule also subjects them to review by an Oversight Advisory Committee and threatens them with removal from office for non-compliance. *Id.* §§ 56.8, 56.9. Plaintiffs Dallas, Bexar, and Harris Counties are imminently threatened with having to raise funds—including through additional taxation—to fund the personnel, infrastructure, and equipment needed for their district attorneys' offices and their own county offices to comply with the Final Rule's reporting requirements. Plaintiffs have a legal right not to be subjected to regulation by the OAG absent statutory authority, reasoned justification, or compliance with the Texas Constitution.

16. The initial report is due July 1, 2025, and requires a search for, review of, and production of twelve categories of information covering a period of four years and three months. 1 Tex. Admin. Code § 56.3(b). If the district and county attorneys, including Plaintiffs Creuzot, Gonzales, and Teare, do not comply with the onerous reporting requirements, the Final Rule

threatens that "(1) [t]he OAG may construe the violation to constitute 'official misconduct' under Local Government Code § 87.911; (2) [t]he OAG may file a petition for quo warranto under Civil Practice and Remedies Code § 66.002 for the performance of an act that by law causes the forfeiture of the County of District Attorney's office; or (3) [t]he OAG may initiate a civil proceeding seeking to order the County or District Attorney to comply with this chapter." 1 Tex. Admin. Code § 56.8. Plaintiffs need not wait until a report is due or enforcement of the Final Rule to bring this action. *See Tex. Dep't of Pub. Safety v. Salazar*, 304 S.W.3d 896, 903 (Tex. App.—Austin 2009, no pet.). "[T]he purpose of [Texas Government Code] Section 2001.038 . . . 'is to obtain a final declaration of a rule's validity *before* the rule is applied.'" *Id.* (emphasis in original) (quoting *Rutherford Oil Corp. v. Gen. Land Off.*, 776 S.W.2d 232, 235 (Tex. App.—Austin 1989, no writ)); *accord Abbott v. Doe*, 691 S.W.3d 55, 75 (Tex. App.—Austin 2024, pet. filed).

17. Plaintiffs' claims are not barred by the doctrine of sovereign immunity. Plaintiffs are seeking non-monetary relief. Texas Government Code Section 2001.038(a)'s grant of jurisdiction represents a waiver of sovereign immunity where the validity or applicability of an administrative rule is in issue, as it is here.[4] Furthermore, a suit that a government officer acted without legal authority and seeking to compel the official to comply with statutory or constitutional provisions is an *ultra vires* suit that is not protected by sovereign immunity. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 376 (Tex. 2009).

18. This Court has personal jurisdiction over the OAG because Austin, Texas is the OAG's principal place of business and over Attorney General Paxton because he is a resident of Texas.

[4] "Section 2001.038 is considered a legislative grant of subject-matter jurisdiction, so that valid claims raised pursuant to that provision are not barred by sovereign immunity." *Salazar*, 304 S.W.3d at 903.

19. Venue is mandatory in Travis County under Texas Government Code Section 2001.038(b). Tex. Gov't Code § 2001.038(b); *see* Tex. Civ. Prac. & Rem. Code § 15.016; *see also id.*§ 15.004 (extending jurisdiction to Plaintiffs' non-APA claims). Additionally, venue is proper under Texas Civil Practice and Remedies Code Section 15.002(a)(1)–(3) and Section 65.023 because all or a substantial part of the events giving rise to the claims occurred in Travis County, Texas, and, the residence or principal office of all Defendants is in Travis County, Texas. Tex. Civ. Prac. & Rem. Code §§ 15.002(a)(1)–(3), 65.023.

LOCAL RULE 10.2 NOTICE

20. Plaintiffs have notified the Local Administrative Judge of this filing, in compliance with Travis County Local Rule 10.2.

EXHIBITS

21. Plaintiffs specifically identify and incorporate by reference herein the following exhibits in support of their Petition and Application for Temporary and Permanent Injunction:

Exhibit A: Final Rule and Preamble

Exhibit B: 1879 Texas Code of Criminal Procedure Articles 29, 30, 40

Exhibit C: House Bill 2676[5]

Exhibit D: House Bill 2676 Bill Analysis[6]

Exhibit E: Senate Bill 1228 Bill Analysis[7]

Exhibit F: March 2024 Proposed Rule

Exhibit G: September 2024 Revised Proposed Rule

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[5] Act of May 21, 2003, 78th Leg., R.S., ch. 691, § 1 (H.B. 2676), 2003 Tex. Gen. Laws 2120 (codified Tex. Gov't Code § 402.003).

[6] Senate Research Center, Bill Analysis, Tex. H.B. 2676, 78th Leg., R.S. (2003).

[7] S. Comm. on Judiciary, Bill Analysis, Tex. S.B. 1228, 69th Leg., R.S. (1985).

Exhibit H: Dallas County District Attorney Comments on Revised Proposed Rule

Exhibit I: Bexar County District Attorney Comments on Revised Proposed Rule

Exhibit J: Dallas County Commissioners' Court Comments on Revised Proposed Rule

Exhibit K: Harris County Comments on Revised Proposed Rule and Referenced Comments on Proposed Rule

Exhibit L: Declaration of Marsha Edwards

Exhibit M: Declaration of Jamissa Jarmon

Exhibit N: Declaration of Joshua Reiss

FACTUAL BACKGROUND

The Texas Constitution Does Not Give the Attorney General Any Rulemaking Authority Over Criminal Law Enforcement Matters or District and County Attorneys

22. The Attorney General is part of the Executive Department of the State. Tex. Const. art. IV, § 1 ("The Executive Department of the State shall consist of a Governor, who shall be the Chief Executive Officer of the State, a Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, Commissioner of the General Land Office, and Attorney General.").

23. District and county attorneys are part of the Judicial Department of the State. Tex. Const. art. V, § 21.

24. Article IV, Section 22 of the Texas Constitution sets out the powers of the Attorney General:

> The Attorney General shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the

> Governor and other executive officers, when requested by them, and perform such other duties as may be required by law.

25. Article IV, Section 22 of the Texas Constitution does not confer any rulemaking authority on the Attorney General.

26. The Texas Constitution does not authorize the Attorney General to institute criminal prosecutions, and the Attorney General has no independent authority to represent the State in criminal prosecutions in state district or appellate courts, except when a district or county attorney formally requests the Attorney General's assistance, *see* Tex. Gov't Code § 402.028, or when a district or county attorney is recused and appoints an assistant attorney general to represent the State, *see* Tex. Code Crim. Proc. art. 2A.104(b). *See Saldano v. State*, 70 S.W.3d 873 (Tex. Crim. App. 2002); *see also State v. Stephens*, 663 S.W.3d 45, 49 (Tex. Crim. App. 2021).

The Legislature Has Not Granted the Attorney General Rulemaking Authority Over District or County Attorneys

27. The duties and statutory authority of the Attorney General are set out in Chapter 402 of the Texas Government Code. Consistent with the Constitution, those provisions do not provide the Attorney General any authority over criminal prosecutions or district and county attorneys. Under Section 402.028(a), 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." Tex. Gov't Code § 402.028(a).

28. Texas Government Code Chapter 402 does not confer broad rulemaking authority on the Attorney General. Where rulemaking is permitted, it is confined to a few subject-specific areas, none of which relate to oversight of district and county attorneys or their reporting obligations. *See* Tex. Gov't Code § 402.0212(f) (authorizing rulemaking solely to implement the use of outside counsel by state agencies, providing that "[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 is limited to the operations of a human trafficking prevention task force); *id.* § 402.0351(b) (providing "[t]he attorney general by rule shall prescribe the design and content of a sign required to be posted under this section," which applies only to signage obligations for certain entities related to human trafficking awareness); *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.").

29. A few remaining provisions of the Texas Government Code authorize rulemaking by the Attorney General, but only as to discrete, subject-matters wholly unrelated to the Final Rule. For example, limited rulemaking authority exists for administering sexual assault -related programs. *See* Tex. Gov't Code § 420.005(b) (conferring limited authority to adopt rules solely related to grants administered by the Attorney General for sexual assault programs); *id.* § 420.011(providing that the attorney general "may adopt" or "shall adopt" rules relating to specific aspects of sexual assault prevention and crisis services); *id. §* 420.108 (regarding the Statewide Telehealth Center for Sexual Assault Medical Forensic Examinations, "[t]he attorney general may adopt rules as necessary to implement this subchapter"). The Public Information Act authorizes the Attorney General to adopt rules but only to manage the *process* of handling open records requests—deadlines, briefing schedules, cost calculations, and procedures for electronic submissions. *See id.* ch. 552 ("The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor,

the governmental body, and any other interested person");[8] *id.* § 552.262(a) ("The attorney general shall adopt rules for use by each governmental body in determining charges for providing copies of public information under this subchapter"). Outside the Public Information Act, similar authority applies to administrative logistics. *See id.* § 1202.004(e) (regarding fees for examination of issuance of public securities, "[t]he attorney general may adopt rules necessary to administer this section"); *id.* § 552.3031(c) (regarding electronic submission for request of attorney general decision, "[t]he attorney general may adopt rules necessary to implement this section"); *id.* § 2107.002(c) ("Until a state agency adopts rules under this section, the attorney general by rule may establish collection procedures for the agency, including the period for collecting a delinquent obligation," for collecting delinquent obligations owed to the agency).

30. And few other statutes confer rulemaking authority on the Attorney General; those that do use unmistakable, clear directive language, such as "shall adopt rules." *See* Tex. Code Crim. Proc. art. 56B.460(f) (regarding appropriation of other crime victim assistance funds, "[t]he attorney general *shall adopt rules* necessary to implement this article") (emphasis added); *id.* art. 56A.309 (regarding forensic medical examination of sexual assault victims, "[t]he attorney general and each department *shall adopt rules* as necessary to implement this subchapter") (emphasis added); *id.* art. 58.052(e) (regarding confidentiality program for certain crime victims, "[t]he attorney general *shall adopt rules* to administer the program") (emphasis added); *id.* art. 2.305(f) (regarding human trafficking case reporting, "the attorney general *shall adopt rules* to administer this article") (emphasis added); Tex. Bus. & Com. Code § 102.101(b) ("The attorney general *by rule shall* prescribe the design, content, and manner of display of the sign required by this section"

[8] Tex. Gov't Code §§ 552.008(b-2), 552.024(c-1), 552.1175(g), 552.130(d), 552.136(d), 552.138(d).

to be posted by sexually oriented businesses to direct victims of human trafficking to the National Human Trafficking Resource Center) (emphasis added); *id.* § 114.0002 (regarding human trafficking awareness and prevention in commercial lodging establishments, "[t]he attorney general *by rule shall*: (1) establish the requirements for operators of commercial lodging establishments to comply with the training required under Section 114.0051; (2) create and make available to commercial lodging establishments a template for the sign required under Section 114.0053; and (3) designate a telephone number for reporting a suspected act of human trafficking or a violation of this chapter.") (emphasis added); *id.* § 303.004 (regarding telephone solicitation for certain law enforcement -related charitable organizations, "[t]he attorney general *may adopt rules*, procedures, and forms necessary to administer and enforce this chapter") (emphasis added); *id.* § 17.464(d) ("the attorney general *may adopt rules*" regarding source of hospital charge data for use in establishing average charge for emergency care) (emphasis added); Tex. Transp. Code § 371.051(g) (regarding highway toll project entity examination fee, "[t]he attorney general *by rule shall* set the examination fee") (emphasis added); Tex. Ins. Code § 848.151 (regarding regulation of health care collaboratives, "the attorney general *may adopt reasonable rules* as necessary and proper to implement the requirements of this chapter") (emphasis added).

Texas Government Code Section 41.006 Does Not Authorize the Attorney General to Adopt Rules

31. In adopting the Final Rule, the Attorney General contends that "[n]ew 1 [Texas Administrative Code] Chapter 56 is adopted pursuant to Texas Government Code §41.006." 50 Tex. Reg. 2173, 2180 (Mar. 28, 2025) (Ex. A).

32. In contrast to the statutes discussed in paragraphs 28 to 30 above, Texas Government Code Section 41.006 does not authorize the Attorney General to adopt rulemaking.

The statute, which appears in the portion of the Government Code governing prosecuting attorneys—*not* the Attorney General—states: "At 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." The statute does not include any provision that the attorney general "may adopt" or "shall adopt" rules to implement or administer the statute.

33. The legislative history further confirms that Section 41.006 does not confer rulemaking authority on the Attorney General or the OAG. An earlier version of Section 41.006 was enacted as part of the 1879 Code of Criminal Procedure (as Article 40) in tandem with two related provisions, Articles 29 and 30, requiring the Attorney General report information to the Governor. Article 29 required the Attorney General to report:

> [A]nnually, and at such other times as the governor may require, the number of indictments which have been found by grand juries in this state for the preceding year; the number of informations filed in this state for the preceding year; the offenses charged in such indictments or information; the number of arraignments, convictions and acquittals for each offense; the number of indictments and informations which have been disposed of without the intervention of a petit jury, with the cause and manner of such disposition; and also a summary of the judgments rendered on conviction, specifying the offense, the nature and amount of penalties imposed, and the amount of fines collected.

Ex. B. Article 30 provided that the Attorney General may "require the several district and county attorneys, clerks of the district and county clerks in the state, to communicate to him at such times as he may designate, and in such form as he may prescribe, all the information necessary for his compliance with the requirements of the preceding article." *Id.* Article 40, which ultimately became the basis for Section 41.006, imposed a reciprocal duty on district and county attorneys and provided: "District and county attorneys shall, when required by the attorney -general, report to him at such times, and in accordance with such forms as he may direct, such information as he

may desire in relation to criminal matters and the interests of the state, in their districts and counties." *See id.*

34. Significantly, Article 30—the provision that had authorized the Attorney General to require district and county attorneys to provide the information for the Attorney General's reports to the Governor—was repealed in 1925.

35. Article 29, which governed the Attorney General's reporting obligations to the Governor, was later codified as Texas Government Code Section 402.003 in 1987. Act of May 21, 1987, 70th Leg., R.S., ch. 147, § 1 (S.B. 894), 1987 Tex. Gen. Laws 316, 322 (amended 2003). As recodified, it provided:

> The attorney general shall report to the governor on the first Monday of December of each even-numbered year. The report must include the following information for the preceding two years:
>
> (1) a statement of the number of indictments found by grand juries in the state and the offenses charges;
>
> (2) a statement of the number of trials, convictions, and acquittals for each offense;
>
> (3) a statement of the number of dismissals;
>
> (4) a summary of the judgments rendered on conviction, the nature and amount of penalties imposed, and the amount of fines collected;
>
> (5) a summary of the cases in which the state was a party that were acted on by the supreme court and court of criminal appeals; and
>
> (6) a summary of civil cases in which the state was a party that were prosecuted or defended by the attorney general in other state or federal courts.

Id. In 2003, the Legislature amended Texas Government Code Section 402.003 to eliminate the reporting requirements as to the first four categories. Ex. C, Act of May 21, 2003, 78th Leg., R.S., ch. 691, § 1 (H.B. 2676), 2003 Tex. Gen. Laws 2120 (amending Tex. Gov't Code § 402.003). According to the Bill Analysis, "[m]ost of this information . . . is collected by the office of court administration, rather than the attorney general's office." Ex. D, Senate Research Center, Bill

Analysis, Tex. H.B. 2676, 78th Leg., R.S. (2003). "Report" as used in Section 402.003 does not include case files, correspondence, or other internal district attorney office files.

36. Reporting requirements regarding article 40, which directed district and county attorneys to provide reports to the Attorney General in concert with articles 29 and 30, was codified as Texas Government Code Section 41.006 in 1985. At that time, the Bill Analysis Section of the legislation, S.B. 1228, stated: "It is the opinion of this committee that this bill *does not delegate rulemaking authority* to any state officer, agency, department, or institution." Ex. E, S. Comm. on Judiciary, Bill Analysis at 4, Tex. S.B. 1228, 69th R.S. (1985) (emphasis added).

37. Not only does Texas Government Code Section 41.006 fail to confer any rulemaking authority on the Attorney General, but it is effectively a dead letter statute. The statute was enacted to support a now-defunct reporting obligation imposed on the Attorney General. That obligation has long-since lapsed. The information is now collected by the Office of Court Administration—a state agency within the Judicial Branch—and the Executive Branch's power to compel such reports was repealed one hundred years ago.

38. In nearly one hundred and fifty years of existence, neither Texas Government Code Section 41.006 nor its predecessors have served as the basis for adopting rules or regulations.

The Rulemaking Process for the Final Rule

39. On March 8, 2024, the Attorney General published a proposed rule (the "Initial Proposed Rule") to adopt a new Chapter 56 in Title 1 of the Texas Administrative Code, 1 Tex. Admin. Code §§ 56.1–56.10. Ex. F (49 Tex. Reg. 1357 (Mar. 8, 2024)). Among other things, the Initial Proposed Rule required initial and quarterly reporting of entire case files for numerous categories of cases. *Id*. at 1358–59. The OAG received approximately 122 public comments, most in opposition to the proposed rule. District attorneys and county commissioners' offices provided

comments detailing the extraordinary burden and cost associated with complying with the proposed rule. They also raised concerns about conflicting statutory obligations requiring district attorneys to safeguard sensitive and confidential information contained in case files.

40. Following the comment period, the OAG did not adopt, nor adopt as amended, the Initial Proposed Rule. The Initial Proposed Rule, therefore, was withdrawn by operation of law. Tex. Gov't Code § 2001.027 ("A proposed rule is withdrawn six months after the date of publication of notice of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule.").

41. On September 13, 2024, the Attorney General again proposed the adoption of a new Chapter 56 in Title 1 of the Texas Administrative Code. Ex. G (49 Tex. Reg. 7139 (Sept. 13, 2024) ("Revised Proposed Rule").

42. The Revised Proposed Rule increased the population threshold from 250,000 to 400,000 but continued to impose extraordinarily burdensome and costly document review and production requirements, including requiring the district and county attorneys to produce entire case files at the request of the Oversight Advisory Committee. *Id.* at 7141–42.

43. Numerous comments were submitted in opposition to the Final Rule, including from Plaintiffs John Creuzot, Joe Gonzales, Dallas County, and Harris County. Exs. H, I, J, K. In addition to challenging the OAG's authority to adopt the rule, Plaintiffs John Creuzot and Joe Gonzales detailed the infeasibility and extraordinary staffing and financial burden that compliance with the rule would impose, as well as the rule's conflict with various state and federal laws limiting disclosure of confidential material in law enforcement case files. Ex. H at 6–11; Ex. I at 1–8; Ex. J at 2–4. Plaintiff Dallas County questioned the accuracy of the OAG's Government Growth Impact Statement and estimated that compliance with the rule would cost $22.9 million

over five years, resulting in a future property tax increase of 1% to Dallas County taxpayers. Ex. J at 2–3. Plaintiff Harris County warned that the rule would require these attorneys to risk violating statutes governing the confidentiality of sensitive records, including juvenile and Child Protective Services records. Ex. K at 4 (Apr. 8, 2024 comments). With respect to the cost and burden, Harris County commented: "The proposed Rules will significantly impact operations for this already burdened agency. Aside from producing the quarterly and annual reports, the Harris County District Attorney's office would need to update its data gathering mechanisms, which will come at an operational and labor cost. Moreover, the Rules will require individual prosecutors to spend hours gathering this data, at the expense of swiftly prosecuting their cases." *Id.*

44. The OAG held a hearing on the Revised Proposed Rule on November 18, 2024, and numerous concerned citizens testified in opposition to the rule.

The Final Rule

45. Despite widespread opposition, the OAG dismissed public comments and proceeded with the rule's final adoption. No substantive modifications were made to address concerns about the rule's legality, cost, or feasibility, demonstrating a failure to meaningfully respond to public comments.

46. The OAG filed the Final Rule with the Office of the Secretary of State on March 13, 2025. The Final Rule went into effect on April 2, 2025.

47. According to the OAG: "Adopted new Chapter 56 helps ensure that county and district attorneys are consistently complying with statutory duties, including seeking justice for citizens who have been harmed by a criminal act, appropriately administering funds, and appropriately prosecuting crimes. Whether a public official and office whose purpose is to fairly

prosecute crimes and keep communities safe is enforcing criminal prosecution laws is a criminal matter and within the interest of the state." Ex. A, 50 Tex. Reg. 2173, 2174 (Mar. 28, 2025).

48. Under the Final Rule, Section 56.1 mandates that district and county attorneys in jurisdictions with a population of 400,000 or more must submit initial, quarterly, and annual "reports." The Final Rule allows the OAG to comb through correspondence, case files, and policies of targeted district and county attorneys so the attorney general can assess whether county and district attorneys are "consistently complying with statutory duties" and "appropriately prosecuting crimes." *Id.*; *see also id.* at 2174.

49. Under the Final Rule, Section 56.3 imposes quarterly and initial reporting requirements. Quarterly, the covered district and county attorneys must provide:

> (1) The number of instances that the Reporting Entity indicted a peace officer for the peace officer's conduct during official duties;
>
> (2) The number of instances that the reporting entity indicted an individual for a criminal violation under the Texas Election Code.
>
> (3) 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;
>
> (4) 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;
>
> (5) The case file for prosecutions for which the Texas Governor has announced that The Office of the Texas Governor is considering a pardon;
>
> (6) Any case file for prosecutions relating to criminal matters and the interests of the state, as requested by the Attorney General through the Oversight Advisory Committee, including cases where there are substantial doubts by the Oversight Advisory Committee whether probable cause exists to support a prosecution;
>
> (7) 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;
>
> (8) All correspondence requested by OAG's Oversight Advisory Committee for a

> matter listed in response to paragraph (7) of this subsection on a prior quarterly report;
>
> (9) All correspondence and other documentation describing and analyzing a reporting entity's policy not to indict a category or sub-category of criminal offenses;
>
> (10) All correspondence with any employee of a federal agency regarding a decision whether to indict an individual;
>
> (11) All correspondence with any non-profit organization regarding a decision whether to indict an individual; and
>
> (12) All correspondence written at any time by an assistant district attorney or assistant county attorney regarding the attorney's resignation under a formal or informal complaint process. This Section does not include communications regarding salary negotiations or retirement policies.

1 Tex. Admin. Code § 56.3

50. Under the Final Rule, covered district and county attorneys must provide an initial report that includes all the information required in Section 56.3(a) to be reported quarterly for the period January 1, 2021, to April 2, 2025. The initial report is due within 90 days of the effective date of the rule (by July 1, 2025). *Id.* § 56.5(a)(4).

51. Under the Final Rule, Section 56.2(1) broadly defines "case file" as "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," though it does not include the "reporting entity['s] employee's correspondence that is purely personal in nature and has no connection with the transaction of official business." *Id.* § 56.2(1).

52. Under the Final Rule, Section 56.2(2) defines "correspondence" as "any email, letter, memorandum, instant message, text message, or direct message, received or issued by an employee of the reporting entity," excluding "a reporting entity employee's correspondence that

is purely personal in nature and has no connection with the transaction of official business." *Id.* § 56.2(2).

53. Under the Final Rule, Section 56.2(7) defines "violent crime" to include theft and automobile theft, and any attempt to commit those crimes, even though the definition of "violent offense" in Texas Code of Criminal Procedure Section 17.50(a)(3) does not include theft or automobile theft. *See* Tex. Code Crim. Proc. art. 17.50(a)(3).

54. Under the Final Rule, Section 56.4 requires the submission of annual reports providing the following information:

> (1) All policies, rules, and orders, including internal operating procedures and public policy documents, that were modified during the prior 12 months;
>
> (2) A list of all local, county, state, and federal ordinances, statutes, laws, and rules for which the reporting entity files reports, whether that requirement is regular or arises upon the occurrence of an event;
>
> (3) A list of individual expenditures and purchases made based on funds or assets received through civil asset forfeiture;
>
> (4) All information regarding funds accepted by the commissioners court of their county pursuant to Texas Government Code §41.108 that were passed on to the reporting entity. The reporting entity must detail how much of the funds were passed on to the reporting entity and provide a detailed accounting of how the reporting entity disposed of any funds received; and
>
> (5) All information regarding funds accepted by the commissioners court of their county pursuant to Texas Government Code §41.108 that were not passed on to the reporting entity, but were used to benefit the reporting entity, its personnel, or its operations. The report must include any correspondence regarding accepted funds, as well as a detailed account of how the funds were used to benefit the reporting entity, its personnel, or its operations.

1 Tex. Admin. Code § 56.4. The Final Rule provides for the creation of an Oversight Advisory Committee composed of three members of the OAG designated by the Attorney General. *Id.* § 56.9(a). Section 56.9(c) gives the Oversight Advisory Committee authority 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." *Id.* § 56.9(c).

55. Under the "Compliance" provisions of the Final Rule, if a district attorney or county attorney violates the reporting requirements: "(1) The OAG may construe the violation to constitute 'official misconduct' under Local Government Code §87.011; (2) The OAG may file a petition for quo warranto under Civil Practice and Remedies Code §66.002 for the performance of an act that by law causes the forfeiture of the County or District Attorney's office; or (3) The OAG may initiate a civil proceeding seeking to order the County or District Attorney to comply with this chapter." *Id.* § 56.8.

56. In addressing the fiscal impact on state and local government, the preamble to the Final Rule states that Josh Reno, the Deputy Attorney General for Criminal Justice, "has determined that for the first five-year period the adopted rules are in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of state government." Ex. A, 50 Tex. Reg. at 2174. According to the OAG, "[b]ecause the content of the reports will differ between reporting entities, the OAG cannot predict the cost amounts but expects the cost to be minimal and likely absorbed into reporting entities' ongoing operations with minimal, if any, fiscal impact." *Id.*

57. In violation of Texas Government Code Section 2001.033(1)(A), the Final Rule does not disclose "the names of interested groups or associations offering comment on the rule and whether they were for or against its adoption."

The OAG's Responses to Comments on the Revised Proposed Rule

58. In response to comments that the Final Rule violates the Constitution's requirement of a separation of powers between the executive and judicial branches, the OAG provided a

non-responsive statement: "The rule implements Government Code §41.006 as it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices." *Id.* at 2175. But elsewhere the OAG states that the purpose of the Final Rule is to "ensure that county and district attorneys are consistently complying with statutory duties, including seeking justice for citizens who have been harmed by a criminal act, appropriately administering funds, and appropriately prosecuting crimes." *Id.* at 2173; *see also id.* at 2174. The OAG fails explain why its use of the Final Rule to monitor and assess the performance of district and county attorneys so that those the OAG deems not "appropriately" prosecuting crimes can be removed from office is not a violation of the separation of powers doctrine.

59. In response to comments that imposing reporting requirements only on district attorneys and county attorneys presiding in a district or county with a population of 400,000 or more persons is arbitrary, politically motivated, and lacks a statutory basis, the OAG responded that "[t]he population requirement for compliance with the rule allows the OAG to review data from the largest counties in the state which will indicate trends for all counties in the state." *Id.* at 2177. But, by the OAG's own admission, the purpose of the Final Rule is not to identify statewide trends, but rather to identify district and county attorneys who are not, in the eyes of the Attorney General, complying with their statutory duties or "appropriately prosecuting crimes." *Id.* at 2173, 2174. The Final Rule targets only those district and county attorneys in district or counties with populations of 400,000 or more, and the OAG provides no reasoned justification for targeting that category of prosecutor. Moreover, if the OAG were seeking to identify "trends for all counties in

the state" there would be no purpose to seeking correspondence and case files, which would not show "trends."

60. In response to comments that "violent crimes" should not be defined to include non-violent theft and automobile theft, and attempts to commit such crimes, the OAG responded: "The OAG reviewed the comments and declines to make changes to the rule because the definition of 'violent crime' in §56.2(7) is only applicable to the reporting requirements in the rule. The rule does not purport to amend the definition of 'violent crime' in any other context." Ex. A at 2177. The OAG failed to provide any reasoned justification for adopting an inaccurate definition of violent crime "only applicable" to the Final Rule.

61. In response to extensive comments regarding the substantial cost and burden associated with complying with the Final Rule, the OAG stated:

> The OAG considered the comments and declines to make changes to the rule as the OAG completed a fiscal impact analysis of the rule and concluded that costs should be minimal as complying with the rule could be absorbed into the reporting entities' ongoing operations. Because the content of the reports will differ between reporting entities, the OAG could not predict the exact cost amounts for each reporting entity but expects the cost to be minimal and likely absorbed into reporting entities' ongoing operations with minimal, if any, fiscal impact. Additionally, the OAG acknowledges it will take some time for employees to compile the required reporting data. However, the OAG estimates such time will be minimal as the reporting entity should maintain standard law enforcement record keeping practices.

Id. at 2176. The OAG failed to address numerous comments from district attorneys and counties that the reporting requirements imposed by the Final Rule are extraordinarily burdensome,

infeasible, and would interfere with the operations of the district attorney offices.

62. In response to extensive comments explaining that case files include confidential information that district and county attorneys are prohibited by statute from disclosing, the OAG responded:

> The OAG considered the comments and declines to make changes to the rule as the OAG has not identified any instances in which a reporting entity would be prohibited from sharing information with the OAG. Reporting entities currently routinely submit their entire case files, including all of the types of information specified in the comments, to the OAG in various manners and in compliance with other statutes that only generally require disclosure of information to the OAG. The rule implements Government Code §41.006, which specifically states the district and county attorneys shall report to the attorney general the information the attorney general desires. The OAG is required to comply with the same confidentiality statutes for which the reporting entities are required to comply. Any confidential information provided to the OAG pursuant to the rule and §41.006 maintains its confidentiality under the respective confidentiality laws.

Ex. A at 2176. In fact, the commenters did identify specific statutes that prohibit disclosure of categories of information that could be included in case files. *See, e.g.*, Ex. H at 6 ("Various statutes limit the disclosure of confidential information without a court order or the satisfaction of some other statutory requirement(s). For example, Tex. Code Crim. Proc. art. 20.02(e) only provides for the district court in which a case is pending to release grand jury information. Tex. Fam. Code § 261.201 sets out the procedure for the release of child abuse records (and the release of an informer's information, Section 261.101). Tex. Occ. Code § 1701.661 sets out the requirements for the release of body cam video."); *see also id.* at 7–9. In addition, the OAG failed to identify any statute that requires district or county attorneys to disclose their case files to the OAG or any legal support for the OAG's position that confidential information provided to the

OAG maintains its confidentiality under confidentiality laws.

63. In response to comments observing that the OAG has no authority to define what conduct constitutes "official misconduct" for purposes of Local Government Code Section 87.011, *see* 1 Tex. Admin. Code § 56.8(1), the OAG again provided a non-responsive statement: "The rule states the OAG may construe the violation to constitute 'official misconduct.' Section 87.015 sets forth procedures for petitioning a district court for the removal of an attorney. It does not state the OAG may remove a district or county attorney from office." Ex. A at 2175.

Impact of the Final Rule

64. Compliance with the rule would require reassignment of prosecutors who would otherwise be handling violent crime cases, felony trials, or domestic violence prosecutions. These attorneys would be forced to pause work on pending cases.

65. As Plaintiffs and other commentators flagged, the Final Rule will have a significant impact on already-strained district attorney offices. The anticipated financial cost of compliance is staggering. Compliance with the Final Rule will require staff overtime, digital storage expansion, and record retrieval expenses, with Dallas, Harris, and Bexar Counties projecting significant costs. These estimates do not include the additional personnel, IT infrastructure, and security measures necessary to protect sensitive legal records.

66. Compliance will impose even greater costs on district attorneys' offices in the largest jurisdictions targeted by the Final Rule, as those offices carry heavy caseloads.

67. The Final Rule's retroactive reporting mandate—requiring review and production of information dating back to January 1, 2021—is logistically impossible to meet within the required timeframe. To comply, district attorneys' offices would be required to review a

tremendous amount of email correspondence belonging to current and former employees, as well as case files that have been closed for years—all while simultaneously handling active caseloads.

68. The sheer volume of requested information threatens to overwhelm case management systems statewide, forcing counties to upgrade digital storage capacity at an unexpected cost of millions, further straining IT departments that were never equipped to handle this level of sensitive data transfer.

69. Beyond financial and administrative burdens, the Final Rule places district and county attorneys in an untenable position of having to choose between complying with the Final Rule or complying with confidentiality provisions that restrict the production of certain material in case files, such as grand jury records, medical records, and juvenile court records.

70. Compliance with the Final Rule will substantially disrupt Texas's criminal justice system in the state's largest jurisdictions, overwhelming prosecutors with excessive reporting obligations, creating legal uncertainty regarding compliance with confidentiality laws, and diverting resources away from prosecuting crime, with zero statutory authority for the unfunded diversion of criminal justice resources. If left in place, the Final Rule 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 urgent judicial intervention to enjoin application of the Final Rule before Plaintiffs must produce the required initial and quarterly "reports."

COUNT I – VIOLATION OF THE TEXAS ADMINISTRATIVE PROCEDURE ACT:

The OAG Lacks Authority to Adopt Any Rules Under Texas Government Code Section 41.006

71. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

72. "'An agency rule is invalid if (1) the agency had no statutory authority to promulgate it; (2) it was not promulgated pursuant to proper procedure; or (3) it is unconstitutional.'" *Williams v. Tex. State Bd. of Orthotics & Prosthetics*, 150 S.W.3d 563, 568 (Tex. App.—Austin 2004, no pet.) (quoting *R.R. Comm'n v. ARCO Oil & Gas Co.*, 876 S.W.2d 473, 477 (Tex. App.—Austin 1994, writ. denied)); *Doe*, 691 S.W.3d at 73. To meet its burden of demonstrating invalidity, the challenging party "must show that the rule: (1) contravenes specific statutory language, (2) runs counter to the general objectives of the statute, or (3) imposes additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions." *Tex. State Bd. of Exam'rs of Marriage & Fam. Therapists v. Tex. Medical Ass'n*, 511 S.W.3d 28, 33 (Tex. 2017).

73. Texas Government Code Section 41.006 does not grant the OAG rulemaking authority, and no other statute grants the OAG authority to promulgate the Final Rule.

74. The Final Rule is invalid because the OAG lacks statutory authority to promulgate the Final Rule.

75. As a result of the foregoing, Plaintiffs are entitled to a declaratory judgment and permanent injunction declaring the Final Rule to be invalid, prohibiting Defendants from enforcing the Final Rule, and any other relief that may be appropriate.

COUNT II – VIOLATION OF THE TEXAS ADMINISTRATIVE PROCEDURE ACT:

The Final Rule Exceeds the Scope of any Rulemaking Authority

76. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

77. Even if Texas Government Code Section 41.006 is construed to confer the OAG with rulemaking authority, the Final Rule is invalid because it contravenes the specific statutory

language of Texas Government Code Section 41.006 and imposes additional burdens, conditions, or restrictions in excess of or inconsistent with the statute.

78. The Final Rule contravenes the specific statutory language of Texas Government Code Section 41.006 and imposes additional burdens, conditions, or restrictions in excess of or inconsistent with the statute by requiring district and county attorneys to not simply provide a "report" to the OAG of prosecution statistics but also to provide to the OAG entire case files, correspondence, internal legal analysis, and internal office files on employees, internal policies, and use of funds.

79. The Final Rule contravenes the specific statutory language of Texas Government Code Section 41.006 by targeting only those jurisdictions with populations of 400,000 or more. Section 41.006 does not draw any distinction based on population. Indeed, if Section 41.006 were to be interpreted to apply only to specific jurisdictions, it would potentially violate the Texas Constitution's prohibition on local and special laws "regulating the affairs of counties" or "prescribing the . . . duties of officers . . . in counties." Tex. Const. art. III, § 56(a)(2), (14). The bracketed population classification of 400,000 in the Final Rule is not based on characteristics legitimately distinguishing jurisdictions with populations of 400,000 or more from others with respect to the public purpose sought to be accomplished.

80. The Final Rule contravenes the specific statutory language of Texas Government Code Section 41.006 and imposes additional burdens, conditions or restrictions in excess of or inconsistent with the statute by defining "violent crime" to include non-violent crimes, including all thefts and all attempts at those offenses.

81. The Final Rule contravenes the specific statutory language of Texas Government Code Section 41.006 and imposes additional burdens, conditions or restrictions in excess of or

inconsistent with the statute by defining what constitutes "official misconduct" for purposes of Texas Local Government Code Section 87.011, authorizing the OAG to treat noncompliance with the Final Rule as a basis for pursuing the removal of district and county attorneys through quo warranto proceedings, and authorizing the OAG to initiate civil proceedings against district and county attorneys.

82. The Final Rule contravenes the specific statutory language of Texas Government Code Section 41.006 and imposes additional burdens, conditions or restrictions in excess of or inconsistent with the statute by imposing new document retention obligations on district and county attorneys.

83. The Final Rule contravenes the specific statutory language of Texas Government Code Section 41.006 and imposes additional burdens, conditions or restrictions in excess of or inconsistent with the statute by 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.

84. The Final Rule contravenes the specific statutory language of Texas Government Code Section 41.006 and imposes additional burdens, conditions or restrictions in excess of or inconsistent with the statute by creating an Oversight Advisory Committee, which can request entire case files at its discretion.

85. The Final Rule contravenes the specific statutory language of Texas Government Code Section 41.006 and imposes additional burdens, conditions or restrictions in excess of or inconsistent with the statute by requiring district attorneys to provide a "list of individual expenditures and purchases made based on funds or assets received through civil asset forfeiture." 1 Tex. Admin. Code § 56.4(3).

86. As a result of the foregoing, Plaintiffs are entitled to a declaratory judgment and permanent injunction declaring the Final Rule to be invalid, prohibiting Defendants from enforcing the Final Rule, and any other relief that may be appropriate.

COUNT III – VIOLATION OF THE TEXAS ADMINISTRATIVE PROCEDURE ACT

The Final Rule was not Adopted in Substantial Compliance with the Reasoned Justification Requirement of Section 2001.033 of the Administrative Procedure Act

87. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

88. Under APA Section 2001.033(a)(1), a state agency order finally adopting a rule must include a "reasoned justification for the rule as adopted." Specifically:

> A state agency order finally adopting a rule must include:
>
> (1) a reasoned justification for the rule as adopted consisting solely of:
>
> > (A) a summary of comments received from parties interested in the rule that shows the names of interested groups or associations offering comment on the rule and whether they were for or against its adoption;
> >
> > (B) a summary of the factual basis for the rule as adopted which demonstrates a rational connection between the factual basis for the rule and the rule as adopted; and
> >
> > (C) the reasons why the agency disagrees with party submissions and proposals.

Tex. Gov't Code § 2001.033(a)(1).

89. The "agency's reasoned justification" must demonstrate in a "clear and logical fashion that the rule is a reasonable means to a legitimate objective." *Id.* § 2001.035(c). An agency rule is invalid if it is not adopted in substantial compliance with APA Section 2001.033(a)'s reasoned justification requirement. *Id.* § 2001.035.

90. In adopting the Final Rule, the OAG did not substantially comply with the "reasoned justification" requirement under the APA because the final notice did not provide "a summary of comments received from parties interested in the rule that shows the names of interested groups or associations offering comment on the rule and whether they were for or against its adoption," the factual basis of the rule demonstrating any rational connection between the factual basis for the rule and the rule as adopted, or the reasons why it disagreed with comments by Plaintiffs and others opposing the Final Rule. As a result of these failures, the OAG failed to demonstrate a rational connection between the facts before it and the Final Rule.

91. The Final Rule violates the reasoned justification requirement by, among other things, failing to provide the names of interested groups or associations offering comment on the rule and whether they were for or against its adoption, as required by APA Section 2001.033(a)(1)(A).

92. During the notice-and-comment period following the publication of the Revised Proposed Rule multiple stakeholders, including Plaintiffs, warned of the significant legal and practical concerns posed by the Revised Proposed Rule. In adopting the Final Rule, the OAG did not adequately address Plaintiffs' concerns, or those of other stakeholders, in its Final Rule.

93. The OAG provided no reasoned justification for singling out district and county attorneys presiding in a district or county with a population of 400,000 or more.

94. The OAG provided no reasoned justification for imposing burdensome recordkeeping, document review, and reporting requirements from district and county attorneys.

95. The OAG provided no reasoned justification for seeking highly sensitive and confidential information protected from disclosure under federal and state law.

96. As a result of the foregoing, Plaintiffs are entitled to a declaratory judgment and permanent injunction declaring the Final Rule to be invalid, prohibiting Defendants from enforcing the Final Rule, and any other relief that may be appropriate.

COUNT IV – VIOLATION OF THE TEXAS ADMINISTRATIVE PROCEDURE ACT

The OAG violated the APA Because Its Notice Did Not Substantially Comply with Section 2001.024 of the APA

97. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

98. The APA mandates that agencies provide a comprehensive cost-benefit analysis when proposing new rules. The Texas APA requires that the agency provide "the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule" in the notice of a proposed rule. Tex. Gov't Code § 2001.024(a)(4)(C). Similarly, Section 2001.024(a)(5) requires an agency to provide a detailed statement of public benefits and economic costs for the first five years of implementation. Tex. Gov't Code § 2001.024(a)(5) (requiring "a note about public benefits and costs showing the name and Title of the officer or employee responsible for preparing or approving the note and stating for each year of the first five years that the rule will be in effect: (A) the public benefits expected as a result of the adoption of the proposed rule; and (B) the probable economic cost to persons required to comply with the rule").

99. When proposing the rule, the OAG failed to consider and address the loss of revenue local governments will suffer as a result of the sweeping new compliance burdens, including extensive collection, review, and submission of case files, as required by Texas Government Code Section 2001.024(a)(4)(C) and (2). The OAG failed to quantify, or misstated,

the projected costs of compliance, including the additional staff, overtime, digital infrastructure, and security measures necessary to implement the rule.

100. In an apparent attempt to satisfy Texas Government Code Section 2001.024(a)(4)(C), the OAG stated in its notice that "there may be minimal costs to local governments for gathering and submitting quarterly and annual reports to OAG" and that "OAG cannot predict the cost amounts." Ex. A, 50 Tex. Reg. at 2174. Section 2001.024(a)(4)(C), however, commands the OAG to estimate what the loss or increase in revenue to the state and local governments would be.

101. When proposing the Proposed Revised Rule (Ex. G), the OAG failed to consider and discuss the public benefits and costs associated with the Proposed Revised Rule, as required by Texas Government Code Section 2001.024(a)(5).

102. Instead of providing a meaningful analysis, the OAG's notice contained vague, conclusory statements, unsupported by data, and devoid of any reasoned evaluation. The notice failed to account for the significant financial and administrative burdens placed on local prosecutors, and it did not address the estimated impact on prosecutorial efficiency, case backlogs, or public safety.

103. The APA's cost-benefit requirements exist to ensure transparency and accountability in rulemaking. By failing to conduct and disclose a meaningful cost analysis, the OAG deprived affected parties—including Plaintiffs and taxpayers—of the opportunity to fully understand the Proposed Revised Rule's consequences and to offer informed objections. *See Unified Loans, Inc. v. Pettijohn*, 955 S.W.2d 649, 651 (Tex. App.—Austin 1997, no writ).

104. Because the OAG failed to substantially comply with the statutory requirements of Texas Government Code Section 2001.024(a)(4)(C) and Section 2001.024(a)(5), the Final Rule is

procedurally invalid and requires that the Court declare the Final Rule null and void and of no force and effect. Plaintiffs thus seek a declaratory judgment that the Final Rule is void and unenforceable, as well as injunctive relief prohibiting its enforcement.

105. As a result of the foregoing, Plaintiffs are entitled to a declaratory judgment and permanent injunction declaring the Final Rule to be invalid, prohibiting Defendants from enforcing the Final Rule, and any other relief that may be appropriate.

COUNT V – VIOLATION OF THE TEXAS CONSTITUTION

The Final Rule Violates Separation of Powers (Tex. Const. art. II, § 1)

106. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

107. The Texas Constitution, like the U.S. Constitution, divides the powers of government into legislative, executive, and judicial departments. *See* Tex. Const. art. II, § 1, *see also id.* arts. III, IV, V. But unlike its federal counterpart, the Texas Constitution expressly provides that "no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted." *Id.* art. II, § 1.

108. This prohibition is absolute. The executive, legislative, and judicial departments may not expand, restrict, or destroy the powers of any one of them. A constitutional violation occurs when one branch attempts to usurp or interfere with the core function of another. *See In re Turner*, 627 S.W.3d 654, 660 (Tex. 2021).

109. This express separation of powers provision is unlike the structural separation of powers doctrine emanating from the United States Constitution, which "suggests that Texas would

more aggressively enforce separation of powers between its government branches than would the federal government." *Ex parte Perry*, 483 S.W.3d 884, 894 (Tex. Crim. App. 2016).

110. A separation of powers violation may occur in one of two ways. First, "it is violated when one branch of government assumes, or is delegated, *to whatever degree*, a power that is more 'properly attached' to another branch.'" *Stephens*, 663 S.W.3d at 51 (emphasis added) (quoting *Armadillo Bail Bonds v. State*, 802 S.W.3d 237, 239 (Tex. Crim. App. 1990)). The second occurs "when one branch unduly interferes with another branch so that the other branch cannot *effectively* exercise its constitutionally assigned powers." This case involves both types of separation-of-powers violations.

111. The OAG is part of the executive branch of government, whereas district and county attorneys are part of the judicial branch. Tex. Const., art. V, § 21; *id.* art. IV, § 22. The OAG does not have the right, power, or authority to institute criminal prosecutions in the name of the State, unless the district or county attorney asks for the OAG's assistance. *Stephens*, 663 S.W.3d at 49; *see also In re Abbott*, 601 S.W.3d 802, 812 (Tex. 2020) ("[T]he State correctly observes that the Attorney General cannot bring such a criminal prosecution without the participation of a district attorney.").

112. The Final Rule improperly transfers judicial power to the OAG by imposing oversight, review, and potential discipline over district and county attorneys—functions that are the exclusive domain of the judicial branch and the Texas Constitution's system of elected prosecutors. The OAG states in the Preamble to the Final Rule that it "will help ensure that county and district attorneys are consistently complying with statutory duties, appropriately administering funds, appropriately prosecuting crimes, and seeking justice for citizens who have been harmed by a criminal act." Ex. A at 2174. Attorney General Paxton has stated that purpose of the Final

Rule is to "rein in" "rogue district attorneys" and "to enable citizens to hold rogue DA's accountable." *See infra* note 1. The Texas Constitution does not permit the OAG to become the de facto supervisors of district and county attorneys.

113. The Final Rule also unlawfully interferes with district and county attorneys by requiring them to produce burdensome initial, quarterly, and annual reports to the OAG. In doing so, the OAG impinges on district and county attorney's ability to exercise its core prosecutorial functions. *See Webster v. Comm'n for Law. Discipline*, 704 S.W.3d 478, 502, 506 (Tex. 2024) (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 threatened interference at all that raises a separation-of-powers problem).

114. The Final Rule unduly interferes with Plaintiffs' duties under the judicial branch so they cannot effectively perform their constitutionally delegated powers.

115. Courts should "interpret [a] statute in a manner that avoids constitutional infirmities," *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 380 (Tex. 1998), and an interpretation of Section 41.006 that authorizes the Final Rule runs afoul of the separation of powers doctrine.

116. "Exceptions to the constitutionally mandated separation of powers are never to be implied in the least; they must be 'expressly permitted' by the Constitution itself." *Fin. Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 570 (Tex. 2013) (quoting Tex. Const. art. II, § 1).

117. The administrative burdens of the Final Rule will divert resources away from district and county attorneys' core function of prosecuting crimes.

118. As a result of the foregoing, Plaintiffs are entitled to a declaratory judgment and permanent injunction declaring the Final Rule to be unconstitutional, prohibiting Defendants from enforcing the Final Rule, and any other relief that may be appropriate.

COUNT VI – ULTRA VIRES ACT

Attorney General Paxton Exceeded His Authority and Acted *Ultra Vires*

119. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

120. Attorney General Paxton has committed *ultra vires* acts by adopting the Final Rule without lawful authority. The Texas Constitution and Texas Legislature do not grant Attorney General Paxton any rulemaking authority under Texas Government Code Section 41.006, nor do they grant him the power to regulate the State's district attorneys and county attorneys.

121. Attorney General Paxton has committed *ultra vires* acts by including provisions in the Final Rule, including Section 56.8(1), (2), which purport to grant to the Office of Attorney General additional powers and authority under Texas Local Government Code Chapter 87 and/or Texas Civil Practice and Remedies Code Chapter 66. 1 Tex. Admin. Code § 56.8(1), (2).

122. Attorney General Paxton has committed *ultra vires* acts by requiring district and county attorneys to produce documents and information where that disclosure violates state laws, federal laws, and the Texas Constitution.

123. As a result of the foregoing, Plaintiffs are entitled to a declaratory judgment and permanent injunction declaring the Final Rule to be unconstitutional, prohibiting Defendants from enforcing the Final Rule, and any other relief that may be appropriate.

APPLICATION FOR TEMPORARY INJUNCTION

124. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

125. In addition to the above-requested relief, Plaintiffs seek a temporary injunction to enjoin application and enforcement of the Final Rule during the pendency of this litigation. Plaintiffs request that this Court set their application for a temporary injunction for a hearing and, after hearing the application, issue a temporary injunction order against Defendants.

126. "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). The "status quo" is the "'last, actual, peaceable, non-contested status which *preceded* the pending controversy.'" *Clint Indep. Sch. Dist. v. Marquez*, 487 S.W.3d 538, 555 (Tex. 2016) (emphasis added) (quoting *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004)).

127. The "status quo" in this case was the Plaintiffs' status *prior* to the April 2, 2025, effective date of the Final Rule.

128. The issuance of a temporary injunction in an APA case challenging the validity of an administrative rule is consistent with the purpose of Texas Government Code Section 2001.038, which is "'to obtain a final declaration of a rule's validity *before* the rule is applied.'" *Abbott v. Doe*, 691 S.W.3d 55, 75 (Tex. App.—-Austin 2024, pet. filed) (quoting *Texas Dep't of Pub. Safety v. Salazar*, 304 S.W.3d 896, at 903 (Tex. App.-Austin 2009, no. pet.).

129. Trial courts have frequently issued a temporary injunction order in APA cases challenging the validity or application of an administrative rule, and appellate courts have affirmed those orders. *See, e.g.*, *Tex. Health & Hum. Servs. v. Advocates for Patient Access, Inc.*, 399 S.W.3d 615, 629–31 (Tex. App.—Austin 2013, no pet.); *Tex. Alcoholic Beverage Comm'n v. Amusement & Music Operators of Tex., Inc.*, 997 S.W.2d 651, 654–59 (Tex. App.—Austin 1999,

pet. dism'd w.o.j.); *see also Muth v. Voe*, 691 S.W.3d 93, 134–38 (Tex. App.—Austin 2024, pet. filed); *Doe*, 691 S.W.3d at 86–93; *Tex. Dep't of State Health Servs. v. Sky Mktg. Corp.*, No. 03-21-00571-CV, 2023 WL 6299115, at *12–15; (Tex. App.—Austin Sept. 28, 2023, pet. granted); *Combs v. Ent. Publ'ns, Inc.*, 292 S.W.3d 712, 724–25 (Tex. App.—Austin 2009, no pet.).

130. For example, in *Advocates for Patient Access*, the Court of Appeals affirmed the trial court's issuance of a temporary injunction order in a declaratory-judgment action challenging the validity of a Health and Human Services Commission's medical transportation rule. 399 S.W.3d at 629–31. The court reached this decision after noting that "the only question before the trial court is whether the applicant is entitled to preservation of the status quo pending trial on the merits." *Id*. at 629. In *Combs*, the Court of Appeals similarly affirmed the trial court's issuance of a temporary injunction enjoining the Comptroller from implementing and enforcing a new rule. 292 S.W.3d at 724–25. Again, the court emphasized that "[t]he purpose of a temporary injunction is to preserve the status quo of the subject matter of a suit pending final disposition of the case on the merits." *Id*. at 724. And in *Abbott v. Doe*, the Court of Appeals affirmed the trial court's temporary injunction order enjoining the Department of Family and Protective Services from implementing or enforcing a rule that redefined "child abuse" to include every report that an adolescent was receiving gender-affirming medical care. 691 S.W.3d at 86–93. The court also noted that a temporary injunction's purpose "is to preserve the status quo of the litigation's subject matter pending trial" before reaching its decision. *Id*. at 86. Time and time again, Texas appellate courts have confirmed that a well-grounded challenge to an agency rule justifies halting its enforcement until its validity is resolved on the merits.

131. "To obtain a temporary injunction, the applicant must plead and prove three specific elements: (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." *Butnaru*, 84 S.W.3d at 204. A trial court has "broad discretion" to determine whether to issue a temporary injunction. *Combs*, 292 S.W.3d at 724.

132. Plaintiffs easily satisfy each of the three requirements for a temporary injunction.

133. The first requirement is met because the action is brought against Defendant OAG, the agency that adopted the rule that Plaintiffs seek to be declared invalid. The action is also brought against Defendant Attorney General Paxton, the head of the agency that adopted the Final Rule and is responsible for its enforcement.

134. The second requirement is met because, as set forth in the Petition, Plaintiffs have a probable right to recover on their claims that (1) the OAG lacks statutory authority to adopt the Final Rule under Texas Government Code Section 41.006 or any other statute; (2) the Final Rule exceeds the scope of any rulemaking authority; (3) the OAG failed to comply with the reasoned justification requirement of the APA; (4) the OAG failed to comply with the cost-benefit analysis requirement of the APA; (5) the Final Rule violates the separation of powers provision under the Texas Constitution; and (6) Attorney General Paxton committed *ultra vires* acts by adopting a rule without lawful authority to do so. To satisfy this element, Plaintiffs "need not prove that [it] will ultimately prevail in the litigation; rather, the applicant must show [it] has a cause of action for which relief may be granted." *Topheavy Studios, Inc. v. Doe*, No. 03–05–00022–CV, 2005 WL 1940159, at *3 (Tex. App.—Austin Aug. 11, 2005, no pet.); *see also Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex. 1968) (explaining temporary injunction applicants need not establish it will prevail on final trial and need only plead a cause of action and show a probable right to the relief sought).

135. The third requirement is met because Plaintiffs will suffer probable, imminent, and irreparable injury absent a temporary injunction. Covered district and county attorneys are *now* required to prepare burdensome reports, with the first quarterly report due on June 30, 2025, the initial report due on July 1, 2025, and the second quarterly report and the first annual report due on September 30, 2025. 1 Tex. Admin. Code § 56.5. They are also required to implement *now* a document retention policy that "must preserve documents for at least two years after the dates when they are due to be reported." *Id*. § 56.6.

136. 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) (quoting *Butnaru*, 84 S.W.3d at 204); *see also Butnaru*, 84 S.W.3d at 210 ("The general rule at equity is that before injunctive relief can be obtained, it must appear that there does not exist an adequate remedy at law.") (quoting *Republic Ins. Co. v. O'Donnell Motor Co.*, 289 S.W. 1064, 1066 (Tex. Civ. App.—Dallas 1926, no writ.)).

137. Here, Plaintiffs are not seeking and would not be entitled to receive money damages from the OAG or Attorney General Paxton. The APA allows the Plaintiffs to seek a declaratory judgment, not money damages. *See* Tex. Gov't Code § 2001.038(a); *see also Voe*, 691 S.W.3d at 129.

138. Compliance with the initial report requires covered district and county attorneys to produce information and documents responsive to *twelve* separate requests for events occurring between January 1, 2021, and April 2, 2025, the effective date of this rule. 1 Tex. Admin. Code § 56.3(b). That is more than *four years'* worth of reporting information.

139. Plaintiffs Creuzot, Gonzales, and Teare lead district attorneys' offices that handle thousands of felony and misdemeanor cases each year. The Dallas County Criminal District Attorney's Office ("DCCDAO") processes approximately 30,000 felony and 32,000 misdemeanor cases each year. Ex. L ¶ 4 (Decl. of Marsha Edwards). The Bexar County Criminal District Attorney's Office ("BCCDAO") handles approximately 27,000 felony and 33,000 misdemeanor cases each year. Ex. M ¶ 4 (Decl. of Jamissa Jarmon). The Harris County District Attorney's Office ("HCDAO") carries a caseload of approximately 54,000 felony and 50,000 misdemeanor cases each year. Ex. N ¶ 3 (Decl. of Joshua Reiss).

140. Plaintiffs can establish that compliance with the Final Rule would disrupt the ongoing work and operations of their district attorneys' offices by diverting key personnel away from their core prosecutorial responsibilities. Ex. L ¶ 4; Ex. M ¶ 4.

141. Compliance with the Final Rule imposes concrete, immediate, and significant economic costs. The HCDAO has determined following an "assessment of staffing, caseload, technical infrastructure, and interpretations of Chapter 56 language and requirements" that it "estimates it would have to hire 10 new, fulltime employees dedicated to a specialized 'OAG Reporting Unit' to comply with Chapter 56." Ex. N ¶ 3. "The initial cost, which includes salaries and benefits for the 10 new employees, and computer system costs relating to licensing, hardware, and software, is currently estimated to in excess of $11 million over the next five years." *Id.* ¶ 6. Both the DCCDAO and the BCCDAO have determined that compliance with the Final Rule would require them to hire a third-party vendor, at substantial cost, to identify and collect multiple categories of "correspondence" from current and former employees. Ex. L ¶ 8; Ex. M ¶ 9. Because existing systems do not track or organize this data in a usable form, these vendors must extract archived emails, transfer them into document review platforms, and run search protocols to isolate

responsive materials required by the Final Rule's initial and quarterly reports. Ex. L ¶ 8; Ex. M ¶ 9. These increased costs will be borne by the counties in which these district attorneys operate.

142. Compliance with the Final Rule requires covered district and county attorneys to obtain information that is not tracked by case management systems. For example, the Final Rule requests the number of instances in which a peace officer was indicted for the peace officer's conduct occurring in the course of official duties. 1 Tex. Admin. Code § 56.3(a)(1). To identify this number for the initial report, the BCCDAO would need to manually review each case file within the Public Integrity Division and the Civil Rights Division, which have recently been joined. The total number of cases in those two units between January 1, 2021, and April 2, 2025, is nearly 860 cases. Ex. M ¶ 11. DCCDAO likewise must individually review more than 100 cases to determine the number of instances a peace officer was indicted for the peace officer's conduct during official duties. Ex. L ¶ 11.

143. The Final Rule requests 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 Tex. Admin. Code § 56.3(a)(3). To identify this number, the BCCDAO would need to run disposition reports for each Title 9 offense that might involve a firearm. There are more than 1,000 Title 9 cases that were handled by the office between January 1, 2021, and April 2, 2025, that would need to be reviewed individually to determine which of those involved the discharge of a firearm. Ex. M ¶ 12.

144. The Final Rule requests 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 Tex. Admin. Code § 56.3(a)(7). The Final Rule defines "violent crime" to include "theft" and "automobile theft," even though those offenses do

not meet the statutory definition of "violent offense" under Texas Code of Criminal Procedure Article 17.50(3). To identify the correct number, the BCCDAO would need to review data in two separate locations, the mainframe case management system that housed data prior to June 1, 2024, and the new Odyssey case management system that has housed offense data since June 2, 2024. The Office would need to review data in a third system if juvenile prosecutions were included in this request. Ex. M ¶ 13. To identify the current number, the DCCDAO would need to determine which of the more than 82,000 cases that meet this definition of "violent crime" during the period January 1, 2021, to April 2, 2025, should be counted when approximately 33,000 of the cases are misdemeanors that, by definition, are charged by information, not indictment. Ex. L ¶ 10.

145. The Final Rule requests "correspondence" related to an "attorney's resignation under a formal or informal complaint process." 1 Tex. Admin. Code § 56.3(a)(12). The HCDAO does not currently track this information. For the initial report, the HCDAO's Human Resources division would need to perform an initial audit of all attorney resignations dating back to 2021 and then the HDCAO would have to determine whether each resignation involved "a formal or informal complaint process," and if so, to obtain the "correspondence" related to that resignation. Ex. N ¶ 19.

146. The Final Rule requires covered district and county attorneys to produce the "case file for instances a recommendation made by a 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 Tex. Admin. Code § 56.3(a)(4). The DCCDAO's Conviction Integrity Unit has identified 12 cases whose case files are potentially responsive to this request. Ex. L ¶ 12. Those case files are located in approximately 100 boxes of hard-copy case files. *Id*. Those 100 boxes of case files

would need to be scanned into an internal database and reviewed individually to determine which documents would need to be produced to the OAG. *Id.* ¶ 13. The DCCDAO does not have staff to undertake this work without diverting them from their current roles and responsibilities. *Id.*

147. The DCCDAO has also determined, based on a preliminary review of those 12 case files, that the case files contain confidential records protected by law from disclosure, including grand jury transcripts, children's medical records, photos that display a child's genitalia, juvenile court records, medical cards with social security numbers, mental health records, and sexual assault examination records. *Id.* ¶ 15; *see also* Ex. M ¶ 15 (noting generally that case files contain confidential information protected from disclosure by various statutes).

148. Various state and federal statutes restrict the disclosure of confidential materials. For example, "[g]rand jury proceedings are secret," Tex. Code Crim. Proc. art. 20A.202(a), and "District Attorneys have a clearly defined statutory and a common law duty to keep grand jury testimony secret." *Stern v. State ex rel. Ansel*, 869 S.W.2d 614, 619 (Tex. App.—Houston [14th Dist.] 1994, writ denied). Medical records, especially children's medical records, are protected from disclosure by both federal and state law, and sealed medical records are not open for inspection "by any person" except on order of the court after notice to a parent or guardian and a finding of good cause, in connection with a criminal or civil proceeding, or on request of a parent or legal guardian of the victim – circumstances that clearly do not apply here. *See* Tex. Code Crim. Proc. art. 58.303.

149. The Final Rule expressly requires district and county attorneys to produce "work product and otherwise privileged and confidential matters." 1 Tex. Admin. Code § 56.2(1). In response to comments during objecting to the production of confidential materials that are protected by law from disclosure, the OAG refused to make any changes to the Proposed Final

Rule and asserted that confidential materials may be produced to the OAG on the grounds that "[t]he OAG is required to comply with the same confidentiality statutes for which the reporting entities are required to comply" and "[a]ny confidential information provided to the OAG pursuant to the rule and §41.006 maintains its confidentiality under the respective confidentiality laws." Ex. A, 50 Tex. Reg. 2173, 2176 (Mar. 28, 2025). But the fact that the OAG has stated its intention to maintain confidentiality over the materials it receives does not mean that district and county attorneys are permitted to produce those materials to the OAG in the first place, particularly when the confidentiality provisions protect third parties, including victims and witnesses, and are therefore not waivable by the OAG.

150. The Final Rule, therefore, puts covered district and county attorneys in an untenable position: they must either risk violating confidentiality laws to comply with the Final Rule or refuse to comply in order to abide by confidentiality laws. Noncompliance, however, carries serious consequences. *See* 1 Tex. Admin. Code § 56.8 (subjecting covered district and county attorneys who do not comply with the Final Rule to discipline). Under Section 56.8 of the Final Rule, the OAG may unilaterally determine that a district or county attorney has violated the Final Rule and treat it as "official misconduct" under Local Government Code Section 87.011, or "[t]he OAG may file a petition for quo warranto under Civil Practice and Remedies Code §66.002 for the performance of an act that by law causes the forfeiture of the County or District Attorney's office." *Id.* § 56.8(1), (2).

151. Should a covered district or county attorney choose not to produce confidential information protected from disclosure by statute, that district or county attorney must undertake the laborious process of redacting the confidential material. *See* Ex. L ¶ 15.

152. Because the Final Rule mandates recurring quarterly and annual reports, Defendants will continue to exceed their statutory and Constitutional authority by requiring the reports from Plaintiffs.

153. The entry of a temporary injunction will place no hardship on Defendants.

154. Plaintiffs are exempt by law from the requirement to file a bond for a request for an injunction. Tex. Civ. Prac. & Rem. Code § 6.001(c).

PRAYER FOR RELIEF

155. WHEREFORE, for the foregoing reasons, Plaintiffs request that the Court grant the following relief:

a. Upon hearing, a temporary injunction enjoining Defendants from implementing or enforcing application of the Final Rule during the pendency of the litigation;

b. Upon final hearing or trial, a permanent injunction order enjoining Defendants from implementing or enforcing application of the Final Rule;

c. A declaratory judgment stating that the Final Rule promulgated in Texas Administrative Code Chapter 56 is invalid;

d. A declaratory judgment stating that promulgating Chapter 56 of the Texas Administrative Code constitutes an *ultra vires* act by the Attorney General; and

e. Any other and further relief that this Court may deem just and proper.

May 16, 2025

Respectfully submitted,

/s/ Jonathan G.C. Fombonne (with permission)
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900 16th Street, NW
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Counsel for Criminal District Attorney John Creuzot; Dallas County; Criminal District Attorney Joe Gonzales; and Bexar County

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

My name is John Creuzot. I am the Dallas County District Attorney, and I am a Plaintiff in this case in my official capacity. I have read the above Petition and Application and certify that the factual allegations contained therein related to Dallas County are within my personal knowledge and are true and correct.

John Creuzot
Dallas County Criminal
District Attorney

SUBSCRIBED AND SWORN TO BEFORE ME on this 14 day of May 2025, to certify which witness my hand and official seal.

Notary Public in and for the State of Texas

Marah Noemi Salazar
My Commission Expires
8/20/2028
Notary ID 135047571

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

I, Charles Reed, hereby certify that I am the Assistant County Administrator of Dallas County, and that I am authorized to make this verification on its behalf. I have read the above Petition and Application and certify that the factual allegations contained therein related to Dallas County are within my personal knowledge and are true and correct.

Charles Reed
Assistant County Administrator
Dallas County

SUBSCRIBED AND SWORN TO BEFORE ME on this 15th day of May 2025, to certify which witness my hand and official seal.

Notary Public in and for the State of Texas

CASSANDRA MICHELLE COLUNGA
My Notary ID # 135052797
Expires August 22, 2028

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

My name is Joe Gonzales. I am the Bexar County Criminal District Attorney, and I am a Plaintiff in this case in my official capacity. I have read the above Petition and Application and certify that the factual allegations contained therein related to Bexar County are within my personal knowledge and are true and correct.

Joe Gonzales
Bexar County Criminal
District Attorney

SUBSCRIBED AND SWORN TO BEFORE ME on this 15th day of May 2025, to certify which witness my hand and official seal.

ANTHONY CANTU
Notary Public-State of Texas
Notary ID #133005950
Commission Exp. MARCH 30, 2029

Notary Public in and for the State of Texas

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

I, Peter Sakai, hereby certify that I am the Bexar County Judge and statutory Presiding Officer of the Bexar County Commissioners Court, and that I am authorized to make this verification on its behalf. I have read the above Petition and Application and certify that the factual allegations contained therein related to Bexar County are within my personal knowledge and are true and correct.

Peter Sakai
Bexar County Judge

SUBSCRIBED AND SWORN TO BEFORE ME on this the 14 day of May 2025, to certify which witness my hand and official seal.

L GARCIA
Notary Public, State of Texas
My Commission Expires
January 20, 2026
NOTARY ID 12409194-5

Notary Public in and for the State of Texas

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

My name is Sean Teare. I am the Harris County District Attorney, and I am a Plaintiff in this case in my official capacity. I have read the above Petition and Application and certify that the factual allegations contained therein related to Harris County are within my personal knowledge and are true and correct.

Sean Teare

Sean Teare
Harris County District Attorney

SUBSCRIBED AND SWORN TO BEFORE ME on this 14th day of May 2025, to certify which witness my hand and official seal.

J. BERMUDEZ
Notary Public-State of Texas
Notary ID #13516538-7
Commission Exp. NOV. 26, 2028

Notary Public in and for the State of Texas

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

I, Joshua Reiss, hereby certify that I am the General Counsel of the Harris County District Attorney's Office, and that I am authorized to make this verification on behalf of Harris County. I have read the above Petition and Application and certify that the factual allegations contained therein related to Harris County are within my personal knowledge and are true and correct.

Joshua Reiss
General Counsel
Harris County District Attorney's Office

SUBSCRIBED AND SWORN TO BEFORE ME on this the 14 day of May 2025, to certify which witness my hand and official seal.

ADA C. VICTORIA
Notary Public-State of Texas
Notary ID #1223750-9
Commission Exp. MAY 18, 2026

Notary Public in and for the State of Texas