

No. _____

ANNUNCIATION HOUSE, INC.,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	EL PASO COUNTY, TEXAS
	§	
v.	§	_____ JUDICIAL DISTRICT
	§	
KEN PAXTON in his official capacity as	§	
Texas Attorney General, and	§	
JENNIFER COBOS, in her official capacity	§	
as Director of Regional Operations &	§	
Strategy for the Office of Attorney General	§	
	§	
<i>Defendants.</i>	§	

**VERIFIED ORIGINAL PETITION FOR DECLARATORY JUDGMENT,
APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND
APPLICATION FOR TEMPORARY INJUNCTION**

DISCOVERY

1. Plaintiff intends to conduct any needed discovery pursuant to TEX. R. CIV. P. 190.3 Level Two, and affirmatively pleads that Plaintiff seeks declaratory and injunctive relief.

PRELIMINARY STATEMENT

2. The office of Defendant Ken Paxton, Texas Attorney General (AG), has demanded that Plaintiff Annunciation House, Inc., (AHI) produce extensive and sensitive documents within *one day* of being served with a “Request to Examine” letter. The AG threatened criminal sanctions and forfeiture of AHI’s right to do business in Texas if the AG, in his sole discretion, decides that AHI has not complied. This demand violates Due Process, Equal Protection, the First Amendment, and other law, and is thus *ultra vires*. To preserve the *status quo* and forestall irreparable harm to AHI’s capacity to continue its religious and charitable mission, which it has pursued in El Paso for 46 years, AHI needs immediate injunctive relief preventing further enforcement of the demand while its constitutional and other legal objections are resolved.

PARTIES, SERVICE, AND NOTICE

3. Plaintiff Annunciation House, Inc., is a non-profit corporation that is exempt from taxation under Internal Revenue Code § 501(c)(3), and licensed to operate in Texas.

4. Defendant Ken Paxton is the Texas Attorney General, who is domiciled in Travis County and is sued in his official capacity only.

5. Defendant Jennifer Cobos is the Director of Regional Operations & Strategy for the Office of Attorney General, who is domiciled in El Paso County and is sued in her official capacity only.

JURISDICTION AND VENUE

6. This Court's jurisdiction to enter declaratory relief in this lawsuit is established in TEX. CIV. PRAC. & REM. CODE § 37.003.

7. This Court's jurisdiction to enter injunctive relief in this lawsuit is established in TEX. CIV. PRAC. & REM. CODE § 65.001, *et seq.*

8. Venue in El Paso County is proper under TEX. CIV. PRAC. & REM. CODE §§ 15.002(a) and 65.023.

FACTS

9. AHI was born in 1976 as an expression of Catholic faith and the Gospel calling to serve the poor. *See* [History – Annunciation House](#).

10. AHI is listed in the National Catholic Directory as a recognized organization of the Catholic Diocese of El Paso and it is via this listing that AHI has nonprofit tax exemption status under a “group ruling” by the Internal Revenue Service.

11. For forty-six years, AHI has operated several shelters in El Paso to serve the needs of homeless people, particularly immigrant and refugee populations.

12. AHI primarily relies on volunteer staff to perform its work, at times up to 30 full-time

volunteers.

13. All persons who work for AHI are kept exceedingly busy due to the demand for shelter services in El Paso, Texas.

14. AHI's board is comprised of former volunteers who live throughout the nation.

15. For over a decade AHI has repeatedly and routinely cooperated with federal and local government officials and agencies in responding to emergencies on the border.

16. On February 7, 2024, the Office of the Attorney General caused to be delivered to Annunciation House a "Request to Examine" (RTE) which demands immediate access to AHI documents, including attorney referrals provided to shelter guests, all documents provided to AHI by its guests, all personal documents that guests provided to AHI as part of seeking shelter, which could include medical and legal documents, and warns that civil and criminal penalties will result if the AG finds non-compliance. Attached Exhibit A. The RTE was apparently delivered by the Consumer Protection Division of the Office of Attorney General.

17. The RTE begins by stating that it is the AG's "duty to protect and enforce the public interest in nonprofit organizations. In this capacity, this Office reviews nonprofit entities to determine compliance with Texas law." *Id.* But the RTE never hints what Texas law it aims to gauge compliance with, so the government interest in the documents sought cannot be guessed.

18. AHI's counsel responded hours later that 30 days were needed for a fair opportunity to respond. Counsel for AG Paxton responded thirty minutes later by stating that "Unless your client provides us access to the specified records in its possession by tomorrow, February 8, we will deem it to be in non-compliance with our Request to Examine." Attached Exhibit B.

**CAUSE OF ACTION
DECLARATORY JUDGMENT ACT**

19. AHI's rights, status, and legal relations are affected by the statutes referenced by the AG in

the RTE, only some of which the AG cites.

20. Real controversies exist between AHI and the Office of the Attorney General regarding the construction and validity of the statutes that the AG relies upon for issuing the RTE, namely:

a. what deadline Defendants may constitutionally use to determine AHI's compliance with the RTE; and

b. whether Defendants' unexplained demand for sensitive information infringes on AHI's constitutional rights, including religious liberty, association, and equal protection, and the privacy rights of third parties, including their sensitive medical, legal, and personal information.

21. These controversies will be resolved by this action seeking a ruling on when the AG may constitutionally access AHI documents, and what documents the AG may constitutionally access. Suits alleging ultra vires or unconstitutional conduct by a government official "do not seek to alter government policy but rather to enforce existing policy" by compelling a government official "to comply with statutory or constitutional provisions." *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

22. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.004(a), AHI needs to have its rights and obligations under the RTE determined in this action.

BRIEF SUPPORTING APPLICATION FOR TRO

23. This Court's capacity to determine AHI's rights and obligations will be mooted unless AHI is granted an immediate *ex parte* injunction against further enforcement of the RTE pending a temporary injunction hearing to be set by the Court within fourteen days.

24. AHI can demonstrate a likelihood that it will prevail on its claims in at least two respects:

a. "Due process may . . . be violated if a statute makes it nearly impossible to comply with

its provisions” *Robinson v. State*, 466 S.W.3d 166, 174 n.2 (Tex. Crim. App. 2015) (Keller, J. concurring). “Holding an individual criminally liable for failing to comply with a duty imposed by statute, with which it is legally impossible to comply, deprives that person of his due process rights.” *Doe v. Snyder*, 101 F. Supp. 3d 722, 724 (E.D. Mich. 2015) (collecting cases); *accord De Ren Zhang v. Barr*, 767 Fed. App’x 101, 103-04 (2d Cir. 2019); *United States v. Dalton*, 960 F.2d 121, 124 (10th Cir. 1992); *Brunetti v. New Milford*, 350 A.2d 19, 31 (N.J. 1975). In light of Annunciation House’s work with vulnerable populations, its limited volunteer staff, its need to consult with its far-flung board members, and the RTE’s breadth on its face, Defendants’ sudden appearance with a demand to be fulfilled in one day is nothing short of an impossible demand that violates Due Process. AHI is perfectly willing to provide the documents which it is required to produce by law, but it cannot be constitutionally required to perform tasks that are practically impossible on pain of severe civil and criminal consequences. AHI has openly operated in El Paso for forty-six years, and the AG has stated nothing to indicate why immediate production of documents, without an opportunity for review by its counsel, comports with Due Process.

b. The Texas Supreme Court has held that the Attorney General violates constitutional rights of association by seeking sensitive information from corporations without proving “convincingly a substantial relation between the information sought and a subject of overriding and compelling state interest.” *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 381 & n.10 (Tex. 1998). The Court refused to read a statute to permit the AG to require a non-profit organization to reveal its donor lists unless a compelling state interest could be stated, which the Court could not find. *Id.* Here, the AG seeks

information similar to donor lists, for example “[a]ll logs identifying aliens to whom you have provided services in the relevant time period.” Attached Exhibit A at 7. And in addition to identity, the RTE seeks personal documents of AHI guests. Yet AG Paxton never discloses in the RTE why he needs this information, or how it could conceivably assist in enforcing any specific Texas law. RTE at 1.

25. The AG threatened imminent injury to AHI unless AHI complies with the RTE within one day, including revoking AHI’s right to continue performing its religious mission and serve persons who it chooses. As the Fifth Circuit recently reiterated, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336, 348 (5th Cir. 2022) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). This injury outweighs any damage that an injunction might cause Defendants, who have not articulated any basis for their need to have immediate access to a broad swath of AHI documents.

26. Due to sovereign immunity, AHI has no remedy at law for Defendants’ threatened constitutional violations. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 368–69 (Tex. 2009).

27. AHI did not provide notice of this petition and TRO request to counsel for the AG because in light of Exhibit B, notice would pose an immediate threat to the *status quo*. Counsel for AG Paxton is Levi Fuller, Asst. Attorney General, P.O. Box 12548, Austin, TX 78711, cell (512) 936-1308, levi.fuller@oag.texas.gov.

PRAYER

WHEREFORE, Plaintiff AHI seeks the following relief:

- a. a temporary restraining order on appropriate bond to preserve the *status quo* and prevent any further findings or enforcement concerning the RTE while the Court decides

what constitutional limits apply to the deadline for responding to the RTE and its scope, which can be addressed at a hearing to be held within 14 days, as provided in the attached proposed Temporary Restraining Order;

- b. upon hearing, a temporary injunction specifying constitutional limits on the deadline for response and the scope of the RTE;
- c. declaratory judgment that the RTE attached as Exhibit A violates AHI's constitutional rights;
- d. costs of suit and attorney fees as provided by TEX. CIV. PRAC. & REM. CODE § 37.009; and
- e. all other relief, at law or in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

TEXAS RIOGRANDE LEGAL AID, INC.

February 8, 2024

By: /s/ Jerome Wesevich
Texas Bar No. 21193250
jwesevich@trla.org
1331 Texas Ave.
El Paso, Texas 79901
(915) 585-5120

Attorney for Plaintiff

VERIFICATION

Pursuant to TEX. CIV. PRAC. AND REM. CODE § 132.001(d), I, Ruben Garcia, born August 10, 1948, Director of Annunciation House, Inc. at 815 Myrtle Street, El Paso, TX 79901, declare under penalty of perjury that the statements under "Facts" above (¶¶ 9-18) are true and correct.



Ruben L. Garcia