

No. \_\_\_\_

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**In the Supreme Court of Texas**

In re Dallas County, Texas and Marian Brown, in her official capacity  
as Dallas County Sheriff,

*Relators.*

On Petition for Writ of Injunction  
to the Third Court of Appeals, Austin

**PETITION FOR WRIT OF INJUNCTION**

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Oral Argument Requested

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### **Respondent:**

The Court of Appeals for the Third District of Texas, Austin

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The Record filed contemporaneously herewith is cited as “Rec. at Tab x.”

### STATEMENT OF THE CASE

- Nature of the Case:* Relators (Dallas County, *et al.*) sued Real Parties in Interest, state officials of the Health and Human Services Commission, under various statutory and constitutional causes of action related to their *ultra vires* failure to timely transfer from the Dallas County jail to state hospitals inmates adjudicated not competent to stand trial or not guilty by reason of insanity, as required by law. Rec. at Tab A.
- Trial Court:* 353rd Judicial District Court of Travis County, Texas  
The Honorable Maya Guerra Gamble
- Disposition in the Trial Court:* The trial court denied Real Party in Interest’s plea to the jurisdiction.
- Parties in the Court of Appeals:* Relators are the appellees in the court of appeals. Real parties in interest, Defendants, are the appellants.
- Disposition in the Court of Appeals:* The appeal is pending in the court of appeals with briefing ongoing. Real parties in interest, the appellants, filed a Docketing Statement indicating their belief that this appeal will transfer on September 1, 2024, to the Fifteenth Court of Appeals, as it involves a case against state officials.



## **STATEMENT OF JURISDICTION**

The Court has jurisdiction under Article V, Section 3(a) of the Texas Constitution, Texas Government Code § 22.002, and Section 3.02 of the Act of June 9, 2023, 88th Leg., R.S., ch. 459, General and Special Laws of Texas.

## ISSUE PRESENTED

1. Whether S.B. 1045, which established the Fifteenth Court of Appeals with exclusive, statewide jurisdiction over certain cases against, *inter alia*, state officials, violates Article V, Section 6 of the Texas Constitution, should be declared unconstitutional and enjoined, and the Third Court of Appeals enjoined from transferring Relator's appeal to the Fifteenth Court of Appeals?

## **TO THE HONORABLE SUPREME COURT OF TEXAS:**

In June 2023, the Legislature passed, and the Governor signed S.B. 1045 (Rec. at Tab D), creating a new Fifteenth Court of Appeals with statewide, exclusive appellate jurisdiction over, *inter alia*, certain cases against the state or state officials. The bill provided that this Court had exclusive and original jurisdiction over a challenge to the constitutionality of the Act and could issue injunctive or declaratory relief in connection with such a challenge.

S.B. 1045 violates Article V, Section 6 of the Texas Constitution (Rec. at Tab G), which does not permit the Legislature to create a statewide Court of Appeals or to deprive the existing Courts of Appeals of their constitutionally conferred appellate jurisdiction.

### **STATEMENT OF FACTS**

#### **I. Article V, Section 6 of the Texas Constitution**

Article V, Section 6(a) of the Texas Constitution prescribes the permissible jurisdiction of the Texas Courts of Appeals. It provides that “[t]he state shall be *divided* into courts of appeals *districts* . . . . Said Courts of Appeals shall have appellate jurisdiction *co-extensive with the limits* of their respective districts, which *shall extend to all cases* of which

the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law.” TEX. CONST. art. V, § 6(a) (emphasis added). Section 6(b) provides that the justices of the Courts of Appeals “shall be elected by the qualified voters of their respective districts.” TEX. CONST. art. V, § 6(b).

## **II. S.B. 1045 and the Fifteenth Court of Appeals**

On June 9, 2023, the Governor signed S.B. 1045 into law, creating a new Fifteenth Court of Appeals. *See* Act of June 9, 2023, 88th Leg., R.S., ch. 459, General and Special Laws of Texas. S.B. 1045 amended Section 22.201 of the Government Code, which had set forth how the state was divided into Courts of Appeals districts pursuant to Article V, Section 6 of the Constitution. S.B. 1045 struck the word “divided” from Section 22.201—the very word the Constitution uses to describe how Courts of Appeals districts should be created—and replaced it with “organized.” It then created a new “Fifteenth Court of Appeals District [] composed of all counties in this state.” Act of June 9, 2023, 88th Leg., R.S., ch. 459, § 1.01, General and Special Laws of Texas. A screenshot of this portion of S.B. 1045 is shown below:

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AN ACT

relating to the creation of the Fifteenth Court of Appeals with jurisdiction over certain civil cases, the compensation of the justices of that court, and the jurisdiction of the courts of appeals in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. FIFTEENTH COURT OF APPEALS

SECTION 1.01. Section 22.201, Government Code, is amended by amending Subsection (a) and adding Subsection (p) to read as follows:

(a) The state is organized ~~[divided]~~ into 15 ~~[14]~~ courts of appeals districts with a court of appeals in each district.

(p) The Fifteenth Court of Appeals District is composed of all counties in this state.

*Id.* (red circle added).

S.B. 1045 provided that the Fifteenth Court of Appeals has “exclusive intermediate appellate jurisdiction” over, with certain exceptions, matters brought against the state or state officials and matters challenging the constitutionality or validity of a state statute or rule in which the attorney general is a party to the case.” *Id.* Section 1.06 of S.B. 1045 limited the Fifteenth Court of Appeals’ original jurisdiction to the topics over which it was given exclusive appellate jurisdiction. *Id.* § 1.06.

### **III. Relators' lawsuit and appellate proceeding.**

Relators filed suit against Real Parties in Interest (“Defendants”) on March 23, 2023. The suit alleged various causes of action related to Defendants’ failure to comply with their obligations to transfer inmates adjudicated not competent to stand trial or not guilty by reason of insanity from the county jails to state hospitals. Rec. at Tab A. Defendants filed a plea to the jurisdiction, which the district court denied on December 21, 2023. Rec. at Tab B. On January 10, 2024, Defendants appealed to the Third Court of Appeals. Rec. at Tab C. In their Docketing Statement, Defendants indicated that this appeal would be subject to the jurisdiction of the Fifteenth Court of Appeals. Rec. at Tab F, Sec. XV.

#### **STANDARD OF REVIEW**

This Court has the “exclusive and original jurisdiction over a challenge to the constitutionality of [S.B. 1045] or any part [thereof] and may issue injunctive or declaratory relief in connection with the challenge.” Act of June 9, 2023, 88th Leg., R.S., ch. 459, § 3.02, General and Special Laws of Texas. This Court may issue a writ of injunction. *See* TEX. CONST. art. V, § 3(a) (authoring Supreme Court to issue “such other writs, as may be necessary to enforce its jurisdiction”).

A writ of injunction shall issue where, *inter alia*, “the applicant is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant,” or “the applicant is entitled to a writ of injunction under the principles of equity and the statutes of this state relating to injunctions.” Tex. Civ. Practice & Remedies Code § 65.001.<sup>1</sup>

## ARGUMENT

### **I. S.B. 1045 violates Article V, Section 6 of the Texas Constitution.**

#### **A. S.B. 1045 violates Article V, Section 6’s requirement that the state be “divided” into Courts of Appeals “districts.”**

##### **1. The text, history, and structure of the Constitution renders S.B. 1045 unconstitutional.**

S.B. 1045 violates Article V, Section 6’s requirement that the state be “divided” into Court of Appeals “districts.” This Court “strive[s] to give constitutional provisions the effect their makers and adopters intended.”

*Garofolo v. Ocwen Loan Servicing, L.L.C.*, 497 S.W.3d 474, 477 (Tex.

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<sup>1</sup> Relators have styled this Petition as a Petition for a Writ of Injunction, given this Court’s exclusive and original jurisdiction to review the constitutionality of S.B. 1045 and its expressly authorized power to issue an injunction. To the extent the Court believes some other writ or request for relief more appropriately applies, Relators respectfully ask the Court to so construe this Petition.

2016). “Accordingly, when interpreting our state constitution, we rely heavily on its literal text and give effect to its plain language.” *Id.*

**Text.** The plain meaning of “divide,” both at the time the Constitution was adopted and today, is to separate a whole thing into smaller parts. In 1865, “divide” was defined as “[t]o sever into parts or pieces; to separate; to sunder.” N. Webster, *An American Dictionary of the English Language* 398 (1865).<sup>2</sup> “Divide” means the same thing today. See, e.g., *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/divide> (“Divide”: “to separate into two or more parts, areas or groups”). The state cannot be “sever[ed] into parts” and result in a court of appeals district comprising the whole state.

Likewise, the plain meaning of “district,” both at the time the Constitution was adopted and today, is a portion of a whole political unit. In 1865, “district” was defined as “[a] defined portion of a state or city for legislative, judicial, fiscal, or elective purposes.” N. Webster, *An American Dictionary of the English Language* 396 (1865). Likewise today. See *Merriam-Webster Dictionary*, [---

<sup>2</sup> This Court has observed that Webster’s “An American Dictionary of the English Language” was used by the framers. See \*Edgewood Indep. Sch. Dist. v. Kirby\*, 777 S.W.2d 391, 395 \(Tex. 1989\).](https://www.merriam-</a></p></div><div data-bbox=)



webster.com/dictionary/district (“District”: “a territorial division (as for administrative or electoral purposes”).

Even the Legislature thought it could not “divide” the state into a *statewide* Court of Appeals “district.” In Section 1.01 of S.B. 1045, the Legislature remarkably *struck the word “divided”* from the relevant statute, Tex. Gov’t. Code § 22.201(a), and replaced it with “organized.”

***History.*** The history of the Constitution’s treatment of the Courts of Appeals illustrates the unconstitutionality of S.B. 1045. Texas’s current Constitution was adopted in 1876 and amended many times since. The original 1876 Constitution provided for a Court of Appeals with statewide jurisdiction and justices elected statewide. *See* TEX. CONST. art. V, § 6 (1876) (“The Court of Appeals shall have appellate jurisdiction, *co-extensive with the limits of the State . . . .*”) (emphasis added); *id.* art. V, § 5 (1876) (“The Court of Appeals shall consist of three judges . . . . [who] shall be elected by the qualified voters of the State at a general election.”). The Court of Appeals had jurisdiction over both civil and criminal matters decided by the district courts, while the Supreme Court had jurisdiction over only civil matters. *Id.* art. V, §§ 3 & 6.

In 1891, the voters approved a constitutional amendment to Article V. The Amendment created the Court of Criminal Appeals as the statewide court of final resort for criminal cases and created “Courts of Civil Appeals” as the new intermediate appellate courts for civil matters. Tex. Senate J.R. No. 16, § 1 (1891). The amended Article V, Section 6 provided that “[t]he Legislature shall . . . divide the State” into districts from which appellate court judges would be elected and have jurisdiction. *Id.* Art. V, § 6. The contemporary Legislature understood the 1891 amendment to require courts of appeals districts that were geographically limited to parts of the state—not “statewide” “districts.” *See, e.g., In re Reece*, 341 S.W.3d 360, 380 (Tex. 2011) (noting that Legislature established courts of appeals districts in Galveston, Fort Worth, and Austin); *see also In re Abbott*, 628 S.W.3d 288, 293 (Tex. 2021) (“[L]egislative construction and contemporaneous exposition of a constitutional provision is of substantial value in constitutional interpretation.”) (citing *Am. Indem. Co.*, 246 S.W. at 1023). In 1980, the voters amended Article V, Section 6 again to vest the Courts of Appeals with both intermediate civil and criminal appellate jurisdiction. *See* Tex. Senate J.R. 36 (1980). S.B. 1045 seeks to undo these amendments.

**Structure.** The constitutional structure also demonstrates that S.B. 1045 is unconstitutional.

*First*, the framers knew how to provide for statewide judicial jurisdiction and statewide elections and said so expressly when they intended to do so. *See, e.g.*, TEX. CONST. art. V, § 3 (“The Supreme Court shall exercise the judicial power of the state . . . . Its jurisdiction shall be coextensive with the limits of the State . . . .”); *id.* art. V, § 2 (providing for statewide election of Supreme Court justices); *id.* art. V, § 5 (“The Court of Criminal Appeals shall have final appellate jurisdiction coextensive with the limits of the state . . . .”); *id.* art. V, § 4 (providing for statewide Court of Criminal Appeals elections); *id.* art. IV, § 2 (providing that executive officers “shall be elected by the qualified voters of the State . . . .”). “When the [framers] use a word or phrase in one part of [the Constitution] but exclude it from another, the terms should not be implied where it has been excluded.” *Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm’n*, 518 S.W. 3d 318, 329 (Tex. 2017).

*Second*, the structure of the State Commission on Judicial Conduct created by Article V, § 1-a (Rec. at Tab H) is incompatible with an interpretation that allows for a statewide Court of Appeals “district.” The

Constitution provides that the judges and lawyers on the Commission “may not reside or hold a judgeship in the same court of appeals district as another member of the Commission.” Tex. Const. art. V, § 1-a(2). S.B. 1045 thus can render it *impossible* to constitute the Commission. If a judge from the Fifteenth Court of Appeals were appointed to the Commission, *no other judges or lawyers* could be appointed to fill the constitutionally prescribed positions, because they would all reside in the same Court of Appeals “district”—*i.e.*, the State of Texas. This provision is particularly instructive because it deals specifically with court of appeals districts, and thus informs how Article V, Section 6 must be interpreted. *See Garofolo*, 497 S.W.3d at 477.

*Third*, the Constitution elsewhere specifically differentiates between state and district offices. For example, Article IV, Section 12 provides that “[a]ll vacancies in State *or* district offices, except members of the Legislature, shall be filled unless otherwise provided by law by appointment of the Governor.” TEX. CONST. art. IV, § 12 (emphasis added); *see also id.* art. V XI, § 72(b) (differentiating “state or district office”). As this Court has explained, the “use of the disjunctive conjunction ‘or’ between . . . two phrases . . . signifies a separation

between two distinct ideas.” *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 581 (Tex. 2000).

*Fourth*, if Article V, Section 6’s requirement that “[t]he state shall be divided into courts of appeals districts” is interpreted to permit the Legislature to create the Fifteenth Court of Appeals “district” encompassing the entire state, then there is nothing preventing the Legislature from converting the Texas Senate into an at-large body with 31 statewide “districts.” Article III, Section 25 of the Constitution likewise provides that “[t]he State shall be divided into Senatorial Districts of contiguous territory, and each district shall be entitled to elect one Senator.” TEX. CONST. art. III, § 25.

**2. The Legislature’s Article V, Section 1 power to create “other courts” does not permit it to violate the constitutionally required structure of Courts of Appeals.**

S.B. 1045 is not saved by the Legislature’s power to create “other courts” beyond those enumerated in the Constitution. Article V, Section 1 specifically creates various constitutional courts and then provides that “[t]he Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the *district and other inferior courts*

thereto.” TEX. CONST. art. V, § 1 (emphasis added). “The Constitution must be read as a whole . . . and effect must be given to each part of each clause.” *Id.* (quoting *Collingsworth Cnty. v. Allred*, 40 S.W.2d 13, 15 (1931)). This requirement for harmonious reading of the Constitution is particularly so for “provisions of [the] Constitution which relate to the same subject-matter.” *Id.* And the “principle of ejusdem generis warns against expansive interpretations of broad language that immediately follows narrow and specific terms, and counsels us to construe the broad in light of the narrow.” *Marks v. St. Luke’s Episcopal Hosp.*, 319 S.W.3d 658, 663 (Tex. 2010).

These principles foreclose any contention that Section 1 renders S.B. 1045 constitutional. By its plain text, Section 1 merely authorizes the Legislature to create courts *other than* those enumerated in the Section’s first sentence. It does not authorize the Legislature to create another of the *enumerated* courts in a design that violates the specific requirements of Article V, Section 6.

Both this Court and the Court of Criminal Appeals have so held. In *Reasonover v. Reasonover*, this Court invalidated a statute that withdrew jurisdiction of a District Court over divorce cases and instead gave a new

Criminal District Court established by the statute exclusive jurisdiction over divorce matters. 58 S.W.2d 817, 818 (Tex. 1933). The Court reasoned that the 1891 amendment authorizing the Legislature to create “other courts” and to “conform” the jurisdiction of the District and inferior courts thereto “was not intended to take away from and deprive the regular district courts of the jurisdiction specifically given them by the Constitution. No provision of the Constitution anywhere intimates such a withdrawal or negation of jurisdiction.” *Id.*; *id.* at 819 (“The Legislature cannot take away from a district court jurisdiction given it by the Constitution”). “Conform,” this Court explained, allowed the “other courts” to have concurrent jurisdiction to the district courts—it could not be interpreted to mean “destroy.” *Id.* at 819. In so holding, the Court expressly rejected dicta from prior decisions.<sup>3</sup>

This Court reiterated its view of the Legislature’s power to create “other courts” again in 1950. *See Jordan v. Crudgington*, 231 S.W. 2d 641, 645 (Tex. 1950) (holding that the Section 1 power was “adopted for the purpose of making it certain that the Legislature has the authority to

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<sup>3</sup> *See id.* (distinguishing contrary “dicta” from, for example, *Harris County v. Stewart*, 41 S.W. 650 (Tex. 1897)).

establish courts *other than constitutional courts*”(emphasis added)). The Court of Criminal Appeals agrees. *See Kelly v. State*, 724 S.W.2d 42, 46 (Tex. Crim App. 1987) (en banc) (holding that pursuant to Section 1, “the Legislature now has the power to create such other courts as it believes necessary to the demands of the citizenry, but such amendment is applicable only to courts other than those constitutional courts identified in the first paragraph of Section one”)

Neither does Section 1 allow the Legislature, in creating “other courts,” to alter the jurisdiction of the Courts of Appeals, as the Legislature has done with S.B. 1045. Rather, it only allows the Legislature to “conform the jurisdiction of the *district and other inferior courts*” to the jurisdiction of the new, statutory “other courts” the Legislature creates. TEX. CONST. art. V, § 1 (emphasis added). The Constitution makes clear that “inferior courts” are those at the district or county level. *See id.*; *see also* TEX. CONST. art. V, § 17 (providing for criminal proceedings in “County Courts or other inferior courts”).



**B. S.B. 1045 unconstitutionally deprives other Courts of Appeals of their constitutionally conferred jurisdiction.**

S.B. 1045 is also unconstitutional because it deprives the other fourteen Courts of Appeals of their constitutionally conferred jurisdiction and transfers it to another out-of-district Court of Appeals. “The Legislature cannot take away from a [] court jurisdiction given to it by the Constitution.” *Reasonover*, 58 S.W.2d at 819. The jurisdiction of courts expressly granted to them in the Constitution cannot be by legislation transferred to some other court, because “[n]o provision of the Constitution anywhere intimates such a withdrawal or negation of jurisdiction.” *Id.* at 818. For that reason, in *Reasonover* this Court invalidated a statute transferring a specific subject matter of lawsuits from one court to another where the Constitution itself conferred the original court with that jurisdiction. *Id.*

Article V, Section 6 provides that the “Court of Appeals shall have appellate jurisdiction *co-extensive* with the limits of their respective districts, which shall extend to *all cases* of which the District Courts or County Courts have original or appellate jurisdiction, under such

restrictions and regulations as may be prescribed by law.” TEX. CONST. art. V, § 6 (emphasis added).

The plain meaning of “co-extensive,” at the time the Constitution was written and today means having equal scope. See N. Webster, *An American Dictionary of the English Language* 247 (1865) (“Coextensive”: “Equally extensive; having equal extent”); *Merriam-Webster’s Dictionary*, <https://www.merriam-webster.com/dictionary/coextensive> (“Coextensive”: “having the same spatial or temporal scope or boundaries”). The Constitution thus defines the Courts of Appeals’ appellate jurisdiction geographically to cover the entirety of their respective districts. It punctuates the point by specifying that it “shall” extend to “all cases” from the District Courts or County Courts within the Court of Appeals’ respective geographic boundaries.

S.B. 1045 violates this provision because it decouples the constitutionally mandated tethering of each Court of Appeals to the District and County Courts within its geographic district. In doing so, it grants the Fifteenth Court of Appeals appellate jurisdiction untethered to its “district” (because there are zero statewide judicial districts home to any District or County Courts) and it statutorily amends Article V,

Section 6 to confer appellate jurisdiction to only “some” rather than “all” appeals originating from the Court of Appeals’ geographic district. Article V, Section 6’s conferral of appellate jurisdiction is mandatory, not merely suggestive. *See, e.g., Albertson’s, Inc. v. Sinclair*, 984 S.W.2d 958, 961 (Tex. 1999) (“We generally construe the word ‘shall’ as mandatory, unless legislative intent suggests otherwise.”).

Importantly, S.B. 1045 does not constitute an appropriate “restriction and regulation” on the Courts of Appeals’ appellate jurisdiction “as may be prescribed by law.” TEX. CONST. art. V, § 6. The Legislature’s power to restrict and regulate appellate jurisdiction must be interpreted consistent with the first clause, which specifies the geographic and substantive conferral of each Court’s appellate jurisdiction. *See In re Nestle USA, Inc.*, 387 S.W.3d 610, 619 (Tex. 2012) (“The Constitution must be read as a whole . . . and effect must be given to each part of each clause.”) (internal quotation marks and citation omitted).

This is especially so because the last clause of the sentence does not authorize the Legislature to create *exceptions* to the constitutionally specified geographic scope of appellate jurisdiction. Rather, it provides

that appellate jurisdiction “shall” extend to “all” District Court and County Court cases within the geographic district “*under* such restrictions and regulations as may be prescribed by law.” TEX. CONST. art. V, § 6 (emphasis added). Where the Constitution creates a general rule of judicial jurisdiction, and then authorizes the Legislature to enact laws that are *inconsistent* with the general rule, it says so expressly by authorizing “exceptions.” *See, e.g.*, TEX. CONST. art. V, § 5 (“The Court of Criminal Appeals shall have final appellate jurisdiction coextensive with the limits of the state, and its determinations shall be final, in all criminal cases of whatever grade, with such *exceptions* and under such regulations as may be provided in this Constitution or as prescribed by law.” (emphasis added)); *id.* art. V, § 3 (providing that the Supreme Court’s “appellate jurisdiction shall be final and shall extend to all cases *except* in criminal law matters and as otherwise provided in this Constitution or by law” (emphasis added)); *id.* art. V, § 8 (“District court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, *except* in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body”

(emphasis added)); *id.* (“The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners Court, with such *exceptions* and under such regulations as may be prescribed by law.” (emphasis added)).

Article V carefully specifies whether and when it authorizes “exceptions,” “restrictions,” or “regulations” by the Legislature over the constitutionally prescribed jurisdiction of the state’s courts. The framers’ careful word choice must be respected. *See Garofolo*, 497 S.W.3d at 477. And the framer’s choice to exclude from Section 6 the power of the Legislature to create *exceptions* to the rule that Courts of Appeals have jurisdiction over *all* appeals generated from their geographic districts must be honored. *See Cadena Comercial USA Corp.*, 518 S.W.3d at 329. In any event, even where a constitutional provision (or a statute) allows exceptions to a general rule, courts must not interpret the power to create exceptions in a manner as they swallow a general rule. *See, e.g., City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 391 (Tex. 2014) (holding that a statutory exception could not be interpreted broadly

to swallow the rule, but instead must be read “as flowing from compliance with the remainder of the subsection; it does not stand alone”).

This Court’s cases interpreting the Legislature’s powers to create restrictions and regulations to Article V jurisdiction illustrate the point. For example, this Court has upheld statutory “restrictions and regulations” that limit a party’s ability to appeal a district court’s decision to disputes involving more than \$100. *See Tune v. Texas Department of Public Safety*, 23 S.W.3d 358, 361 (Tex. 2000). And it has upheld as an appropriate “restriction[] and regulation[]” a statute making the district court the final arbiter—with no right to appeal—in certain election contest cases. *See Seale v. McCallum*, 287 S.W. 45, 45-47 (Tex. 1926). Likewise, at the time the Constitution used the same “restrictions and regulations” phrase regarding the Supreme Court’s jurisdiction (it no longer does, *see supra*), the Court upheld a statute that limited the Supreme Court’s jurisdiction by making the decision of the Court of Civil Appeals final with respect to boundary disputes. *See Maddox v. Covington*, 29 S.W. 465 (Tex. 1895). And the Court upheld a statute authorizing Supreme Court justices to appoint a temporary committee of Court of Civil Appeal Justices to assist with a backlog of writs filed with

the Supreme Court. *San Antonio & A.P. Ry. Co. v. Blair*, 196 S.W. 502, 503-05 (Tex. 1917).

These restrictions and regulations are consistent with the general rule that the Court of Appeals has jurisdiction over appeals generated from lower courts within its respective geographic districts. They simply limit the ability of certain types of appeals to occur at all. They thus appropriately respect Article V, Section 6's conferral of jurisdiction "under such restrictions and regulations" passed by the Legislature. All appeals remain consistent with the statutory framework. By contrast, S.B. 1045 deprives the Courts of Appeals of jurisdiction over appeals generated from their geographic districts. This goes far beyond a restriction or regulation that exists in harmony with the constitutionally prescribed structure.

Nor does the Legislature's power to assign Courts of Appeals "such other jurisdiction, as may be prescribed by law," Art. V, § 6, permit the Legislature to assign the Fifteenth Court of Appeals jurisdiction over cases the Constitution itself expressly provides to the other fourteen Courts of Appeals. The Legislature may create additional "other jurisdiction" beyond what the Constitution itself allocates; it cannot

eliminate the constitutionally allocated jurisdiction of Courts of Appeals.

*See Kelly*, 724 S.W.2d at 46.

**C. S.B. 1045 unconstitutionally confers appellate jurisdiction to the Fifteenth Court of Appeals despite it having no corresponding District or County Courts.**

S.B. 1045 is likewise unconstitutional because it assigns to the Fifteenth Court of Appeals appellate jurisdiction that is not in any way tied to a corresponding District or County Court within its judicial “district.” To be a constitutionally valid, the Fifteenth Court of Appeals would have to have appellate jurisdiction extending to its “respective district[], which shall extend to all cases of which the District Courts or County Courts have original and appellate jurisdiction.” TEX. CONST. art. V, § 6. But there is no statewide judicial district and thus no District or County Courts from which the Fifteenth Court of Appeals can constitutionally receive appeals. Moreover, S.B. 1045 is inconsistent with the purpose of the 1980 amendment to Article V vesting the Courts of Appeals with both civil and criminal jurisdiction. *See Tex. Senate J.R. 36* (1980). The Legislature has removed from the Fifteenth Court of Appeals jurisdiction over a specific category of cases the voters expressly conferred to Courts of Appeals.



**II. The Court should declare S.B. 1045 unconstitutional and enjoin it in its entirety.**

The Court should declare S.B. 1045 unconstitutional and enjoin it in its entirety. Because the invalid aspects of S.B. 1045 are “essentially and inseparably connected in substance” to whatever remains, and the remaining portions cannot stand on their own, the entire Act should be enjoined. *Rose v. Doctors Hosp.*, 801 S.W.2d 841, 844 (Tex. 1990) (quoting *Western Union Telegraph Co. v. State*, 62 Tex. 630 (1884)).

The Court should issue the writ of injunction to the Third Court of Appeals to prevent the transfer for Relator’s appeal to the Fifteenth Court of Appeals. Briefing is still ongoing, and it is extraordinarily unlikely the Court will schedule argument, let alone decide the appeal, before the September 1, 2024, date upon which transfer to the Fifteenth Court of Appeals will occur. Moreover, judicial economy and order are best served by this Court reviewing the constitutionality of S.B. 1045 now—prior to September 1, 2024—to avoid chaos and confusion that could otherwise result from the Court’s disposition on the question.

## PRAYER

The Court should declare S.B. 1045 unconstitutional, enjoin it in its entirety, and issue a writ of injunction directing the Third Court of Appeals not to transfer Relator's appeal.

Dated May 22, 2024

Respectfully submitted,

*/s/ Chad W. Dunn*

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*Counsel for Relators*

## **CERTIFICATE OF COMPLIANCE**

In compliance with Tex. R. App. P. 9.4(i)(3), I certify that this brief was prepared with Century Schoolbook typefaces, in 14-point height for body text and 12-point text for footnotes. I further certify that the relevant sections of this document contain 4,389 words.

*/s/ Chad Dunn*  
Chad Dunn

## **APPELLATE RULES 52.3(J), 52.3(K)(1)(A), and 52.7(A) CERTIFICATION**

My name is Chad Dunn. I am over the age of 18, and I am fully competent to execute this Certification. I am counsel for Relators in this case. I am the person filing the Petition.

I have reviewed the foregoing Petition and concluded that every factual statement in the Petition is supported by competent evidence included in the Appendix or Record.

The Record contains a true and correct copy of every document that is material to the Relator's claim for relief and that was filed in the underlying proceeding.

I certify that the December 21, 2023 Order filed with the Appendix is a true and correct copy of the trial court's order.

*/s/ Chad Dunn*  
Chad Dunn

**CERTIFICATE OF SERVICE**

I certify that on May 22, 2024, a true and correct copy of the foregoing document has been served via the Court's e-filing system on the below parties:

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*/s/ Chad Dunn*  
\_\_\_\_\_

Chad Dunn

No. \_\_\_\_

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**In the Supreme Court of Texas**

In re Dallas County, Texas and Marian Brown, in her official capacity  
as Dallas County Sheriff,

*Relators.*

On Petition for Writ of Injunction to the Third  
Court of Appeals, Austin

**RECORD FOR RELATORS' PETITION  
FOR WRIT OF INJUNCTION**

1. Plaintiffs' Original Petition and Application for Mandamus  
and Injunctive Relief ..... Tab A
2. Order Denying Defendants' Plea to the Jurisdiction..... Tab B
3. Defendants' Notice of Accelerated Interlocutory Appeal  
and Automatic Stay ..... Tab C
4. Enrolled S.B. No. 1045 ..... Tab D
5. Governor's Notes Regarding S.B. No. 1045..... Tab E
6. Docketing Statement..... Tab F
7. TEX. CONST. ART. V, § 6 ..... Tab G
8. TEX. CONST. ART. V, § 1 ..... Tab H

**TAB A: PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR  
MANDAMUS AND INJUNCTIVE RELIEF**

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

DALLAS COUNTY, TEXAS AND	§	IN THE DISTRICT COURT OF
MARIAN BROWN, IN HER OFFICIAL	§	
CAPACITY AS DALLAS COUNTY SHERIFF	§	
	§	
PLAINTIFFS,	§	
	§	
VS.	§	
	§	
CECILE ERWIN, IN HER OFFICIAL CAPACITY	§	TRAVIS COUNTY, TEXAS
AS THE EXECUTIVE COMMISSIONER OF THE	§	
TEXAS HEALTH AND HUMAN SERVICES	§	
COMMISSION; AND MICHELLE HILLSTROM,	§	
IN HER OFFICIAL CAPACITY AS THE REGION	§	
3 DIRECTOR FOR TEXAS HEALTH AND	§	353RD, DISTRICT COURT
HUMAN SERVICES	§	
	§	
DEFENDANTS.	§	_____ JUDICIAL DISTRICT

**PLAINTIFFS’ ORIGINAL PETITION  
AND APPLICATION FOR MANDAMUS AND INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Dallas County, Texas, one of the duly and legally organized counties of the State of Texas and Marian Brown, in her capacity as the elected Sheriff for Dallas County, Texas (hereinafter referred to as “Plaintiffs” or “Dallas County”) and complains of Cecile Erwin Young, in her official capacity as the Executive Commissioner of the Texas Health and Human Services Commission; and Michelle Hillstrom, in her official capacity as the Region 3 Director for Texas Health and Human Services (hereinafter sometimes referred to as "Defendants") and for cause of action would show the following:

**I. INTRODUCTION**

1. Individuals charged with a crime are sometimes determined by a court

or jury of competent jurisdiction, where applicable, to be suffering from mental illness and/or intellectual disability, such that they are deemed incompetent stand trial or deemed insane.

2. When this occurs, pursuant to Texas Code of Criminal Procedure 46B or 46C, Defendants are required to take custody of such person to treat their mental health condition and/or evaluate them, as applicable, in compliance with varying statutory requirements.

3. The law requires that these persons “must be transported directly to the facility within a reasonable amount of time and without undue delay.” TEX. CODE CRIM. PROC. Art. 46.04, Sec. 2(1).

4. Defendants continuously and unlawfully refuse to timely accept persons that have been judicially ordered into their custody and control. Instead, Defendants have waitlisted these persons, some for over two years.

5. Defendants’ actions in failing to timely designate a state facility for committed persons and perform the duties required by law are *ultra vires*.

6. As a result of Defendants’ actions, Dallas County is forced to divert its constitutionally delegated tax revenue to cover state expenses and otherwise divert county assets to ensure the committed persons receive appropriate treatment and care in compliance with state and federal law.

7. Defendants have and continue to refuse to compensate Plaintiffs for the expenses they have and continue to incur because of Defendants’ failures to comply with the Texas Constitution and state law.



8. This suit does not complain about the Defendants' exercise of discretion, but rather that the Defendants acted and continue to act without legal authority and/or failed and fail to perform purely ministerial acts as set forth in Sections 46B and 46C of the Texas Code of Criminal Procedure.

9. This case is also not a case to *control* the actions of the Defendants but rather to *regain* control of the Defendants to ensure their compliance with the Texas Constitution and Texas laws.

10. Although appropriate prospective relief, issued from the date of injunction, would require Dallas County receive compensation for the costs it has incurred and will incur because of the *ultra vires* conduct, such relief is incidental to the prospective injunctive and mandamus relief Plaintiffs seek in order to regain control of Defendants in furtherance of our state constitution and laws.

## II. PARTIES

11. Plaintiff Dallas County, Texas is a duly and legally organized county under the laws of the State of Texas that must provide "safe and suitable" county jails pursuant to statutory authority. Dallas County Commissioners Court "shall exercise such powers and jurisdiction over all county business" and has authorized this action in the name of the County. *See* Texas Constitution, art. V, section 18.

12. Marian Brown is the duly elected Sheriff of Dallas County, Texas and is a constitutional officer charged with administration and operation of the Dallas County Jail.

13. Cecile Erwin Young is the Executive Commissioner of the Texas Health

and Human Services Commission. She may be served at 4601 W. Guadalupe, Austin, Texas 78711.

14. Michelle Hillstrom is the Region 3 Director for Texas Health and Human Services. She may be served at 801 S. State Highway 161., Suite 740. Grand Prairie, Texas 75051.

### **III. JURISDICTION, VENUE AND DISCOVERY PLAN**

15. This Court has subject matter jurisdiction over the matter pursuant to Texas Constitution art. V, § 8 and TEX. CIV. PRAC. & REM. CODE § 37.003.

16. All relief sought by Plaintiffs is within the jurisdictional limits of this Court pursuant to TEX. CIV. PRAC. & REM. CODE § 37.002(b). To the extent permitted by sovereign immunity, Plaintiffs seek monetary relief over \$1,000,000, for its takings claim.

17. Plaintiffs do not seek a retrospective money judgment of any kind, nor do they seek injunctive or mandamus relief with respect to past economic loss. Plaintiffs only seek a declaration of their rights, as pertaining to events in the past and the future, and, where sovereign immunity does not bar it, declaratory, injunctive and mandamus relief concerning prospective events. Except that, should Plaintiffs prevail on their inverse condemnation claim, a money judgment shall issue for that claim alone because sovereign immunity has been waived in the Texas Constitution. Plaintiffs plead no claim and seek no remedy that is barred by the Texas Supreme Court's opinion in *City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex. 2009) and subsequent decisions.

18. This Court has jurisdiction to issue a writ of mandamus to require the Defendant's compliance. TEX. GOV'T CODE § 24.011.

19. This Court has personal jurisdiction over each Defendant because the Defendants reside in and are citizens of the State of Texas.

20. Venue is proper in Travis County pursuant to TEX. CIV. PRAC. & REM. CODE §§ 15.002(a)(1) & 15.014.

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

#### **IV. FACTUAL BACKGROUND**

##### **A. DEFENDANTS REFUSE TO TIMELY ACCEPT PERSONS COMMITTED TO THEIR CUSTODY THEREBY FORCING THE COUNTY TO INCUR SIGNIFICANT EXPENSE.**

22. The Dallas County Sheriff is the keeper of the Dallas County Jail and is obliged "to exercise supervision and control over the jail." TEX. GOV. CODE § 351.041. The Sheriff is required to "...safely keep all prisoners committed to the jail by a lawful authority, subject to an order of the proper court." *Id.*

23. The Dallas County Commissioners Court is responsible for providing "safe and suitable" county jails. LOCAL GOV'T CODE § 351.001(a). Notably, the Commissioners Court has general fiscal/budgetary authority for the County Jail. TEX. CONST. art. V, § 18(b) and *Griffin v. Birkman*, 266 S.W.3d 189, 194-95 (Tex. App. — Austin 2008, pet. denied). The Commissioners Court must provide adequate funding for the County Jail. *See Alberti v. Sheriff of Harris County, Texas*, 406 F. Supp. 649, 669 (S.D. Tex. 1975) ("Lack of adequate economic resources does not

excuse, nor does it lessen, the obligation of states and local governments to provide jail facilities which are constitutionally adequate.").

24. The County is liable for "all expenses incurred in the safekeeping of prisoners confined in the county jail..." TEX. CODE CRIM. PROC. Art 104.002(a).

25. At times, persons who have been charged with a crime are suffering from mental health challenges or intellectual disability that render them incompetent to stand trial.

26. Specifically, this suit concerns persons who have been examined: 1) on the issue of competency to stand trial by an expert appointed under Subchapter B, Chapter 46B, CODE OF CRIMINAL PROCEDURE; 2) found incompetent to stand trial under Subchapter C, Chapter 46B, CODE OF CRIMINAL PROCEDURE; and 3) committed to court-ordered mental health services under Chapter 46B, CODE OF CRIMINAL PROCEDURE; or (D) found not guilty by reason of insanity under Chapter 46C, CODE OF CRIMINAL PROCEDURE.

27. In those circumstances, state law provides for the procedures described herein to determine the nature and extent of the incapacity.

28. Some criminal defendants are determined by the court to require in-patient or residential mental health treatment.

29. After a hearing/trial wherein a court or jury receives competent testimony on the mental health condition of the criminal defendant, the court or jury determines whether that person is mentally ill and incompetent. Further, after a hearing wherein a court receives competent testimony on the mental health condition

of the criminal defendant, the court determines whether that person is intellectually disabled.

30. The Court may order the criminal defendant committed to a residential care facility. *See e.g.*, TEX. CODE OF CRIM. PRO. art. 46B.103.

31. In certain circumstances, Defendants are statutorily required to take custody of the criminal defendant who has been court ordered to be committed to a state designated mental health facility.

32. Specifically, criminal defendants committed to state designated facilities must be transported “directly to the facility within a reasonable amount of time and without undue delay.” *Id.* at 46.04, Sec. 2(1). For certain offenders meeting violence standard, that should be within 60 days. *Id.* at 46B.105(a)

33. Instead, without authority and in violation of state and constitutional law, Defendants place such persons on a waiting list and, when they do admit them, they do so over time.

34. In many instances, persons wait as long as two years to be placed in the state designated facility to which they have been court ordered. Per the data of the Dallas County Criminal Justice Division, as of the end of February 2023, the average wait time for males to a maximum-security hospital is 869 days.

35. Defendants repeated and continued failure to comply with statutory and constitutional law, which is likely to continue, causes enormous harm to Dallas County and Dallas County taxpayers because Dallas County and Dallas County taxpayers must bear this expense to adequately provide for the inmates who are

required to be transported to stated facilities “within a reasonable amount of time and without undue delay.”

36. As of the end of February 2023, Dallas County and its taxpayers are bearing the burden and expense of treatment and confinement of approximately 364 persons who are committed to the custody of Defendants and among those, 311 have been waiting for more than 45 days.

37. Using the daily jail cost of \$66.16 the cost to hold 311 persons is a total of \$7,510,152.40 for a year.

38. A higher estimated daily cost, which includes the daily jail cost, cost for additional DSO supervision, and cost for Parkland Jail Health care, is \$468.55 per day. Using the higher estimated daily cost to hold 311 persons is a total \$53,257,832.60 for a year.

#### B. STATUTORY REQUIREMENTS FOR COMMITMENT

39. When a person is found incompetent to stand trial, the criminal proceeding against the individual is stayed and the court either commits the defendant to a residential care mental facility, jail based competency restoration, a mental health facility designated by the Texas Health and Human Services Commission (“HHSC”) under the TEXAS CODE OF CRIMINAL PROCEDURE (“TCCP”) 46B.073, or releases the defendant on bail subject to conditions under 46B.072. *See* TEX. CODE CRIM. PROC. Art. 46B.004(d), 46B.071-073.

40. Under the TCCP 46B.073, a defendant found incompetent to stand trial and not released on bail shall be committed to a mental health facility “[f]or purposes

of further examination and competency restoration services with the specific objective of the defendant attaining competency to stand trial....” *Id.* at 46B.073(b).

41. A person charged with a violent crime under TCCP 17.032(a) or alleged in the indictment with an affirmative finding of use of a deadly weapon under 42A.054(c) or (d) and are “committed to a facility as a result of proceedings initiated under this chapter shall be committed to the *facility designated by the commission.*” *Id.* at 46B.104 (emphasis added).

42. Under the TCCP, “Commission” means the Health and Human Services Commission. *Id.* at 46B.001(2).

43. TCCP 46B.073 (commitments for restoration of mental competency) provides:

If the defendant is charged with an offense listed in Article 17.032(a) or if the indictment alleges an affirmative finding under Article 42A.054(c) or (d), the court shall enter an order committing the defendant for competency restoration services to *a facility designated by the commission.*

*Id.* at 46B.073(c)(emphasis added).

44. “Competency Restoration” means treatment or education process for restoring a person's ability to consult with the person's attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person. *Id.* at 46B.001(3).

45. In other words, these persons require treatment so that their competency can be restored and therefore they can stand trial for the offenses for which they are charged. Time is of the essence.

46. Further, under TCCP 46B.102 (mental illness hearing) and 46B.103 (intellectual disability hearing), a defendant that meets the criteria for civil commitment, who is charged with an offense listed under TCCP 17.032(a) or whose indictment makes an affirmative finding under TCCP 42A.054(c) & (d), "...shall be committed to the facility *designated by the commission....*". *Id.* (emphasis added). Unless a review board appointed by the HHSC determines that the person is "manifestly dangerous," a person held at a maximum security unit must be transferred, "not later than the 60th day," to a unit of an inpatient mental health facility other than a maximum security unit, a residential care facility, or a program designated by a local mental health authority or a local intellectual and developmental disability authority. *Id.* at 46B.105(a).

47. All other persons committed to a facility under art. 46B shall be committed to a facility designated by the HHSC or an outpatient treatment program. *Id.* at 46B.106.

48. TCCP Article 46B also sets forth obligations of the HHSC mental health facilities to which incompetent defendants are committed concerning individualized treatment programs, assessments and evaluations, and reports to the criminal court.

49. "[N]ot later than the date of the order of commitment or of release on bail" [the court order] must be sent to the facility or program the person has been court ordered and committed to. *Id.* at 46B.076. The receiving facility must, among other things, "develop an individual program of treatment," assess whether the defendant will attain competency in the future, and make at least one report to the



court. *Id.* at 46B.077.

50. Nothing in the statutory scheme envisions that persons subject to a commitment order to be placed in a facility designated by HHSC shall remain in custody of the county where they were charged, for consecutive months or years.

51. Finally, under Section 46C of the TCCP, if a defendant is acquitted as not guilty by reason of insanity of a crime involving dangerous conduct the court “shall order the acquitted person to be committed for evaluation of the person’s present mental condition and for treatment to the *facility designated by the commission,*” for a period not to exceed 30 days. *Id.* at 46C.251(a) (emphasis added).

52. For all these categories of persons court ordered committed to HHSC, it is inconsistent with these statutory requirements for Defendants not to take custody of them, without undue delay, and in any event longer than 60 days for dangerous persons.

C. WAITLISTING INMATES TO BE TRANSFERRED TO A STATE FACILITY.

53. As of December 31, 2022, there were 382 individuals awaiting transfer to State facilities for competency restoration in the Dallas County Jail.

54. In December 2022, Dallas County took care of and provided medication for the 382 inmates waiting for the state hospital at a cost of \$66.16 per inmate per day for housing. This came at a cost of \$783,585.14 for the month, to the county taxpayer.

55. Additionally, due to the special needs of this population, treatment and supervision costs are an added cost of the care, which could be up to \$468.55 per

inmate, per day, for the jail. Based on this estimate in the month of December 2022, it costs Dallas County taxpayers up to \$5,555,911.14 a month to maintain care for individuals the State was required to designate to a facility, but has failed to do so.

56. The wait time for a bed from HHSC can be over 300 days. For example, as of December 2022, the average wait time for a male defendant for a maximum-security state hospital bed from HHSC was 831 days.

D. STATUTORY REQUIREMENTS ADOPTED IN PRIOR LITIGATION CONCERNING THE STATE'S FAILURE TO TIMELY RECEIVE PERSONS COMMITTED TO TEXAS DEPARTMENT OF CRIMINAL JUSTICE PROVIDES GUIDANCE TO THIS COURT.

57. A state officer's refusal to timely receive, from a County Jail, persons committed to their custody has been litigated before, in the 1990s, and provides guidance for this matter. *See e.g., Nueces et al. v. Texas Board of Corrections et al.*, in the 250th Judicial District Court of Travis County, Texas, Cause No. 452,071 and *Harris County, Texas v. the State of Texas, et al.*, in the 126th District Court of Travis County, Texas, Cause No. 475,468.

58. In the Harris County case, the plaintiffs argued that the state officers' refusals to accept convicted persons committed to their custody violated various provisions of the Texas Constitution. This Court agreed and entered summary judgment for the Plaintiffs, held a trial on the amount of reimbursement the Plaintiffs were owed, granted mandamus and, later, a final judgment.

59. In response to this litigation, the Texas Legislature passed several remedial statutes directed at the Texas Department of Criminal Justice ("TDCJ"), Institutional Division. TEX. GOV'T CODE §§ 499.121, *et. seq.*

60. These statutes codified the non-discretionary obligations that the District Court of Travis County declared were required in order for the State to be in compliance with the Texas Constitution as set forth below:

- Starting September 1, 1995, “the institutional division has a duty to accept, not later than the 45th day after the date on which all processing required for transfer has been completed, each inmate confined in a county jail while under an order of commitment to the institutional division.” TEX. GOV’T. CODE § 499.121(c).
- The statute also provides that, “until September 1, 1995, a county shall continue to perform its duty to confine and maintain under suitable conditions and at the county's own expense each inmate eligible for transfer from the county to the institutional division, until the date the inmate is actually accepted into custody by the institutional division.” Tex. Gov’t. Code § 499.121(b)(emphasis added). Therefore, after September 1, 1995, counties were excused by law from paying the expense “to confine and maintain under suitable conditions” persons committed to the institutional division” if counties ever constitutionally could have been required to pay such expenses. *Id.*

61. “[U]ndue delay” cannot be interpreted to allow persons committed to HHSC to remain in the county jail longer than persons who have been committed to the institutional division of TDCJ.

#### E. DEFENDANTS SHOULD BE RESTRAINED

62. Defendants interpret state law to only require them to accept persons committed to their custody in “a reasonable amount of time,” ignoring the phrase “without undue delay.”

63. Because, HHSC officials argue, that there is no hard deadline, the Defendants apparently have concluded that committed persons can sit on waiting lists whereby they never enter the state facility or only do so after many months or years.

64. However, the Texas Legislature chose to qualify the phrase “reasonable

amount of time” with “without undue delay.” TEX. GOV. CODE 311 & 312; TEX. CODE CRIM. PROC. Art 46.04, Sec. 2. It further chose to require that the committed person “must be transported **directly** to the facility.” *Id.* (emphasis added). When read as a whole, there is no ambiguity in the statute.

65. Nothing in the statutory language, or basic statutory construction, allows Defendants to lollygag when it comes to designating a state facility to take the applicable committed individuals who must be taken “directly” to Defendants facility “within a reasonable amount of time and without undue delay.”

66. Because Defendants’ interpretation of law is in violation of statute and the Texas Constitution, the Court should restrain Defendants, by injunction and/or mandamus, from the following acts: 1) not timely accepting persons judicially ordered and statutorily required to be sent to a facility designated by HHSC; and, 2) failing to prospectively compensate Plaintiffs for expenses incurred “to confine and maintain under suitable conditions” persons committed to designated state facilities who are not taken by Defendants in a reasonable amount of time and without undue delay. *See e.g., Witt v. Whitehead*, 900 S.W.2d 374, 375-76 (Tex. App.—Austin 1995, writ denied) and *Canales v. Paxton*, 2020 WL 5884123 (Tex. App.—Austin 2020, pet. ref’d)(unpublished).

67. Since Defendants are state executive officers, not constitutional officers, a district court has jurisdiction to determine what the law requires and restrain an executive officer to comply with the Court’s interpretation of the constitutional and statutory requirements. *See Texas Constitution, art. IV, Section 1, TEXAS GOV’T.*

CODE § 22.002; and *City of El Paso v. Heinrich*, 284 S.W.3d 366, 371-73 (Tex. 2009) (“[I]t is clear that suits to require state officials to comply with statutory or constitutional provisions are not prohibited by sovereign immunity, even if a declaration to that effect compels the payment of money.”).

68. This suit does not complain about the Defendants’ exercise of discretion, but rather that the Defendants acted without legal authority and/or failed to perform a purely ministerial act.

69. This is not a suit against the State. Nor is this is a suit to impose liability upon the State or to compel the performance of a contract.

70. This is not an action that is in essence one for the recovery of money from the State or in which a judgment obtained would be satisfied by the payment out of funds in the State treasury except allowed under the takings claim.

71. The purpose of this suit is not to control the Defendants when acting within the scope of authority lawfully conferred upon them.

72. This action is for the purpose of obtaining a judgment declaring that Defendants are acting wrongfully and without legal authority and as one incidental consequence, that in order to avoid violation of the Texas Constitution, Dallas County is entitled to the cost to incarcerate the persons not timely committed to a HHSC facility.

73. The acts of these officials as complained of herein, which are not lawfully authorized, are not acts of the State and therefore Defendants do not benefit from sovereign immunity.

74. An action such as this against the Defendants by one whose rights have been invaded or violated by such acts (Dallas County), for the determination and protection of its rights, is not a suit against the State within the rule of immunity of the State from suit. *See Cobb v. Harrington*, 190 S.W.2d 709, 712 (Tex. 1945).

## **V. STATUORY CLAIMS**

### **FIRST CAUSE OF ACTION:**

#### **TEXAS CODE OF CRIMINAL PROCEDURE 46B & C.**

75. Plaintiffs incorporate by reference all allegations in all paragraphs of this Verified Petition as though fully set forth in this paragraph.

76. This suit for declaratory judgment is brought pursuant to the Uniform Declaratory Judgments Act in Chapter 37 of the Texas Civil Practice and Remedies Code. “*A court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.*” TEX. CIV. PRAC. & REM. CODE § 37.003(a)(emphasis added). “A person...whose rights, status, or other legal relations are affected by a statute...may have determined any question of construction or validity arising under the...statute....and obtain a declaration of rights, status, or other legal relations thereunder.” *Id.* at 37.004(a).

77. The court’s general jurisdictional authority under Article V, § 8 of the Texas Constitution and TEX. GOV’T CODE § 24.011 is properly invoked by the filing of a declaratory judgment.

78. This is also a suit for mandamus and/or injunction to compel the Defendants to comply with law.

79. TCCP § 46.04, Sec. 2(1) Requirements for Transport, provides:

The transportation of a patient from a jail or detention facility to a mental health facility or residential care facility must meet the following requirements: (1) the patient must be transported directly to the facility *within a reasonable amount of time and without undue delay*;

(emphasis added).

80. Currently, persons in Dallas County Jail who are to be transported to a HHSC designated facility can wait as long as 831 days, which is over two years. This is clearly not “within a reasonable amount of time” or “without undue delay.” Further, it is not being “transported directly to the facility,” but waiting months and years in the County jail.

81. This suit for declaratory judgment seeks findings:

1. That TCCP art. 46.04, Sec. 2(1) requires that HHSC make beds available for persons committed to an HHSC designated facility under art. 46B within a reasonable amount of time and without undue delay.
2. That waiting 60 days to be transferred to an HHSC designated facility is not being transported to the facility within a reasonable amount of time and without undue delay.
3. That waiting 60 days in the Dallas County Jail to be transferred to an HHSC designated facility because the individual has been placed on an HHSC waitlist is not being “transported directly to the facility.”
4. That 60 days is necessarily the most amount of time someone shown to be dangerous and committed under TCCP 46B can wait before being transferred to an HHSC facility.
5. Alternatively, that HHSC requiring Dallas County Jail to waitlist inmates who are to be committed to a facility designated by HHSC, for 100 days and more, violates TCCP art. 46.04, Sec. 2(1) and is *ultra vires*.

6. Alternatively, that waiting for a bed for over 100 days is not “within a reasonable amount of time and without undue delay.”
7. Alternatively, that waiting for a bed for over 150 days is not “within a reasonable amount of time and without undue delay.”
8. Alternatively, that waiting for a bed for over 300 days is not “within a reasonable amount of time and without undue delay.”
9. Alternatively, that waiting 100 days to be transferred to an HHSC designated facility because an individual has been placed on an HHSC waitlist is not being “transported directly to the facility.”
10. That HHSC must compensate Dallas County for the cost to care and housing for any mentally ill/incompetent inmate who is court ordered to be committed to a facility designated by HHSC, who remains in the Dallas County Jail’s custody or control over 45 or 60 days after the court order, as the case may be, for each day after 45 or 60 days that the inmate remains in the Dallas County Jail.

82. The entirety of the statutory scheme in Article 46B of the Texas Code of Criminal Procedure recognizes that the Defendants hold a duty to accept persons court ordered to be committed a facility designated by HHSC. Defendants’ failure to do so “without undue delay” and at least within the 60-day deadline recognized in art. 46B.105 are *ultra vires* acts.

83. Plaintiffs are entitled to injunctive and/or mandamus relief to restrain these *ultra vires* acts of Defendants.

84. Under the Uniform Declaratory Judgments Act (“UDJA”), a person “whose rights, status, or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the [ ] statute ... and obtain a declaration of rights, status, or other legal relations thereunder.” TEX. CIV. PRAC. & REM. CODE § 37.004(a). The UDJA is properly used to “settle and afford



relief from uncertainty and insecurity with respect to rights, and [is] to be liberally construed." *City of Waco v. Tex. Nat. Res. Conservation Comm 'n*, 83 S.W.3d 169, 177 (Tex. App.—Austin 2002, pet. denied).

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

86. A public official, such as these Defendants, has no discretion or authority to misinterpret the law. *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 163 (Tex. 2016).

87. Plaintiffs seek a declaration, under this statutory claim, that state law requires Defendants to prospectively compensate Plaintiffs for the cost to care and house any person who is court ordered committed to a mental health facility under the Defendants' custody or control, that is also not timely received by Defendants and that Defendants' failures to provide this compensation are *ultra vires*.

88. Under the UDJA, "the court may award costs and reasonable and necessary attorney's fees as are equitable and just." TEX. CIV. PRAC. & REM. CODE § 37.009. To the extent that such provision pierces government immunity, Plaintiffs hereby plead for the recovery of their costs and fees incurred in this litigation.

## **VI. CONSTITUTIONAL CLAIMS**

89. As averred above, Plaintiffs contend that state law requires Defendants to timely receive and accept persons court ordered committed to their custody. Alternatively, Plaintiffs claim such duties are required so as not to violate the following provisions of the Texas Constitution:

### **SECOND CAUSE OF ACTION: UNCONSTITUTIONAL AD VALOREM TAX**

90. Plaintiffs incorporate by reference all allegations in all paragraphs of this Verified Petition as though fully set forth in this paragraph.

91. Article 8, Section 1-a of the Texas Constitution expressly provides that the State cannot levy an ad valorem tax, and that counties can levy such ad valorem taxes but only "for county purposes."

92. The taxpayers of Dallas County, and these Plaintiffs, have a vested right and interest in the property and services acquired through the expenditure of their ad valorem tax funds. Such property and services are acquired for their benefit, and they are entitled that such property and services actually be applied to their use and benefit.

93. Defendants have compelled and continue to compel Dallas County and/or its resident citizens and taxpayers to use their funds, property, facilities and the services of their employees for the holding of persons court ordered to state custody without just compensation. By doing this, the Defendants have divested Dallas County of its property, funds and services, has illegally used county ad valorem taxes for state purposes in violation of Article 8, Section 1-a of the Texas

Constitution, and has levied an illegal and unconstitutional tax upon the residents and taxpayers of Dallas County.

94. By forcing Dallas County to house and care for persons who are court ordered under Defendants' custody, they have forced Plaintiffs to carry out duties that are legally the duty, responsibility and obligation of Defendants. Dallas County ad valorem taxes are being expended to house and care for mentally ill/incompetent inmates that should be housed and cared for through the expenditure of state tax money. The state fisc is funded by other constitutionally approved taxes. Allowing Defendants' *ultra vires* acts in this regard re-appropriates money constitutionally limited to the discretion of Dallas County Commissioners Court and spends it instead at the direction of Defendants, executive branch officials.

95. Plaintiffs seek a declaration of their rights that in order that the Constitution be complied with, 1) Defendants must accept without undue delay and in any event, no longer than 60 days, any person committed to their custody and 2) that when undue delay has or will occur, that the state must make payment of the reasonable costs of incarceration to Dallas County, Texas. Provided that, with respect to any relief that requires the payment of money, that the Defendants be ordered by this Court to make such payments, prospectively only. Any declaratory relief regarding past money owed, Plaintiffs would then raise with the Legislature. *See Heinrich*, 284 S.W.2d at 376 ("As we have repeatedly noted, the Legislature is best positioned to waive immunity, and it can authorize retrospective relief if appropriate.")

**THIRD CAUSE OF ACTION:**  
**UNCONSTITUTIONAL VIOLATION OF SEPARATION OF POWERS**

96. Texas Constitution, Article 2, section 1 provides: “SEPARATION OF POWERS OF GOVERNMENT AMONG THREE DEPARTMENTS. The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: those which are Legislative to one, those which are Executive to another, and those which are Judicial to another; and 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.”

97. This express separation of powers provision is unlike the implicit separation of powers in the federal 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).

98. Defendants are part of the executive branch of government. Therefore, Defendants do not have the right, power or authority to levy taxes. Doing so as they have and continue to do with the *ultra vires* acts complained of herein is in violation of Article 2, Section 1 of the Texas Constitution regarding separation of powers.

99. Furthermore, Dallas County Commissioners Court is constitutionally empowered to “exercise such powers and jurisdiction over all [Dallas] [C]ounty business” and is Judicial Department part of the Constitution. Texas Constitution, art. V, section 18. A commissioners court is a "county's principal governing body,"

and its "powers and duties . . . include aspects of legislative, executive, administrative, and judicial functions." *Comm 'rs Ct. of Titus Cty. v. Agan*, 940 S.W.2d 77, 79 (Tex. 1997).

100. A commissioners court's responsibility for county business and to make the county's budget is a legislative function, and the commissioners court has broad discretion to oversee the county's fiscal operations and policies. *Griffin v. Birkman*, 266 S.W.3d 189, 194-95 (Tex. App.— Austin 2008, pet. denied). Conversely, Defendants do not have discretion to unduly delay acceptance of persons court ordered committed to their custody.

101. Defendants', executive branch officers of state government, *ultra vires* acts of appropriating funds from the county fisc are in violation of Article 2, Section 1 of the Texas Constitution regarding separation of powers.

102. "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 Texas v. Norwood*, 418 S.W.3d 566, 570 (Tex. 2014) (quoting TEX. CONST. art. II, § 1).

103. Plaintiffs seek a declaration of their rights that in order that the Constitution be complied with, 1) Defendants must accept without undue delay and in any event, no longer than 60 days, any person committed to their custody and 2) that when undue delay has or will occur, that the state must make payment of the reasonable costs of incarceration to Dallas County, Texas. Provided that, with respect to any relief that requires the payment of money, that the Defendants be ordered by

this Court to make such payments, prospectively only. Any declaratory relief regarding past money owed, Plaintiffs would then raise with the Legislature. See *Heinrich*, 284 S.W.2d at 376 (“As we have repeatedly noted, the Legislature is best positioned to waive immunity, and it can authorize retrospective relief if appropriate.”)

**FOURTH CAUSE OF ACTION:**  
**UNCONSTITUTIONAL STATE DEBT**

104. Plaintiffs incorporate by reference all allegations in all paragraphs of this Verified Petition as though fully set forth in this paragraph.

105. Texas Constitution, Article 3, section 49 provides that “[n]o debt shall be created by or on behalf of the State” except those specifically delineated.

106. The *ultra vires* acts of forcing Plaintiffs to pay for activities required by law to be undertaken by the state agencies, forces Plaintiffs to be a debt or bondholder of the state in violation of the Texas Constitution. In other words, a state debt has been created not in compliance with the constitution.

107. Plaintiffs seek a declaration of their rights that in order that the Constitution be complied with, 1) Defendants must accept without undue delay and in any event, no longer than 60 days, any person committed to their custody and 2) that when undue delay has or will occur, that the state must make payment of the reasonable costs of incarceration to Dallas County, Texas. Provided that, with respect to any relief that requires the payment of money, that the Defendants be ordered by this Court to make such payments, prospectively only. Any declaratory relief regarding past money owed, Plaintiffs would then raise with the Legislature. See

*Heinrich*, 284 S.W.2d at 376 (“As we have repeatedly noted, the Legislature is best positioned to waive immunity, and it can authorize retrospective relief if appropriate.”)

**FIFTH CAUSE OF ACTION:**  
**UNCONSTITUTIONAL APPROPRIATION FOR PRIVATE PURPOSES**

108. Plaintiffs incorporate by reference all allegations in all paragraphs of this Verified Petition as though fully set forth in this paragraph.

109. Texas Constitution, Article 16, section 6(b) provides “State agencies charged with the responsibility of providing services to those who are .... mentally handicapped may accept money from private or federal sources ... Money accepted under this subsection is state money. State agencies may spend money accepted under this subsection, and no other money, for specific programs and projects to be conducted by local level ... in rehabilitating and restoring the handicapped, and in providing other services determined by the state agency to be essential for the better care or treatment of the handicapped.”

110. The *ultra vires* acts of forcing Plaintiffs to pay for activities required by law to be undertaken by the state agencies are in direct violation of this provision in the Texas Constitution.

111. Plaintiffs seek a declaration of their rights that in order that the Constitution be complied with, 1) Defendants must accept without undue delay and in any event, no longer than 60 days, any person committed to their custody and 2) that when undue delay has or will occur, that the state must make payment of the reasonable costs of incarceration to Dallas County, Texas. Provided that, with respect

to any relief that requires the payment of money, that the Defendants be ordered by this Court to make such payments, prospectively only. Any declaratory relief regarding past money owed, Plaintiffs would then raise with the Legislature. See *Heinrich*, 284 S.W.2d at 376 (“As we have repeatedly noted, the Legislature is best positioned to waive immunity, and it can authorize retrospective relief if appropriate.”)

**SIXTH CAUSE OF ACTION:**  
**UNCONSTITUTIONAL INVERSE CONDEMNATION**

112. The housing of persons court ordered to be transported to a facility designated by HHSC has and continues to require expenditures by Dallas County for food, clothing, medical care, transportation, recreational facilities, library facilities, mental health treatment and other necessities. Dallas County has also been forced to expend sums for salaries of employees to care for and supervise these persons. It is not known when, if ever, the Defendants will take custody of these persons from the Dallas County jail facilities; but, unless the Defendants change their policy on accepting these persons, they will continue to be housed in the Dallas County jail indefinitely.

113. The housing of these persons in the Dallas County jail has occurred without the consent of and over the objection of Dallas County, through an HHSC indefinite wait list process.

114. If the Court rules Defendants are lawful in placing court ordered mentally ill/incompetent persons on a waiting list and can require the Plaintiffs to hold them indefinitely, then Defendants’ acts in doing so are intentionally performed



acts in the exercise of their lawful authority; (2) that resulted in the taking, damaging, or destruction of Plaintiffs' property; and Defendants did so (3) for public use.

115. The Defendants' acts in housing these persons in the Dallas County jail constitute a taking of Plaintiffs' property, both real and personal, including the taking of the value of the labor of Plaintiffs' employees, for application to public uses of the Defendants without adequate compensation having been made, in violation of Section 17 of Article I of the Constitution of the State of Texas. Defendants have taken a fractional undivided leasehold interest in the Dallas County jail without adequate compensation.

116. "Inverse condemnation is 'a cause of action against a governmental defendant to recover the value of property that has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.'" *Hearts Bluff Game Ranch Inc. v. State*, 381 S.W.3d 468, 476 (Tex. 2012).

117. In the event Defendants deny that the statutory requirements laid out above entitle Dallas County to compensation for the expenses Plaintiffs incurred holding persons court ordered committed to an HHSC designated facility, then an inverse taking has occurred for which Plaintiffs are entitled to compensation.

118. Sovereign immunity has been waived for this claim. *See Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 594 (Tex. 2001).

119. This is the only claim for which Plaintiffs seek a retrospective money

judgment or other mandatory order judicially requiring the payment of money for losses incurred by Plaintiffs in the past, as well as in the future.

## **VII. APPLICATION FOR INJUNCTION AND/OR MANDAMUS RELIEF**

120. Plaintiffs incorporate by reference all allegations in all paragraphs of this Verified Petition as though fully set forth in this paragraph.

121. Dallas County requests that the Court set its applications for temporary injunction and/or mandamus for hearings, and after hearing the applications, issue a temporary injunction and mandamus, as appropriate, against Defendants enjoining them from the *ultra vires* acts and legal interpretations described above.

122. Plaintiffs further request that the Court set this matter for trial and, upon final hearing, permanently enjoin Defendant.

123. Plaintiffs have pleaded causes of action against Defendants.

124. Dallas County has a probable right to relief and recovery against Defendants. To satisfy this element, Dallas County "need not prove that [it] will ultimately prevail in the litigation; rather, the applicant must show [it] has a cause of action for which relief may be granted." *Topheavy Studios, Inc. v. Doe*, 2005 WL 940159, at \*3 (Tex. App.—Austin 2005, no pet.). As detailed above, Dallas County has furnished the law and evidence that supports a probable right to relief because Defendants' actions do not comply with the relevant statutory and constitutional laws and therefore exceeded Defendants' lawful authority. A "claimant who successfully proves an *ultra vires* claim is entitled to prospective injunctive relief, as measured from the date of injunction." *City of El Paso v. Heinrich*, 284 S.W.3d 366, 376 (Tex.

2009).

125. Dallas County will suffer probable, imminent, and irreparable harm without a temporary and permanent injunction." An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard." *Butnaru v. Ford Aforor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). There is no adequate remedy at law that will give Dallas County complete, final, and equitable relief because, absent court action, Defendants will continue to continuously commit these *ultra vires* acts.

126. An injunction would greatly benefit the millions of residents of Dallas County by allowing the county budget to be adopted without regard to the unlawful expenditure hoisted upon the Plaintiffs and Dallas County residents and to allow the budget to be implemented without diverting funds to cover expenses unlawfully incurred because of the *ultra vires* acts of the Defendants. In contrast, Defendants have no vested interest in the immediate and continued implementation of their erroneous and unconstitutional conduct.

127. Plaintiffs are exempt by law from the requirement to file a bond for a request for an injunction. *See* TEX. CIV. PRAC. & REM. CODE § 6.00J(c).

### **VIII. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Dallas County and its Sheriff Marian Brown pray that Defendants be cited to appear and answer herein, and that appropriate hearings for injunctive and mandamus relief be set and upon the conclusion of same issue the relief described below is granted and upon trial

hereof this Honorable court enter declaratory judgment finding that (1) the Defendants have a legal duty to either remove and transport persons committed under Article 46B of the Texas Code of Criminal Procedure and must do so in no more than 60 days (or some other deadline provided for under current law); (2) when failing to do so, that the law and constitution entitle Dallas County to compensation for its expenses because of Defendants failure to timely receive such person; and/or (3) condemn the property of Dallas County, both real and personal, which has been taken by the Defendants and applied to their use without adequate compensation having been made, or that Defendants adequately compensate Plaintiffs for the services rendered, materials furnished and property taken prior to the date of judgment in this cause.

Plaintiffs further request that this court order the Defendants make suitable provisions for the speedy transportation of mentally ill/incompetent/insane inmates held by Dallas County to HHSC and declare that the law and constitution require Defendants to reimburse Plaintiffs when they cover the costs that should be borne by the state.

Plaintiffs further pray for a declaration that the confinement, housing, care and transportation of persons committed by a court under Article 46B of the Texas Code of Criminal Procedure is the duty and responsibility of the Defendants to be done at the cost and expense of such Defendants, and Plaintiffs pray that a writ of mandamus issue ordering Defendants to either accept the timely transfer of such persons or to prospectively reimburse Dallas County for confining and caring for such

persons.

In no manner do Plaintiffs plead for an order or judgment that includes mandatory relief requiring Defendants to make payment for past loss/damage except under the takings claim.

Plaintiffs further pray that (if the Court determines that sovereign immunity has been waived for these claims), they be awarded prejudgment and post-judgment interest, recover costs of court, reasonable attorney's fees under the declaratory judgment act, case expenses, expert expenses and such other and further relief both general and special, at law and at equity, to which it may be justly entitled.

March 23, 2023

Respectfully submitted,

/s/ Chad W. Dunn

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Counsel for Plaintiff

**VERIFICATION**

My name is Kendall McKimney, and I am an employee of the following governmental agency: Dallas County. I am executing this declaration as part of my assigned duties and responsibilities. I am an assistant district attorney in the Mental Illness Section of the Dallas County District Attorney's Office. Based on my experience, my assigned duties and responsibilities, and through my review of County records and correspondence and other public records, I have personal knowledge of the facts contained in Paragraphs 1, 25, 28-29 of this Original Petition. I declare under penalty of perjury that the facts stated therein are true and correct.

Executed in Dallas County, State of Texas, on March 20, 2023.

*Kendall McKimney*

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Kendall McKimney, Dallas  
County Assistant District  
Attorney

**VERIFICATION**

My name is Laura Edmonds, and I am an employee of the following governmental agency: Dallas County. I am executing this declaration as part of my assigned duties and responsibilities. I am Assistant Director, Behavioral Health in Dallas County Department of Criminal Justice. Based on my experience, my assigned duties and responsibilities, and through my review of County records and correspondence and other public records, I have personal knowledge of the facts contained in Paragraphs 4, 12, 25, 28, 34, 36, 37, 53, and 56 of this Original Petition. I declare under penalty of perjury that the facts stated therein are true and correct.

Executed in Dallas County, State of Texas, on March 20, 2023.

A handwritten signature in black ink that reads "Laura Edmonds". The signature is written in a cursive style with a horizontal line underneath the name.

Laura Edmonds, Assistant  
Director, Behavioral Health in  
Dallas County Department of  
Criminal Justice

## VERIFICATION

My name is Ronica Watkins, PhD, and I am an employee of the following governmental agency: Dallas County. I am executing this declaration as part of my assigned duties and responsibilities. I am the Budget Officer, Dallas County Office of Budget & Evaluation. Based on my experience, my assigned duties and responsibilities, and through my review of County records and correspondence and other public records, I have personal knowledge of the facts contained in Paragraphs 6, 7, 35-38, 54, 55, 62, 102, and 135, and 62 of this Original Petition. I declare under penalty of perjury that the facts stated therein are true and correct.

Executed in Dallas County, State of Texas, on March 20, 2023.

/s/ Dr. Ronica Watkins

Ronica Watkins, PhD, Dallas  
County Budget Officer Office  
of Budget & Evaluation



**TAB B: ORDER DENYING DEFENDANTS' PLEA TO THE JURISDICTION**

CAUSE NO. D-1-GN-23-001610

DALLAS COUNTY, TEXAS AND  
MARIAN BROWN, IN HER OFFICIAL  
CAPACITY AS DALLAS COUNTY SHERIFF

PLAINTIFFS,

VS.

CECILE ERWIN, IN HER OFFICIAL CAPACITY  
AS THE EXECUTIVE COMMISSIONER OF THE  
TEXAS HEALTH AND HUMAN SERVICES  
COMMISSION; AND MICHELLE HILLSTROM,  
IN HER OFFICIAL CAPACITY AS THE REGION  
3 DIRECTOR FOR THE TEXAS HEALTH AND  
HUMAN SERVICES

DEFENDANTS.

§ IN THE DISTRICT COURT OF  
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§ TRAVIS COUNTY, TEXAS  
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§  
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§  
§  
§ 353<sup>RD</sup> JUDICIAL DISTRICT

**ORDER DENYING DEFENDANT'S PLEA TO THE JURISDICTION**

On this day the Court considered the Defendant's Plea to the Jurisdiction. The Court, having considered the pleadings and arguments of counsel, has determined that the Plea to the Jurisdiction should be, and it is, DENIED.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Defendant's Plea to the Jurisdiction is DENIED.

SIGNED on December 21, 2023

  
\_\_\_\_\_  
Maya Guerra Gamble  
Judge Presiding

**TAB C: DEFENDANTS' NOTICE OF ACCELERATED INTERLOCUTORY  
APPEAL AND AUTOMATIC STAY**

DALLAS COUNTY, TEXAS AND	§	IN THE DISTRICT COURT
MARIAN BROWN, in her official capacity	§	
as Dallas County Sheriff,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
CECILE ERWIN, in her official capacity as	§	
the Executive Commissioner of the Texas	§	
Health and Human Services Commission, et	§	
al.,	§	
<i>Defendants.</i>	§	353RD JUDICIAL DISTRICT

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**DEFENDANTS’ NOTICE OF ACCELERATED INTERLOCUTORY APPEAL  
AND AUTOMATIC STAY**

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Pursuant to Texas Rules of Appellate Procedure 25.1(a) and 26.1(b), Defendants Cecile Erwin, in her official capacity as the Executive Commissioner of the Texas Health and Human Services Commission (“HHSC”) and Michelle Hillstrom, in her official capacity as the Region 3 Director for Community Care Services Eligibility for HHSC, appeal the trial court’s denial of Defendants’ Plea to the Jurisdiction.

On December 21, 2023, the trial court entered an order denying Defendants’ Plea to the Jurisdiction. Defendants desire to take an interlocutory appeal to the Third Court of Appeals from this order pursuant to Texas Civil Practice and Remedies Code § 51.014(a)(8). This is an accelerated appeal as provided by Texas Rule of Appellate Procedure 28.1. This is not a parental termination or child protection case as defined in Rule 28.4. Pursuant to Texas Civil Practice and Remedies Code § 51.014(b), all further proceedings in the Trial Court are stayed pending resolution of Defendants’ appeal.

Respectfully submitted.

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

GRANT DORFMAN  
Deputy First Assistant Attorney General

JAMES LLOYD  
Deputy Attorney General for Civil Litigation

KIMBERLY GDULA  
Chief - General Litigation Division

*/s/ William D. Wassdorf*  

---

**WILLIAM D. WASSDORF**  
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**ATTORNEY FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served electronically through the electronic-filing manager in compliance with Texas Rule of Civil Procedure 21a and Texas Rule of Appellate Procedure 9.5(e) on January 10, 2024 to all counsel of record.

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*/s/ William D. Wassdorf*  
\_\_\_\_\_  
**WILLIAM D. WASSDORF**

**TAB D: ENROLLED S.B. NO. 1045**

AN ACT

relating to the creation of the Fifteenth Court of Appeals with jurisdiction over certain civil cases, the compensation of the justices of that court, and the jurisdiction of the courts of appeals in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. FIFTEENTH COURT OF APPEALS

SECTION 1.01. Section 22.201, Government Code, is amended by amending Subsection (a) and adding Subsection (p) to read as follows:

(a) The state is organized [~~divided~~] into 15 [~~14~~] courts of appeals districts with a court of appeals in each district.

(p) The Fifteenth Court of Appeals District is composed of all counties in this state.

SECTION 1.02. Subchapter C, Chapter 22, Government Code, is amended by adding Section 22.2151 to read as follows:

Sec. 22.2151. FIFTEENTH COURT OF APPEALS. (a) The Court of Appeals for the Fifteenth Court of Appeals District shall be held in the City of Austin.

(b) The Fifteenth Court of Appeals may transact its business in any county in the district as the court determines is necessary and convenient.

SECTION 1.03. Subchapter C, Chapter 22, Government Code, is amended by adding Section 22.2152 to read as follows:



1       Sec. 22.2152. REPORT ON FIFTEENTH COURT OF APPEALS. Not  
2 later than December 1 of each year, the Office of Court  
3 Administration of the Texas Judicial System shall submit to the  
4 legislature a report on the number and types of cases heard by the  
5 Court of Appeals for the Fifteenth Court of Appeals District in the  
6 preceding state fiscal year.

7       SECTION 1.04. Section 22.216, Government Code, is amended  
8 by adding Subsections (n-1) and (n-2) to read as follows:

9       (n-1) The Court of Appeals for the Fifteenth Court of  
10 Appeals District consists of a chief justice and of four justices  
11 holding places numbered consecutively beginning with Place 2.

12       (n-2) Notwithstanding Subsection (n-1), the Court of  
13 Appeals for the Fifteenth Court of Appeals District consists of a  
14 chief justice and of two justices holding places numbered  
15 consecutively beginning with Place 2 for the first three years  
16 following the court's creation. This subsection expires September  
17 1, 2027.

18       SECTION 1.05. Section 22.220, Government Code, is amended  
19 by amending Subsection (a) and adding Subsection (d) to read as  
20 follows:

21       (a) Except as provided by Subsection (d), each ~~Each~~ court  
22 of appeals has appellate jurisdiction of all civil cases within its  
23 district of which the district courts or county courts have  
24 jurisdiction when the amount in controversy or the judgment  
25 rendered exceeds \$250, exclusive of interest and costs.

26       (d) The Court of Appeals for the Fifteenth Court of Appeals  
27 District has exclusive intermediate appellate jurisdiction over

1 the following matters arising out of or related to a civil case:

2 (1) matters brought by or against the state or a board,  
3 commission, department, office, or other agency in the executive  
4 branch of the state government, including a university system or  
5 institution of higher education as defined by Section 61.003,  
6 Education Code, or by or against an officer or employee of the state  
7 or a board, commission, department, office, or other agency in the  
8 executive branch of the state government arising out of that  
9 officer's or employee's official conduct, other than:

10 (A) a proceeding brought under the Family Code  
11 and any related motion or proceeding;

12 (B) a proceeding brought under Chapter 7B or  
13 Article 17.292, Code of Criminal Procedure;

14 (C) a proceeding brought against a district  
15 attorney, a criminal district attorney, or a county attorney with  
16 criminal jurisdiction;

17 (D) a proceeding relating to a mental health  
18 commitment;

19 (E) a proceeding relating to civil asset  
20 forfeiture;

21 (F) a condemnation proceeding for the  
22 acquisition of land or a proceeding related to eminent domain;

23 (G) a proceeding brought under Chapter 101, Civil  
24 Practice and Remedies Code;

25 (H) a claim of personal injury or wrongful death;

26 (I) a proceeding brought under Chapter 125, Civil  
27 Practice and Remedies Code, to enjoin a common nuisance;

- 1                   (J) a proceeding brought under Chapter 55, Code
- 2 of Criminal Procedure;
- 3                   (K) a proceeding under Chapter 22A, Government
- 4 Code;
- 5                   (L) a proceeding brought under Subchapter E-1,
- 6 Chapter 411, Government Code;
- 7                   (M) a proceeding brought under Chapter 21, Labor
- 8 Code;
- 9                   (N) a removal action under Chapter 87, Local
- 10 Government Code; or
- 11                   (O) a proceeding brought under Chapter 841,
- 12 Health and Safety Code;
- 13                   (2) matters in which a party to the proceeding files a
- 14 petition, motion, or other pleading challenging the
- 15 constitutionality or validity of a state statute or rule and the
- 16 attorney general is a party to the case; and
- 17                   (3) any other matter as provided by law.

18           SECTION 1.06. Section 22.221, Government Code, is amended  
19 by amending Subsection (b) and adding Subsections (c) and (c-1) to  
20 read as follows:

21           (b) Subject to Subsection (c-1), each [~~Each~~] court of  
22 appeals for a court of appeals district may issue all writs of  
23 mandamus, agreeable to the principles of law regulating those  
24 writs, against [~~+~~  
25           [~~(1)~~] a judge of a district, statutory county,  
26 statutory probate county, or county court in the court of appeals  
27 district[~~+~~

1           ~~[(2) a judge of a district court who is acting as a~~  
2 ~~magistrate at a court of inquiry under Chapter 52, Code of Criminal~~  
3 ~~Procedure, in the court of appeals district; or~~

4           ~~[(3) an associate judge of a district or county court~~  
5 ~~appointed by a judge under Chapter 201, Family Code, in the court of~~  
6 ~~appeals district for the judge who appointed the associate judge].~~

7           (c) Each court of appeals for a court of appeals district,  
8 other than the Court of Appeals for the Fifteenth Court of Appeals  
9 District, may issue all writs of mandamus, agreeable to the  
10 principles of law regulating those writs, against:

11           (1) a judge of a district court who is acting as a  
12 magistrate at a court of inquiry under Chapter 52, Code of Criminal  
13 Procedure, in the court of appeals district; or

14           (2) an associate judge of a district or county court  
15 appointed by a judge under Chapter 201, Family Code, in the court of  
16 appeals district for the judge who appointed the associate judge.

17           (c-1) The original jurisdiction of the Court of Appeals for  
18 the Fifteenth Court of Appeals District to issue writs is limited to  
19 writs arising out of matters over which the court has exclusive  
20 intermediate appellate jurisdiction under Section 22.220(d).

21           SECTION 1.07. Section 22.229(a), Government Code, is  
22 amended to read as follows:

23           (a) An appellate judicial system fund is established for  
24 each court of appeals, other than the Court of Appeals of the  
25 Fifteenth Court of Appeals District, to:

26           (1) assist the court of appeals in the processing of  
27 appeals filed with the court of appeals from the county courts,

1 statutory county courts, statutory probate courts, and district  
2 courts in the counties the court of appeals serves; and

3 (2) defray costs and expenses incurred in the  
4 operation of the court of appeals.

5 SECTION 1.08. Section 73.001, Government Code, is amended  
6 to read as follows:

7 Sec. 73.001. AUTHORITY TO TRANSFER. (a) Except as provided  
8 by Subsection (b), the ~~[The]~~ supreme court may order cases  
9 transferred from one court of appeals to another at any time that,  
10 in the opinion of the supreme court, there is good cause for the  
11 transfer.

12 (b) The supreme court may not transfer any case or  
13 proceeding properly filed in the Court of Appeals for the Fifteenth  
14 Court of Appeals District to another court of appeals for the  
15 purpose of equalizing the dockets of the courts of appeals.

16 (c) The supreme court shall adopt rules for:

17 (1) transferring an appeal inappropriately filed in  
18 the Fifteenth Court of Appeals to a court of appeals with  
19 jurisdiction over the appeal; and

20 (2) transferring to the Fifteenth Court of Appeals  
21 from another court of appeals the appeals over which the Fifteenth  
22 Court of Appeals has exclusive intermediate appellate jurisdiction  
23 under Section 22.220(d).

24 SECTION 1.09. Section 659.012(a), Government Code, is  
25 amended to read as follows:

26 (a) Notwithstanding Section 659.011 and subject to  
27 Subsections (b) and (b-1):

1           (1) a judge of a district court is entitled to an  
2 annual base salary from the state as set by the General  
3 Appropriations Act in an amount equal to at least \$140,000, except  
4 that the combined base salary of a district judge from all state and  
5 county sources, including compensation for any extrajudicial  
6 services performed on behalf of the county, may not exceed the  
7 amount that is \$5,000 less than the maximum combined base salary  
8 from all state and county sources for a justice of a court of  
9 appeals other than a chief justice as determined under this  
10 subsection;

11           (2) except as provided by Subdivision (3), a justice  
12 of a court of appeals other than the chief justice is entitled to an  
13 annual base salary from the state in the amount equal to 110 percent  
14 of the state base salary of a district judge as set by the General  
15 Appropriations Act, except that the combined base salary of a  
16 justice of the court of appeals other than the chief justice from  
17 all state and county sources, including compensation for any  
18 extrajudicial services performed on behalf of the county, may not  
19 exceed the amount that is \$5,000 less than the base salary for a  
20 justice of the supreme court as determined under this subsection;

21           (3) a justice of the Court of Appeals for the Fifteenth  
22 Court of Appeals District other than the chief justice is entitled  
23 to an annual base salary from the state in the amount equal to  
24 \$5,000 less than 120 percent of the state base salary of a district  
25 judge as set by the General Appropriations Act;

26           (4) a justice of the supreme court other than the chief  
27 justice or a judge of the court of criminal appeals other than the

1 presiding judge is entitled to an annual base salary from the state  
2 in the amount equal to 120 percent of the state base salary of a  
3 district judge as set by the General Appropriations Act; and

4           (5) [~~(4)~~] the chief justice or presiding judge of an  
5 appellate court is entitled to an annual base salary from the state  
6 in the amount equal to \$2,500 more than the state base salary  
7 provided for the other justices or judges of the court, except that  
8 the combined base salary of the chief justice of a court of appeals  
9 from all state and county sources may not exceed the amount equal to  
10 \$2,500 less than the base salary for a justice of the supreme court  
11 as determined under this subsection.

12           SECTION 1.10. Section [2001.038\(f\)](#), Government Code, is  
13 amended to read as follows:

14           (f) A Travis County district court in which an action is  
15 brought under this section, on its own motion or the motion of any  
16 party, may request transfer of the action to the Court of Appeals  
17 for the Fifteenth [~~Third~~] Court of Appeals District if the district  
18 court finds that the public interest requires a prompt,  
19 authoritative determination of the validity or applicability of the  
20 rule in question and the case would ordinarily be appealed. After  
21 filing of the district court's request with the court of appeals,  
22 transfer of the action may be granted by the court of appeals if it  
23 agrees with the findings of the district court concerning the  
24 application of the statutory standards to the action. On entry of  
25 an order by the court of appeals granting transfer, the action is  
26 transferred to the court of appeals for decision, and the validity  
27 or applicability of the rule in question is subject to judicial

1 review by the court of appeals. The administrative record and the  
2 district court record shall be filed by the district clerk with the  
3 clerk of the court of appeals. The court of appeals may direct the  
4 district court to conduct any necessary evidentiary hearings in  
5 connection with the action.

6 SECTION 1.11. Section 2001.176(c), Government Code, is  
7 amended to read as follows:

8 (c) A Travis County district court in which an action is  
9 brought under this section, on its own motion or on motion of any  
10 party, may request transfer of the action to the Court of Appeals  
11 for the Fifteenth [~~Third~~] Court of Appeals District if the district  
12 court finds that the public interest requires a prompt,  
13 authoritative determination of the legal issues in the case and the  
14 case would ordinarily be appealed. After filing of the district  
15 court's request with the court of appeals, transfer of the action  
16 may be granted by the court of appeals if it agrees with the  
17 findings of the district court concerning the application of the  
18 statutory standards to the action. On entry of an order by the  
19 court of appeals granting transfer, the action is transferred to  
20 the court of appeals for decision, and the agency decision in the  
21 contested case is subject to judicial review by the court of  
22 appeals. The administrative record and the district court record  
23 shall be filed by the district clerk with the clerk of the court of  
24 appeals. The court of appeals may direct the district court to  
25 conduct any necessary evidentiary hearings in connection with the  
26 action.

27 SECTION 1.12. Section 2301.751(a), Occupations Code, is



1 amended to read as follows:

2 (a) A party to a proceeding affected by a final order, rule,  
3 or decision or other final action of the board with respect to a  
4 matter arising under this chapter or Chapter 503, Transportation  
5 Code, may seek judicial review of the action under the substantial  
6 evidence rule in:

7 (1) a district court in Travis County; or

8 (2) the court of appeals for the Fifteenth [~~Third~~]  
9 Court of Appeals District.

10 SECTION 1.13. Section 39.001(e), Utilities Code, is amended  
11 to read as follows:

12 (e) Judicial review of competition rules adopted by the  
13 commission shall be conducted under Chapter 2001, Government Code,  
14 except as otherwise provided by this chapter. Judicial review of  
15 the validity of competition rules shall be commenced in the Court of  
16 Appeals for the Fifteenth [~~Third~~] Court of Appeals District and  
17 shall be limited to the commission's rulemaking record. The  
18 rulemaking record consists of:

19 (1) the notice of the proposed rule;

20 (2) the comments of all interested persons;

21 (3) all studies, reports, memoranda, or other  
22 materials on which the commission relied in adopting the rule; and

23 (4) the order adopting the rule.

24 SECTION 1.14. (a) Except as otherwise provided by this Act,  
25 the Court of Appeals for the Fifteenth Court of Appeals District is  
26 created September 1, 2024.

27 (b) If the Court of Appeals for the Fifteenth Court of

1 Appeals District is created, the initial vacancies in the offices  
2 of chief justice and justices of the court shall be filled by  
3 appointment.

4 SECTION 1.15. (a) The changes in law made by this Act apply  
5 to appeals perfected on or after September 1, 2024.

6 (b) On September 1, 2024, all cases pending in other courts  
7 of appeal that were filed on or after September 1, 2023, and of  
8 which the Court of Appeals for the Fifteenth Court of Appeals  
9 District has exclusive intermediate appellate jurisdiction are  
10 transferred to the Court of Appeals for the Fifteenth Court of  
11 Appeals District.

12 (c) When a case is transferred as provided by Subsection (b)  
13 of this section:

14 (1) all processes, writs, bonds, recognizances, or  
15 other obligations issued from the other courts of appeal are  
16 returnable to the Court of Appeals for the Fifteenth Court of  
17 Appeals District as if originally issued by that court; and

18 (2) the obligees on all bonds and recognizances taken  
19 in and for the other courts of appeal and all witnesses summoned to  
20 appear in another court of appeals are required to appear before the  
21 Court of Appeals for the Fifteenth Court of Appeals District as if  
22 originally required to appear before the Court of Appeals for the  
23 Fifteenth Court of Appeals District.

24 ARTICLE 2. CONFORMING AMENDMENTS

25 SECTION 2.01. Article 4.01, Code of Criminal Procedure, is  
26 amended to read as follows:

27 Art. 4.01. WHAT COURTS HAVE CRIMINAL JURISDICTION. The

1 following courts have jurisdiction in criminal actions:

- 2 1. The Court of Criminal Appeals;
- 3 2. Courts of appeals, other than the Court of Appeals
- 4 for the Fifteenth Court of Appeals District;
- 5 3. The district courts;
- 6 4. The criminal district courts;
- 7 5. The magistrates appointed by the judges of the
- 8 district courts of Bexar County, Dallas County, Tarrant County, or
- 9 Travis County that give preference to criminal cases and the
- 10 magistrates appointed by the judges of the criminal district courts
- 11 of Dallas County or Tarrant County;
- 12 6. The county courts;
- 13 7. All county courts at law with criminal
- 14 jurisdiction;
- 15 8. County criminal courts;
- 16 9. Justice courts;
- 17 10. Municipal courts;
- 18 11. The magistrates appointed by the judges of the
- 19 district courts of Lubbock County;
- 20 12. The magistrates appointed by the El Paso Council
- 21 of Judges;
- 22 13. The magistrates appointed by the Collin County
- 23 Commissioners Court;
- 24 14. The magistrates appointed by the Brazoria County
- 25 Commissioners Court or the local administrative judge for Brazoria
- 26 County; and
- 27 15. The magistrates appointed by the judges of the

1 district courts of Tom Green County.

2 SECTION 2.02. Article 4.03, Code of Criminal Procedure, is  
3 amended to read as follows:

4 Art. 4.03. COURTS OF APPEALS. The Courts of Appeals, other  
5 than the Court of Appeals for the Fifteenth Court of Appeals  
6 District, shall have appellate jurisdiction coextensive with the  
7 limits of their respective districts in all criminal cases except  
8 those in which the death penalty has been assessed. This article  
9 [~~Article~~] shall not be so construed as to embrace any case which has  
10 been appealed from any inferior court to the county court, the  
11 county criminal court, or county court at law, in which the fine  
12 imposed or affirmed by the county court, the county criminal court  
13 or county court at law does not exceed one hundred dollars, unless  
14 the sole issue is the constitutionality of the statute or ordinance  
15 on which the conviction is based.

16 SECTION 2.03. Article 44.25, Code of Criminal Procedure, is  
17 amended to read as follows:

18 Art. 44.25. CASES REMANDED. The courts of appeals, other  
19 than the Court of Appeals of the Fifteenth Court of Appeals  
20 District, or the Court of Criminal Appeals may reverse the judgment  
21 in a criminal action, as well upon the law as upon the facts.

22 SECTION 2.04. Section 31.001, Government Code, is amended  
23 to read as follows:

24 Sec. 31.001. AUTHORITY FOR COUNTY PAYMENT OF COMPENSATION.  
25 The commissioners courts in the counties of each of the 15 [~~14~~]  
26 courts of appeals districts may pay additional compensation in an  
27 amount that does not exceed the limitations of Section 659.012 to

1 each of the justices of the courts of appeals, other than a justice  
2 of the Court of Appeals of the Fifteenth Court of Appeals District,  
3 residing within the court of appeals district that includes those  
4 counties. The compensation is for all extrajudicial services  
5 performed by the justices.

6 ARTICLE 3. SPECIFIC APPROPRIATION REQUIRED; CONSTITUTIONAL  
7 CHALLENGE; EFFECTIVE DATE

8 SECTION 3.01. (a) Notwithstanding Section 22.201(a),  
9 Government Code, as amended by this Act, and Sections 22.201(p) and  
10 22.2151, Government Code, as added by this Act, the Court of Appeals  
11 for the Fifteenth Court of Appeals District is not created unless  
12 the legislature makes a specific appropriation of money for that  
13 purpose. For purposes of this subsection, a specific appropriation  
14 is an appropriation identifying the Court of Appeals for the  
15 Fifteenth Court of Appeals District or an Act of the 88th  
16 Legislature, Regular Session, 2023, relating to the creation of the  
17 Court of Appeals for the Fifteenth Court of Appeals District.

18 (b) Notwithstanding Section 22.220(a), Government Code, as  
19 amended by this Act, a court of appeals has the same jurisdiction  
20 the court had on August 31, 2023, if the Court of Appeals for the  
21 Fifteenth Court of Appeals District is not created as a result of  
22 Subsection (a) of this section.

23 SECTION 3.02. The Texas Supreme Court has exclusive and  
24 original jurisdiction over a challenge to the constitutionality of  
25 this Act or any part of this Act and may issue injunctive or  
26 declaratory relief in connection with the challenge.

27 SECTION 3.03. This Act takes effect September 1, 2023.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1045 passed the Senate on March 30, 2023, by the following vote: Yeas 19, Nays 12; and that the Senate concurred in House amendments on May 21, 2023, by the following vote: Yeas 19, Nays 12.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1045 passed the House, with amendments, on May 19, 2023, by the following vote: Yeas 91, Nays 47, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

**TAB E: GOVERNOR'S NOTES REGARDING S.B. NO. 1045**

June 9, 2023

**SB 28, SB 30, SB 1045, SB 1402, SB 1653, SB 1900, SB 1929, SB 2013, SB 2627, SCR 2**

**VETOED BY GOVERNOR**

June 13, 2023

**SB 2035**

**SIGNED BY GOVERNOR**

June 14, 2023

**SB 10, SB 1893**

**VETOED BY GOVERNOR**

June 14, 2023

**SB 467**

June 15, 2023

**SB 1080, SB 1998, SB 2493**

June 16, 2023

**SB 247, SB 267, SB 315, SB 348, SB 361, SB 485, SB 526, SB 1431, SB 1568, SB 1712, SB 1979, SB 2052, SB 2260, SB 2379, SB 2453, SB 2597, SB 2598, SB 2604, SB 2605, SB 2613, SB 2616**

**SIGNED BY GOVERNOR**

June 17, 2023

**SB 17, SB 18, SB 867**

**VETOED BY GOVERNOR**

June 17, 2023

**SB 498, SB 796, SB 813, SB 1393, SB 1399, SB 2016, SB 2275**

**SIGNED BY GOVERNOR**

June 18, 2023

**SB 12, SB 15, SB 24, SB 25, SB 26, SB 37, SB 48, SB 52, SB 55, SB 61, SB 129, SB 133, SB 135, SB 158, SB 182, SB 186, SB 189, SB 222, SB 232, SB 252, SB 280, SB 317, SB 323, SB 336, SB 365, SB 372, SB 374, SB 379, SB 386, SB 402, SB 409, SB 414, SB 422, SB 427, SB 459, SB 469, SB 471, SB 477, SB 493, SB 496, SB 532, SB 533, SB 539, SB 540, SB 544, SB 545, SB 565, SB 576, SB 599, SB 614, SB 621, SB 629, SB 640, SB 643, SB 646, SB 658, SB 667, SB 681, SB 691, SB 694, SB 718, SB 719, SB 739, SB 763, SB 773, SB 780, SB 833, SB 893, SB 904, SB 924, SB 944, SB 947, SB 956, SB 975, SB 983, SB 991, SB 994, SB 997, SB 998, SB 999, SB 1001, SB 1015, SB 1040, SB 1070, SB 1094, SB 1098, SB 1122, SB 1131, SB 1136, SB 1146, SB 1188,**



**TAB F: DOCKETING STATEMENT**

**Appellate Docket Number:** 03-24-00023-cv

**Appellate Case Style:** Cecile Erwin, in her official capacity as Executive Commissioner of HHSC, et al.

**Vs.** Dallas County, Texas and Marian Brown, in her official capacity as Dallas County Sheriff

**Companion**

**Case(s):**

Amended/Corrected Statement

**DOCKETING STATEMENT (Civil)**

Appellate Court: 3rd Court of Appeals

(to be filed in the court of appeals upon perfection of appeal under TRAP 32)

***NOTE:** Because space for additional parties / attorneys is limited on this form, you can include the information on a separate document. As per TRAP 32.1 and 9.4, please include party's name and the name, address, email address, telephone number, fax number, if any, and State Bar Number of the party's lead counsel. If the party is not represented by an attorney, that party's name, address, telephone number, fax number should be provided.*

<b>I. Appellant</b>	<b>II. Appellant Attorney(s) - Continued</b>
<p><input checked="" type="checkbox"/> Person <input type="checkbox"/> Organization</p> <p>Name: Cecile Erwin and Michelle Hillstrom</p> <p><input type="checkbox"/> Pro Se</p> <p><i><b>If Pro Se Party, enter the following information:</b></i></p> <p>Address:</p> <p>City/State/Zip:</p> <p>Tel.                      Ext.                      Fax:</p> <p>Email:</p>	<p><input type="checkbox"/> Lead Attorney                      Select</p> <p>Name:</p> <p>Bar No.</p> <p>Firm/Agency:</p> <p>Address 1:</p> <p>Address 2:</p> <p>City/State/Zip:</p> <p>Tel.                      Ext.                      Fax:</p> <p>Email:</p>
<p><b>II. Appellant Attorney(s)</b></p> <p><input checked="" type="checkbox"/> Lead Attorney                      Retained Attorney</p> <p>Name: Allison M. Collins</p> <p>Bar No. 24127467</p> <p>Firm/Agency: Texas Attorney General's Office</p> <p>Address 1: P.O. Box 12548</p> <p>Address 2:</p> <p>City/State/Zip: Austin, Texas 78711-2548</p> <p>Tel. (512) 463-2120    Ext.                      Fax: (512) 320-0667</p> <p>Email: allison.collins@oag.texas.gov</p>	<p><input type="checkbox"/> Lead Attorney                      Select</p> <p>Name:</p> <p>Bar No.</p> <p>Firm/Agency:</p> <p>Address 1:</p> <p>Address 2:</p> <p>City/State/Zip:</p> <p>Tel.                      Ext.                      Fax:</p> <p>Email:</p>
<p><input type="checkbox"/> Lead Attorney                      Retained Attorney</p> <p>Name: William D. Wassdorf</p> <p>Bar No. 24103022</p> <p>Firm/Agency: Texas Attorney General's Office</p> <p>Address 1: P.O. Box 12548</p> <p>Address 2:</p> <p>City/State/Zip: Austin, Texas 78711-2548</p> <p>Tel. (512) 463-2120    Ext.                      Fax: (512) 320-0667</p> <p>Email: will.wassdorf@oag.texas.gov</p>	<p><input type="checkbox"/> Lead Attorney                      Select</p> <p>Name:</p> <p>Bar No.</p> <p>Firm/Agency:</p> <p>Address 1:</p> <p>Address 2:</p> <p>City/State/Zip:</p> <p>Tel.                      Ext.                      Fax:</p> <p>Email:</p>

III. Appellee	IV. Appellee Attorney(s) - Continued
<input checked="" type="checkbox"/> Person <input checked="" type="checkbox"/> Organization Name: Dallas County, Texas and Marian Brown <input type="checkbox"/> Pro Se <i>If Pro Se Party, enter the following information:</i> Address: City/State/Zip: Tel.                      Ext.                      Fax: Email:	<input type="checkbox"/> Lead Attorney                      Select Name: Bar No. Firm/Agency: Address 1: Address 2: City/State/Zip: Tel.                      Ext.                      Fax: Email:
IV. Appellee Attorney(s)	
<input checked="" type="checkbox"/> Lead Attorney                      Retained Attorney Name: Chad W. Dunn Bar No. 24036507 Firm/Agency: Brazil & Dunn, LLP Address 1: 1900 Pearl Street Address 2: City/State/Zip: Austin, Texas 78705 Tel. (512) 717-9822    Ext.                      Fax: Email: chad@brazilanddunn.com	<input type="checkbox"/> Lead Attorney                      Retained Attorney Name: Ann Jordan Bar No. 00790748 Firm/Agency: Carter Arnett PLLC Address 1: 8150 N. Central Expressway, Ste 500 Address 2: City/State/Zip: Dallas, Texas 75206 Tel. (214) 550-8188    Ext.                      Fax: Email: ajordan@carterarnett.com
<input type="checkbox"/> Lead Attorney                      Retained Attorney Name: K. Scott Brazil Bar No. 02934050 Firm/Agency: Brazil & Dunn, LLP Address 1: 13231 Champion Forest Drive, Ste 406 Address 2: City/State/Zip: Houston, Texas 77069 Tel. (281) 580-6310    Ext.                      Fax: Email: scott@brazilanddunn.com	<input type="checkbox"/> Lead Attorney                      Retained Attorney Name: E. Leon Carter Bar No. 03914300 Firm/Agency: Carter Arnett PLLC Address 1: 8150 N. Central Expressway, Ste 500 Address 2: City/State/Zip: Dallas, Texas 75206 Tel. (214) 550-8188    Ext.                      Fax: Email: lcarter@carterarnett.com

**V. Perfection of Appeal, Judgment and Sentencing**

Nature of Case (Subject matter or type of case): Governmental Immunity

Date Order or Judgment signed: 12/21/2023

Type of Judgment: Interlocutory Order

Date Notice of Appeal filed in Trial Court: 01/10/2024

If mailed to the Trial Court clerk, also give the date mailed:

Interlocutory appeal of appealable order:  Yes  No

If yes, please specify statutory or other basis on which interlocutory order is appealable (See TRAP 28):

Texas Civil Practice and Remedies Code § 51.014(a)(8)

Accelerated Appeal (See TRAP 28):  Yes  No

If yes, please specify statutory or other basis on which appeal is accelerated:

§ 51.014(a)(8)

Parental Termination or Child Protection? (See TRAP 28.4):  Yes  No

Permissive? (See TRAP 28.3):  Yes  No

If yes, please specify statutory or other basis for such status:

Agreed? (See TRAP 28.2):  Yes  No

If yes, please specify statutory or other basis for such status:

Appeal should receive precedence, preference, or priority under statute or rule?  Yes  No

If yes, please specify statutory or other basis for such status:

Does this case involve an amount under \$100,000?  Yes  No

Judgment or Order disposes of all parties and issues?  Yes  No

Appeal from final judgment?  Yes  No

Does the appeal involve the constitutionality or the validity of a statute, rule, or ordinance?  Yes  No

If yes, you must also complete and file the Challenge to Constitutionality of a State Statute form.

If yes, is the Attorney General of Texas a party to the case?  Yes  No

**VI. Actions Extending Time to Perfect Appeal**

Motion for New Trial:  Yes  No If yes, date filed:

Motion to Modify Judgment:  Yes  No If yes, date filed:

Request for Findings of Fact and Conclusions of Law:  Yes  No If yes, date filed:

Motion to Reinstate:  Yes  No If yes, date filed:

Motion under TRCP 306a:  Yes  No If yes, date filed:

Other:  Yes  No

If Other, please specify:

**VII. Indigency of Party (Attach file stamped copy of Statement and copy of the trial court order.)**

Was Statement of Inability to Pay Court Costs filed in the trial court?  Yes  No  
If yes, date filed:  
Was a Motion Challenging the Statement filed in the trial court?  Yes  No  
If yes, date filed:  
Was there any hearing on appellant's ability to afford court costs?  Yes  No  
Hearing Date:  
Did trial court sign an order under Texas Rule of Civil Procedure 145?  Yes  No  
Date of Order:  
If yes, trial court finding:  Challenge Sustained  Overruled

**VIII. Bankruptcy**

Has any party to the court's judgment filed for protection in bankruptcy which might affect this appeal?  
 Yes  No  
If yes, please attach a copy of the petition.  
Date bankruptcy filed:  
Bankruptcy Case Number:

**IX. Trial Court and Record**

Court: 353rd Judicial District  
County: Travis  
Trial Court Docket No. (Cause No.):  
D-1-GN-23-001610  
Trial Court Judge (who tried or disposed of the case):  
Name: Maya Guerra Gamble  
Address 1: 1700 Guadalupe, 10th Floor  
Address 2:  
City/State/Zip: Austin, Texas 78701  
Tel. (512) 854-9457 Ext. Fax:  
Email:

**Clerk's Record**

Trial Court Clerk:  District  County  
Was Clerk's record requested?  Yes  No  
If yes, date requested: 01/19/2024  
If no, date it will be requested:  
Were payment arrangements made with clerk?  
 Yes  No  Indigent  
**(Note: No request required under TRAP 34.5(a),(b).)**

**IX. Trial Court and Record - Continued**

**Reporter's or Recorder's Record**

Is there a Reporter's Record?  Yes  No

Was Reporter's Record requested?  Yes  No

If yes, date requested: 01/19/2024

If no, date it will be requested:

Was the Reporter's Record electronically recorded?  Yes  No

Were payment arrangements made with the court reporter/court recorder?  Yes  No  Indigent

Court Reporter  Court Recorder  
 Official  Substitute

Name: Alicia DuBois

Address 1: 1700 Guadalupe, 10th Floor

Address 2:

City/State/Zip: Austin, Texas 78701

Tel. (512) 854-9301 Ext. Fax:

Email: alicia.dubois@traviscountytexas.gov

Court Reporter  Court Recorder  
 Official  Substitute

Name:

Address 1:

Address 2:

City/State/Zip:

Tel. Ext. Fax:

Email:

**X. Supersedeas Bond**

Supersedeas bond filed?  Yes  No

If yes, date filed:

If no, will file?  Yes  No

**XI. Extraordinary Relief**

Will you request extraordinary relief (e.g., temporary or ancillary relief) from this Court?  Yes  No

If yes, briefly state the basis for your request:

**XII. Alternative Dispute Resolution/Mediation**

**(Complete section if filing in the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, or 14<sup>th</sup> Court of Appeals.)**

Should this appeal be referred to mediation?  Yes  No

If no, please specify: [Redacted]

Has this case been through an ADR procedure?  Yes  No

If yes, who was the mediator? [Redacted]

What type of ADR procedure? [Redacted]

At what stage did the case go through ADR?  Pre-Trial  Post-Trial  Other

If other, please specify: [Redacted]

Type of Case?  Governmental Immunity [Redacted]

Give a brief description of the issue to be raised on appeal, the relief sought, and the applicable standard for review, if known (without prejudice to the right to raise additional issues or request additional relief):

The trial court's denial of Defendants' Plea to the Jurisdiction should be reversed because the trial court is without jurisdiction for numerous reasons, including Defendants' entitlement to sovereign immunity from all of Plaintiffs' claims and Plaintiffs' lack of standing. The standard of review is de novo.

How was the case disposed of?  Order denying Defendants' Plea to the Jurisdiction [Redacted]

Summary of relief granted, including amount of money judgment, and if any, damages awarded.

If money judgment, what was the amount? Actual damages: [Redacted]

Punitive (or similar) damages: [Redacted]

Attorney's fees (trial): [Redacted]

Attorney's fees (appellate): [Redacted]

Other: [Redacted]

If other, please specify: [Redacted]

Will you challenge this Court's jurisdiction?  Yes  No

Does judgment have language that one or more parties "take nothing"?  Yes  No

Does judgment have a Mother Hubbard clause?  Yes  No

Other basis for finality: [Redacted]

**XII. Alternative Dispute Resolution/Mediation - Continued**  
(Complete section if filing in the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, or 14<sup>th</sup> Court of Appeals.)

Rate the complexity of the case (use 1 for least and 5 for most complex):  1  2  3  4  5

Please make my answer to the preceding questions known to other parties in this case?  Yes  No

Can the parties agree on an appellate mediator?  Yes  No

If yes, please give the name, address, telephone, fax, and email address:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Ext. \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Languages other than English in which the mediator should be proficient:

\_\_\_\_\_

Name of the person filling out mediation section of docketing statement:

\_\_\_\_\_

**XIII. Related Matters**

List any pending or past related appeals before this, or any other Texas Appellate Court, by Court, Docket, and Style.

Court: Select Appellate Court

Docket:

Style:

Vs.

Court: Select Appellate Court

Docket:

Style:

Vs.

Court: Select Appellate Court

Docket:

Style:

Vs.

Court: Select Appellate Court

Docket:

Style:

Vs.

Court: Select Appellate Court

Docket:

Style:

Vs.

Court: Select Appellate Court

Docket:

Style:

Vs.



**XIV. Pro Bono Program:**

**(Complete section if filing in the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 13<sup>th</sup> or 14<sup>th</sup> Court of Appeals.)**

The Courts of Appeals listed above, in conjunction with the State Bar of Texas Appellate Section Pro Bono Committee and local Bar Associations, are conducting a program to place a limited number of civil appeals with appellate counsel who will represent the appellant in the appeal before this Court.

The Pro Bono Committee is solely responsible for screening and selecting the civil cases for inclusion in the Program based upon a number of discretionary criteria, including the financial means of the appellant or appellee. If a case is selected by the Committee, and can be matched with appellate counsel, that counsel will take over representation of the appellant or appellee without charging legal fees. More information regarding this program can be found in the Pro Bono Program Pamphlet available in paper form at the Clerk's Office or on the Internet at <http://www.tex-app.org>. If your case is selected and matched with a volunteer lawyer, you will receive a letter from the Pro Bono Committee within thirty (30) to forty-five (45) days after submitting this Docketing Statement.

Note: there is no guarantee that if you submit your case for possible inclusion in the Pro Bono Program, the Pro Bono Committee will select your case and that pro bono counsel can be found to represent you. Accordingly, you should not forego seeking other counsel to represent you in this proceeding. By signing your name below, you are authorizing the Pro Bono committee to transmit publicly available facts and information about your case, including parties and background, through selected Internet sites and Listserv to its pool of volunteer appellate attorneys.

Do you want this case to be considered for inclusion in the Pro Bono Program?  Yes  No

Do you authorize the Pro Bono Committee to contact your trial counsel of record in this matter to answer questions the committee may have regarding the appeal?  Yes  No

Please note that any such conversations would be maintained as confidential by the Pro Bono Committee and the information used solely for the purposes of considering the case for inclusion in the Pro Bono Program.

If you have not previously filed a Statement of Inability to Pay Court Costs and attached a file-stamped copy of that Statement, does your income exceed 200% of the U.S. Department of Health and Human Services Federal Poverty Guidelines?  Yes  No

These guidelines can be found in the Pro Bono Program Pamphlet as well as on the internet at <http://aspe.hhs.gov/poverty/06poverty.shtml>.

Are you willing to disclose your financial circumstances to the Pro Bono Committee?  Yes  No

If yes, please attach a Statement of Inability to Pay Court Costs completed and executed by the appellant or appellee. Sample forms may be found in the Clerk's Office or on the internet at <http://www.tex-app.org>. Your participation in the Pro Bono Program may be conditioned upon your execution of a Statement under oath as to your financial circumstances.

Give a brief description of the issues to be raised on appeal, the relief sought, and the applicable standard of review, if known (without prejudice to the right to raise additional issues or request additional relief; use a separate attachment, if necessary).

Appellant will argue that the trial court erred when it denied Appellant's plea to the jurisdiction. Appellant seeks to overturn the trial court's decision and have the lawsuit dismissed for lack of jurisdiction for numerous reasons, including Defendants' entitlement to sovereign immunity from all of Plaintiffs' claims and Plaintiffs' lack of standing. The standard of review is de novo.

## XV. Fifteenth Court of Appeals Jurisdiction

Effective 9/1/24, certain cases filed with this court must be transferred to the new Fifteenth Court of Appeals (See SB 1045, 88th Legislature, Regular Session). To assist the court in the orderly transfer of cases, please complete the following information.

Does this appeal involve a matter brought by or against the state or a board, commission, department, office, or other agency in the executive branch of the state government, including a university system or institution of higher education as defined by Section 61.003, Education Code, or by or against an officer or employee of the state or a board, commission, department, office, or other agency in the executive branch of the state government arising out of that officer's or employee's official conduct?  Yes  No

If the answer is yes, does this appeal involve:

- a proceeding brought under the Family Code and any related motion or proceeding;
- a proceeding brought under Chapter 7B or Article 17.292, Code of Criminal Procedure;
- a proceeding brought against a district attorney, a criminal district attorney, or a county attorney with criminal jurisdiction;
- a proceeding relating to a mental health commitment;
- a proceeding relating to civil asset forfeiture;
- a condemnation proceeding for the acquisition of land or a proceeding related to eminent domain;
- a proceeding brought under Chapter 101, Civil Practice and Remedies Code;
- a claim of personal injury or wrongful death;
- a proceeding brought under Chapter 125, Civil Practice and Remedies Code, to enjoin a common nuisance;
- a proceeding brought under Chapter 55, Code of Criminal Procedure;
- a proceeding under Chapter 22A, Government Code;
- a proceeding brought under Subchapter E-1, Chapter 411, Government Code;
- a removal action under Chapter 87, Local Government Code;
- a proceeding brought under Chapter 841, Health and Safety Code;

## XVI. Signature

	01/19/2024
Signature of counsel (or Pro Se Party)	Date
Allison M. Collins	24127467
Printed Name	State Bar No.
/s/ Allison M. Collins	Allison M. Collins
Electronic Signature (Optional)	Name

## XVII. Certificate of Service

The undersigned counsel certifies that this Docketing Statement has been served on the following lead counsel for all parties to the Trial Court's Order or Judgment as follows on:

	/s/ Allison M. Collins
Signature of counsel (or Pro Se Party)	Electronic Signature (Optional)
24127467	
State Bar No.	

Certificate of Service Requirements (TRAP 9.5(e)): A certificate of service must be signed by the person who made the service and must state:

- (1) the date and manner of service;
- (2) the name and address of each person served, and
- (3) if the person served is a party's attorney, the name of the party represented by the attorney.

**Please enter the following for each person served:**

<p>Date Served: 01/19/2024  Manner Served: eServe  Name: Chad W. Dunn  Bar No. 24036507  Firm/Agency: Brazil &amp; Dunn, LLP  Address 1: 1900 Pearl Street  Address 2:  City/State/Zip: Austin, Texas 78705  Tel. (512) 717-9822 Ext. Fax:  Email: chad@brazilanddunn.com  Party:</p>	<p>Date Served: 01/19/2024  Manner Served: eServe  Name: E. Leon Carter  Bar No. 03914300  Firm/Agency: Carter Arnett PLLC  Address 1: 8150 N. Central Expressway, Ste 500  Address 2:  City/State/Zip: Dallas, Texas 75206  Tel. (214) 550-8188 Ext. Fax:  Email: lcarter@carterarnett.com  Party:</p>
<p>Date Served: 01/19/2024  Manner Served: eServe  Name: K. Scott Brazil  Bar No. 02934050  Firm/Agency: Brazil &amp; Dunn, LLP  Address 1: 13231 Champion Forest Drive, Ste 406  Address 2:  City/State/Zip: Houston, Texas 77069  Tel. (281) 580-6310 Ext. Fax:  Email: scott@brazilanddunn.com  Party:</p>	<p>Date Served:  Manner Served: Select  Name:  Bar No.  Firm/Agency:  Address 1:  Address 2:  City/State/Zip:  Tel. Ext. Fax:  Email:  Party:</p>
<p>Date Served: 01/19/2024  Manner Served: eServe  Name: Ann Jordan  Bar No. 00790748  Firm/Agency: Carter Arnett PLLC  Address 1: 8150 N. Central Expressway, Ste 500  Address 2:  City/State/Zip: Dallas, Texas 75206  Tel. (214) 550-8188 Ext. Fax:  Email: ajordan@carterarnett.com  Party:</p>	

**Please enter the following for each person served that is not an attorney for a party:**

Date Served: Manner Served: eServe Name: Address 1: Address 2: City/State/Zip: Tel.                      Ext. Fax: Email:	Date Served: Manner Served: Select Name: Address 1: Address 2: City/State/Zip: Tel.                      Ext. Fax: Email:
Date Served: Manner Served: eServe Name: Address 1: Address 2: City/State/Zip: Tel.                      Ext. Fax: Email:	Date Served: Manner Served: Select Name: Address 1: Address 2: City/State/Zip: Tel.                      Ext. Fax: Email:
Date Served: Manner Served: Select Name: Address 1: Address 2: City/State/Zip: Tel.                      Ext. Fax: Email:	Date Served: Manner Served: Select Name: Address 1: Address 2: City/State/Zip: Tel.                      Ext. Fax: Email:

**TAB G: TEX. CONST. ART. V, § 6**

# **Texas Constitution**



**Includes Amendments Through  
the November 7, 2023,  
Constitutional Amendment Election**

law. (Feb. 15, 1876. Amended Aug. 11, 1891, Nov. 8, 1966, Nov. 8, 1977, and Nov. 6, 2001.) (Temporary transition provision for Sec. 4: see Appendix, Note 3.)

**Sec. 5. JURISDICTION OF COURT OF CRIMINAL APPEALS.** (a) The Court of Criminal Appeals shall have final appellate jurisdiction coextensive with the limits of the state, and its determinations shall be final, in all criminal cases of whatever grade, with such exceptions and under such regulations as may be provided in this Constitution or as prescribed by law.

(b) The appeal of all cases in which the death penalty has been assessed shall be to the Court of Criminal Appeals. The appeal of all other criminal cases shall be to the Courts of Appeal as prescribed by law. In addition, the Court of Criminal Appeals may, on its own motion, review a decision of a Court of Appeals in a criminal case as provided by law. Discretionary review by the Court of Criminal Appeals is not a matter of right, but of sound judicial discretion.

(c) Subject to such regulations as may be prescribed by law, the Court of Criminal Appeals and the Judges thereof shall have the power to issue the writ of habeas corpus, and, in criminal law matters, the writs of mandamus, procedendo, prohibition, and certiorari. The Court and the Judges thereof shall have the power to issue such other writs as may be necessary to protect its jurisdiction or enforce its judgments. The court shall have the power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction. (Feb. 15, 1876. Amended Aug. 11, 1891, Nov. 8, 1966, Nov. 8, 1977, Nov. 4, 1980, and Nov. 6, 2001.) (Temporary transition provision for Sec. 5: see Appendix, Note 3.)

**Sec. 5a. CLERKS OF APPELLATE COURTS.** The Supreme Court, Court of Criminal Appeals, and each Court of Appeals shall each appoint a clerk of the court, who shall give bond in the manner required by law, may hold office for four years subject to removal by the appointing court for good cause entered of record on the minutes of the court, and shall receive such compensation as the legislature may provide. (Added Nov. 6, 2001.) (Temporary transition provision for Sec. 5a: see Appendix, Note 3.)

**Sec. 5b. SUPREME COURT AND COURT OF CRIMINAL APPEALS: LOCATION AND TERM.** The Supreme Court and the Court of Criminal Appeals may sit at any time during the year at the seat of government or, at the court's discretion, at any other location in this state for the transaction of business, and each term of either court shall begin and end with each calendar year. (Added Nov. 6, 2001.) (Temporary transition provision for Sec. 5b: see Appendix, Note 3.)

**Sec. 6. COURTS OF APPEALS; JUSTICES; JURISDICTION.** (a) The state shall be divided into courts of appeals districts, with each district having a Chief Justice, two or more other Justices, and such other officials as may be provided by law. The Justices shall have the qualifications prescribed for Justices of the Supreme Court. The Court of Appeals may sit in sections as authorized by law. The concurrence of a majority of the judges sitting in a section is necessary to decide a case. Said Court of Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the

## Art. V Sec. 7

decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error. Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law.

(b) Each of said Courts of Appeals shall hold its sessions at a place in its district to be designated by the Legislature, and at such time as may be prescribed by law. Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a term of six years and shall receive for their services the sum provided by law.

(c) All constitutional and statutory references to the Courts of Civil Appeals shall be construed to mean the Courts of Appeals. (Feb. 15, 1876. Amended Aug. 11, 1891, Nov. 7, 1978, Nov. 4, 1980, Nov. 5, 1985, and Nov. 6, 2001.) (Temporary transition provision for Sec. 6: see Appendix, Note 3.)

**Sec. 7. JUDICIAL DISTRICTS; DISTRICT JUDGES; TERMS OR SESSIONS; ABSENCE, DISABILITY, OR DISQUALIFICATION OF DISTRICT JUDGE.** (a) The State shall be divided into judicial districts, with each district having one or more Judges as may be provided by law or by this Constitution.

(b) Each district judge shall be elected by the qualified voters at a General Election. To be eligible for appointment or election as a district judge, a person must:

(1) be a citizen of the United States and a resident of this State;

(2) be licensed to practice law in this State;

(3) have been a practicing lawyer or a Judge of a Court in this State, or both combined, for eight years next preceding the judge's election, during which time the judge's license to practice law has not been revoked, suspended, or subject to a probated suspension;

(4) have resided in the district in which the judge was elected for two years next preceding the election; and

(5) reside in the district during the judge's term of office.

(c) A district judge shall hold the office for the term of four years and shall receive for the judge's services an annual salary to be fixed by the Legislature.

(d) A District Court shall conduct its proceedings at the county seat of the county in which the case is pending, except as otherwise provided by law. The Court shall hold the regular terms at the County Seat of each County in the Court's district in such manner as may be prescribed by law. The Legislature shall have power by General or Special Laws to make such provisions concerning the terms or sessions of each District Court as it may deem necessary.

(e) The Legislature shall also provide for the holding of District Court when the Judge thereof is absent, or is from any cause disabled or disqualified from presiding. (Feb. 15, 1876. Amended Aug. 11, 1891, Nov. 8, 1949, Nov. 5, 1985, and Nov. 2, 2021.) (Temporary provision for Sec. 7: see Appendix, Note 4.)

**Sec. 7a. JUDICIAL DISTRICTS BOARD; REAPPORTIONMENT OF JUDICIAL DISTRICTS.** (a) The Judicial Districts Board is created to reapportion the judicial districts authorized by Article V, Section 7, of this constitution.



**TAB H: TEX. CONST. ART. V, § 1**

# **Texas Constitution**



**Includes Amendments Through  
the November 7, 2023,  
Constitutional Amendment Election**

**ARTICLE V**  
**JUDICIAL DEPARTMENT**

**Sec. 1. JUDICIAL POWER VESTED IN COURTS; LEGISLATIVE POWER REGARDING COURTS.** The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto. (Feb. 15, 1876. Amended Aug. 11, 1891, Nov. 8, 1977, and Nov. 4, 1980.)

**Sec. 1-a. RETIREMENT, COMPENSATION, DISCIPLINE, AND REMOVAL OF JUSTICES AND JUDGES; STATE COMMISSION ON JUDICIAL CONDUCT.**

(1) Subject to the further provisions of this Section, the Legislature shall provide for the retirement and compensation of Justices and Judges of the Appellate Courts and District and Criminal District Courts on account of length of service, age and disability, and for their reassignment to active duty where and when needed. The office of every such Justice and Judge shall become vacant on the expiration of the term during which the incumbent reaches the age of seventy-five (75) years or such earlier age, not less than seventy (70) years, as the Legislature may prescribe, except that if a Justice or Judge elected to serve or fill the remainder of a six-year term reaches the age of seventy-five (75) years during the first four years of the term, the office of that Justice or Judge shall become vacant on December 31 of the fourth year of the term to which the Justice or Judge was elected.

(2) The State Commission on Judicial Conduct consists of thirteen (13) members, to wit: (i) one (1) Justice of a Court of Appeals; (ii) one (1) District Judge; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iv) five (5) citizens, at least thirty (30) years of age, not licensed to practice law nor holding any salaried public office or employment; (v) one (1) Justice of the Peace; (vi) one (1) Judge of a Municipal Court; (vii) one (1) Judge of a County Court at Law; and (viii) one (1) Judge of a Constitutional County Court; provided that no person shall be or remain a member of the Commission, who does not maintain physical residence within this State, or who shall have ceased to retain the qualifications above specified for that person's respective class of membership, and provided that a Commissioner of class (i), (ii), (iii), (vii), or (viii) may not reside or hold a judgeship in the same court of appeals district as another member of the Commission. Commissioners of classes (i), (ii), (vii), and (viii) above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class (iii) by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme Court with advice and consent of the Senate, those of class (iv) by appointment of the Governor with advice and consent of the Senate, and the commissioners of classes (v) and (vi) by appointment of the Supreme Court as provided by law, with the advice and consent of the Senate.

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

Gwen Kelly on behalf of Chad Dunn  
Bar No. 24036507  
gwen@brazilanddunn.com  
Envelope ID: 88033812  
Filing Code Description: Petition  
Filing Description: Petition for Writ of Injunction  
Status as of 5/22/2024 4:31 PM CST

Associated Case Party: Cecile Erwin Young, in her Official Capacity as Executive Commissioner of the Health and Human Services

Name	BarNumber	Email	TimestampSubmitted	Status
Allison M.Collins		allison.collins@oag.texas.gov	5/22/2024 3:57:40 PM	SENT

Associated Case Party: Dallas County, Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Scott Brazil		scott@brazilanddunn.com	5/22/2024 3:57:40 PM	SENT
Chad Dunn		chad@brazilanddunn.com	5/22/2024 3:57:40 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Gwen Kelly		gwen@brazilanddunn.com	5/22/2024 3:57:40 PM	SENT