No. 26-0110

In the Supreme Court of Texas

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF TEXAS, AND THE OFFICE OF THE ATTORNEY GENERAL FOR THE STATE OF TEXAS,

Petitioners,

v.

DELIA GARZA, IN HER OFFICIAL CAPACITY AS TRAVIS COUNTY ATTORNEY, ET AL.; JOHN CREUZOT, IN HIS OFFICIAL CAPACITY AS DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY, ET AL.; AND BRIAN MIDDLETON, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF FORT BEND COUNTY (268TH JUDICIAL DISTRICT), ET AL.,

Respondents.

On Petition for Review
from the Fifteenth Court of Appeals

PETITION FOR REVIEW

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

WILLIAM R. PETERSON
Solicitor General

WILLIAM F. COLE
Principal Deputy Solicitor General
State Bar No. 24124187
William.Cole@oag.texas.gov

BENJAMIN WALLACE MENDELSON
Assistant Solicitor General

CHRISTOPHER J. PAVLINEC
Assistant Attorney General

Counsel for Petitioners

Introduction

For almost one hundred and fifty years, the Legislature has authorized the Attorney General to obtain reports from county and district attorneys "relating to criminal matters and the interests of the state." Tex. Gov't Code § 41.006. Because this reporting statute also gives the Attorney General broad discretion to "direct[]" the "time[]" and "form" of those reports, *id.*, last year he promulgated rules setting out prosecutors' obligations under this statute, 1 Tex. Admin. Code §§ 56.1-.10. The broad language of this statute expressly empowers the Attorney General to adopt those rules to enforce the statute's reporting obligations; but at a minimum such authority is fairly implied from the Legislature's express conferral of power on the Attorney General to obtain such reports "[a]t the times and in the form that the attorney general directs." Tex. Gov't Code § 41.006.

The Fifteenth Court of Appeals erred by affirming the trial court's temporary injunction against enforcement of those Rules on the ground that the Attorney General lacked rulemaking authority. This Court has long held that an administrative agency's "authority to promulgate rules and regulations 'may be expressly conferred on it by statute *or implied from other powers and duties given or imposed by statute.*'" *R.R. Comm'n of Tex. v. Lone Star Gas Co., a Div. of Enserch Corp.*, 844 S.W.2d 679, 685 (Tex. 1992) (emphasis added) (quoting *Dall. Cnty. Bail Bond Bd. v. Stein*, 771 S.W.2d 577, 580 (Tex. App.—Dallas 1989, writ denied)). But the Fifteenth Court has now held that "the existence of an agency's rulemaking power cannot be conferred by implication." *Paxton v. Garza*, No. 15-25-00116-CV, 2025 WL 3764955, at *3 (Tex. App.—15th Dist. Dec. 30, 2025, no pet. h.) (Field, J., joined by Brister, C.J.,

and Farris, J.). Worse yet, the court appears to have imposed a "magic words" requirement on the Legislature as a precondition for it to delegate rulemaking authority to an agency. It effectively held that if the Legislature does not use specific phrases like "make rules" or "adopt rules," then the Legislature cannot delegate rulemaking authority.

The Fifteenth Court's decision merits this Court's review because it implicates questions of statewide importance regarding the Legislature's ability to confer rulemaking authority on state agencies. Tex. R. App. P. 56.1(a)(5). Under the legal principles the Fifteenth Court has now fashioned, it will be more difficult for agencies to carry out their statutory mandates and for the Legislature to empower agencies to conduct state business—a particularly critical function in a State with a Legislature that meets for only six months every two years. And because the Fifteenth Court has exclusive intermediate appellate jurisdiction over most litigation involving state agencies, Tex. Gov't Code § 22.220(d)(1)-(3), its decision will apply to all agencies throughout the State, not just the Office of the Attorney General.

Identity of Parties and Counsel

Petitioners:
Ken Paxton, in his official capacity as Attorney General of Texas
The Office of the Attorney General of Texas

Appellate and Trial Counsel for Petitioners:
Ken Paxton
Brent Webster
William R. Peterson
William F. Cole (lead counsel)
Benjamin Wallace Mendelson
Christopher J. Pavlinec
Eric Abels (no longer employed by the Attorney General of Texas)
Meagan Corser (no longer employed by the Attorney General of Texas)
Kimberly Gdula
William H. Farrell
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
(512) 936-1700
William.Cole@oag.texas.gov

Respondents:
Delia Garza, in her official capacity as Travis County Attorney

Jose P. Garza, in his official capacity as Travis County District Attorney
Travis County

Brian M. Middleton, in his official capacity as Fort Bend County District Attorney
(268th Judicial District)

Harris County District Attorney Sean Teare
Harris County

El Paso County District Attorney James Montoya
El Paso County Attorney Christina Sanchez
El Paso County

Dallas County Criminal District Attorney John Creuzot
Dallas County

Bexar County Criminal District Attorney Joe Gonzales
Bexar County

Shawn M. Dick, in his official capacity as Williamson County District Attorney (26th Judicial District)

Appellate and Trial Counsel for Respondents:

Delia Garza
Leslie W. Dippel (lead counsel)
Todd A. Clark
Cynthia W. Veidt
Office of the Travis County Attorney
P.O. Box 1748
Austin, Texas 78767
Tel.: 512-854-9513
Fax: 512-854-4808
Leslie.Dippel@traviscountytx.gov

Attorneys for the Travis County parties

Justin C. Pfeiffer (lead counsel)
Gavrilov & Brooks, PC
P.O. Box 56632
Houston, Texas 77256
Tel: 832-312-7900
jpfeiffer@gavrilov.com

Attorney for Brian M. Middleton

Christian D. Menefee
Jonathan G.C. Fombonne
Tiffany S. Bingham
Christopher Garza
Office of the Harris County Attorney

1019 Congress Plaza, 15th Floor
Houston, Texas 77002
Tel: 713-274-5101
Fax: 713-755-8924
Jonathan.Fombonne@harriscountytx.gov

Bradley W. Snead (lead counsel)
Michael Adams-Hurta
Wright Close & Barger, LLP
One Riverway, Suite 2200
Houston, Texas 77056
Tel.: 713-572-4321
Fax: 713-572-4320
snead@wrightclosebarger.com

Attorneys for the Harris County parties

Christina Sanchez
Bernardo Cruz (lead counsel)
Office of the El Paso County Attorney
320 S. Campbell St., Suite 200
El Paso, Texas 79901
Tel: 915-273-3247
b.cruz@epcountytx.gov

Attorneys for the El Paso County parties

Michael Satin (lead counsel)
Alexandria Oberman
Laura G. Ferguson
Miller & Chevalier Chartered
900 16th Street, NW
Washington, DC 20006
Tel.: 202-626-5800
Fax: 202-626-5801
msatin@milchev.com

Attorneys for the Dallas County and Bexar County Parties

Randy T. Leavitt (lead counsel)
Law Office of Randy T. Leavitt
1301 Rio Grande St.
Austin, Texas 78701
Tel.: 512-476-4475
randy@randyleavitt.com

C. Robert Heath
Bickerstaff Heath Delgado Acosta
1601 S. Mopac Expy., Suite 400
Austin, Texas 78746
Tel.: 512-404-7821
bheath@bickerstaff.com

Attorneys for Shawn M. Dick

TABLE OF CONTENTS

Index of Authorities

Page(s)

Cases:

Constitutional Provisions, Statutes, and Rules:

Other Authorities:

Statement of the Case

Nature of the Case:	Texas law provides the Attorney General broad power to request any information from local prosecutors relating to criminal matters that he desires and in the form he directs. Tex. Gov't Code § 41.006. Pursuant to that statutory authority, the Attorney General promulgated administrative rules clarifying what type of information he wished to receive and the manner in which prosecutors should submit it. *See* 1 Tex. Admin. Code §§ 56.1-.10. Various counties, county attorneys, and district attorneys refused to comply and sued the Attorney General, alleging that he lacked the authority to promulgate the rules. CR.4. They sought a temporary injunction to prevent the Attorney General from enforcing the rules. CR.4.
Trial Court:	459th Judicial District Court, Travis County The Honorable Catherine Mauzy
Disposition in the Trial Court:	The trial court granted a temporary injunction. CR.391-95.
Parties in the Court of Appeals:	The Attorney General and the OAG were appellants; the counties and district and county attorneys were appellees.
Court of Appeals:	Court of Appeals for the Fifteenth Judicial District
Disposition in the Court of Appeals:	The court of appeals largely affirmed the temporary injunction. *Garza*, 2025 WL 3764955. The court held that rulemaking authority can never be conferred by implication, *id.* at *2-3, and that Texas Government Code section 41.006 does not confer express rulemaking authority on the Attorney General, *id.* at *4-5. Chief Justice Brister concurred, reasoning that recently enacted statutes confirm that section 41.006 does not confer rulemaking authority. *Id.* at *6-7 (Brister, C.J., concurring).

Statement of Jurisdiction

This Court has jurisdiction because this appeal presents questions of law that are important to the jurisprudence of the State. Tex. Gov't Code § 22.001(a).

Issues Presented

1. Whether the Legislature may delegate rulemaking authority to state agencies by implication or whether it must use specific phrases like "adopt rules" to expressly confer such power on agencies, and whether Texas Government Code section 41.006 delegates rulemaking authority to the Attorney General.

   Preserved: CR.359-61, 392-93.

2. Whether the Rules promulgated by the Attorney General exceed the scope of his authority under Texas Government Code section 41.006 or violate the Administrative Procedure Act or the Separation of Powers Clause of the Texas Constitution.

   Preserved: CR.361-66, 392-93.

3. Whether Plaintiffs met the remaining requirements for a temporary injunction.

   Preserved: CR.44-46, 393-94.

Statement of Facts

The court of appeals correctly stated the nature of the case.

I. Statutory and Regulatory Background

Since at least 1879, the Legislature has empowered the Attorney General to obtain reports from district and county attorneys about criminal matters and the interests of the State. *See* Tex. Code Crim. Proc. Title 1, Ch. 2, art. 40 (1879). Specifically, the Legislature has required district and county attorneys to "report to the attorney general" information that he "desires relating to criminal matters and the interests of the state" "[a]t the times and in the form that the attorney general directs." Tex. Gov't Code § 41.006. To ensure fair notice, proper submissions, and to avoid ad hoc information requests, last year the Attorney General promulgated rules that formalize district and county attorneys' reporting obligations under section 41.006. *See* 1 Tex. Admin. Code §§ 56.1-.10 (the "Rules").

The Rules set forth the time, form, and content of materials that district and county attorneys serving populations of 400,000 or more must report to the Attorney General. *Id.* § 56.1. They provide that such prosecutors "must submit an initial, and quarterly and annual reports relating to criminal matters, and the interest of the state." *Id.* And they set deadlines for the reports. *See id.* § 56.5.

As to content, the quarterly reports must include the following: statistical information about certain indictments, prosecutions, and decisions not to prosecute, *id.* § 56.3(a)(1)-(3), (a)(7); case files for matters involving prosecutor recommendations for early release, resentencing, or a new trial, and those involving potential gubernatorial pardons, *id.* § 56.3(a)(4)-(6); and policies not to indict as well as

correspondence with third parties regarding decisions not to prosecute, *id.* § 56.3(a)(8)-(11). One-time initial reports must include the same information from January 2021 to the effective date of the Rules. *Id.* § 56.3(b). And annual reports must provide policies that were modified during the previous year, a list of statutes and rules under which the prosecutors file other reports, a list of purchases made with funds received through civil-asset forfeiture, and information regarding the use of funds accepted as gifts from private entities. *Id.* § 56.4; *see* Tex. Gov't Code § 41.108.

The Rules also provide prosecutors flexibility for compliance. For example, prosecutors need not provide an initial report if they submit an affidavit stating that they cannot submit the relevant material because it was the exclusive product of a previous district or county attorney, the material is not reflective of the prosecutor's current policies, or that the relevant material was discarded under a previous, bona fide document-retention policy. 1 Tex. Admin. Code § 56.3(b)(2)-(3). Prosecutors may also seek an exception from the Attorney General for any of the initial reporting requirements. *Id.* § 56.3(b)(1). In turn, the Attorney General may waive any of the reporting requirements "if a reporting entity demonstrates that compliance would impose an undue hardship," *id.* § 56.9(d), and he may extend reporting deadlines "on a case-by-case basis if the reporting entity can establish good cause for not meeting" them, *id.* § 56.5(a)(5).

Finally, the Rules have several provisions that allow the Attorney General to ensure compliance. First, the Rules impose a two-year document-retention policy "designed to preserve all documents which are, or may be, subject to" the Rules. *Id.* § 56.6. Second, the Rules establish a three-person Oversight Advisory Committee

comprised of OAG employees who may issue notifications of overdue reports and request case files. *Id.* § 56.9; *see id.* § 56.7. Third, the Rules announce that the Attorney General "may" construe rule violations as "official misconduct," institute a quo warranto proceeding seeking forfeiture of a prosecutor's office, or initiate a civil proceeding to obtain compliance. *Id.* § 56.8.

II. Procedural History

In February 2024, the Office of the Attorney General filed its initial version of the Rules with the Secretary of State. *See* 49 Tex. Reg. 1357, 1360 (2024). Shortly thereafter, the Attorney General withdrew those proposed rules and filed an amended version with the Secretary of State. *See* 49 Tex. Reg. 7139, 7143 (2024). The Attorney General held a public hearing on the Rules in November 2024. After a period of public notice and comment, the Attorney General adopted the Rules (in their new version), which were published in March 2025 and took effect in April. 50 Tex. Reg. 2173, 2181-82 (2025).

After the Rules took effect, several groups of counties, county attorneys, and district attorneys sued to enjoin the Attorney General from enforcing them. CR.4, 123, 280. Those suits were consolidated into this case. CR.339-40. Plaintiffs alleged that the Rules were unlawful in several ways and requested temporary injunctive relief prohibiting their enforcement. CR.4-51.

After a hearing, the trial court issued an order temporarily enjoining enforcement of the Rules. CR.392-95. It held that Plaintiffs were likely to succeed on the merits of four claims: (1) the reporting statute does not confer rulemaking authority

on OAG; (2) even if the statute confers rulemaking authority, the Rules "impermissibly impose burdens and conditions not authorized by statute"; (3) the Rules do not substantially comply with the reasoned-justification requirement of the Administrative Procedure Act; and (4) the Rules violate the Separation of Powers Clause of the Texas Constitution. CR.392-93. The trial court enjoined the Attorney General from taking any action to enforce the Rules, even as to nonparties. CR.394.

The Attorney General appealed to the Fifteenth Court of Appeals, which automatically superseded the injunction. CR.399-401. Plaintiffs filed an emergency motion under Rule 29.3 to preserve the temporary injunction's effect pending appeal. Over Justice Farris's dissent, the court of appeals granted that motion without considering the likelihood of success on the merits, though it did "leave the trial court's temporary injunction in place" as to the named Plaintiffs only. *Paxton v. Garza*, No. 15-25-00116-CV, 2025 WL 3725674, at *2 (Tex. App.—15th Dist. July 17, 2025) (per curiam), *mandamus conditionally granted sub nom. In re Paxton*, No. 25-0641, 2025 WL 3706697 (Tex. Dec. 22, 2025) (orig. proceeding) (per curiam).

The Attorney General filed a petition for writ of mandamus in this Court, seeking to vacate the court of appeals' grant of temporary relief. This Court conditionally granted that relief. *In re Paxton*, 2025 WL 3706697, at *1-3. The Court held that the court of appeals improperly granted the Rule 29.3 motion because it refused to consider the merits of the case, even though the merits are a required consideration for granting such relief. *Id.* at *2. The Court directed the court of appeals to reevaluate the Rule 29.3 request under the proper standard. *Id.* at *3.

The Fifteenth Court then decided the underlying case, rendering the Rule 29.3 proceedings moot. *Garza*, 2025 WL 3764955, at *6. It held that Plaintiffs "established a probable right to relief because Section 41.006 of the Texas Government Code does not confer rulemaking authority on the Attorney General." *Id.* at *1. It reached that conclusion for two reasons.

First, it held that the "[t]he existence of an agency's rulemaking power cannot be conferred by implication." *Id.* at *3. "[W]hether an agency has implied rulemaking power is analyzed only when deciding whether an agency exceeded the *scope* of its express rulemaking power, not whether the agency has rulemaking power to begin with." *Id.* Second, the court of appeals held that the term "direct" as used in section 41.006 does not grant the Attorney General any express rulemaking power. *Id.* at *4. It reasoned that because other statutes in which the Legislature granted the Attorney General rulemaking authority use terminology like "the Attorney General may 'adopt,' 'prescribe,' or 'establish' rules," the absence of those words in section 41.006 means that the statute grants no rulemaking authority. *Id.* at *3-4, *3 n.3 (collecting statutes). Because the court concluded that section 41.006 does not grant rulemaking authority, it did not reach the other grounds upon which the trial court relied to justify the temporary injunction. *Id.* at *5 n.6.

The Fifteenth Court also held that Plaintiffs established the imminent and irreparable harm needed for a temporary injunction but concluded that the trial court's injunction was overbroad because it enjoined enforcement of the Rules against anyone subject to them, including nonparties. *Id.* at *5-6.

This petition follows.

Summary of the Argument

I. The court of appeals' decision presents issues of statewide importance concerning the Legislature's ability to confer rulemaking authority on administrative agencies. First, the court of appeals held that the Legislature may not delegate rulemaking authority by implication, even though this Court has repeatedly held the opposite. Second, the decision below effectively imposes a "magic words" requirement on the Legislature such that if the Legislature does not use phrases like "adopt rules" or "make rules," then it cannot expressly delegate rulemaking authority. This Court has never seen fit to impose such a requirement. Because these newfound legal principles will work in tandem to make it more difficult for administrative agencies to carry out their statutory mandates and for the Legislature to empower agencies to undertake state business, the decision below presents issues of "importance to the state's jurisprudence" that should be addressed by this Court. Tex. R. App. P. 56.1(a)(5).

The court of appeals also erred by holding that Texas Government Code section 41.006 does not delegate rulemaking authority to the Attorney General either expressly or by implication. That statute imposes a duty on prosecutors to provide "information" to the Attorney General "[a]t the times and in the form that the attorney general directs." Tex. Gov't Code § 41.006. The power to "direct" the time and form of such reports confers express authority to promulgate rules under the ordinary meaning of the verb "direct." But at a minimum such rulemaking authority is fairly implied from the Legislature's express conferral of the power on the

Attorney General to obtain such reports "[a]t the times and in the form that the attorney general directs." *Id.*

II. The trial court provided three additional reasons for temporarily enjoining enforcement of the Rules that the court of appeals did not reach. CR.292-93. Each of those reasons is erroneous and independently warrants this Court's review. Tex. R. App. P. 56.1(a)(3), (4).

First, the Rules do not exceed the scope of section 41.006. That statute textually permits the Attorney General to request from prosecutors any information that he desires at any time, provided that the requests relate to criminal matters and the interest of the State. Tex. Gov't Code § 41.006. The Rules, however, require prosecutors to produce only defined types of information, and only at specific pre-defined times. The Rules therefore authorize more limited power than the statute permits.

Second, the Rules comply with the APA's reasoned-justification requirement. *Id.* § 2001.033(a)(1). Agency orders adopting rules "must include how and why the agency reached the conclusions it did for adopting the rule, and the conclusions must be presented in a relatively clear, precise, and logical fashion." *Tex. Workers' Comp. Comm'n v. Patient Advocs. of Tex.*, 136 S.W.3d 643, 648 (Tex. 2004). The Attorney General's order adopting the Rules did exactly that, including citing specific factual evidence, policy objectives, and other rationales supporting his conclusions. *See* 50 Tex. Reg. at 2173-75.

Third, the Rules do not violate the Separation of Powers Clause. Tex. Const. art. II, § 1. Plaintiffs contend that anytime one branch of government imposes an allegedly burdensome information-gathering requirement on another, such an action

is unconstitutional. That argument has no limiting principle and would mean that judicially ordered discovery against another branch of government, the Legislature's statutory powers to compel executive branch officials to testify and produce documents, and sections of the Public Information Act would all be unconstitutional.

III. The irreparable-harm and balance-of-equities factors also favor the Attorney General. On the one hand, Plaintiffs allege that they are faced with compliance costs, which they can defray (and are defraying), and the highly speculative harm of disclosing confidential information. Conversely, the temporary injunction enjoins the Attorney General from enforcing *all* of the Rules against Plaintiffs, even when this Court recognized that as-applied challenges were available. Further, because the Rules are valid, Plaintiffs will suffer no harm by being required to follow them.

Standard of Review

"To obtain a temporary injunction, the applicant must plead and prove (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *State v. Loe*, 692 S.W.3d 215, 226 (Tex. 2024). The Court reviews orders granting temporary injunctions for an abuse of discretion. *Id.* But a court "abuses its discretion when it misinterprets or misapplies the law." *In re Millwork*, 631 S.W.3d 706, 711 (Tex. 2021) (orig. proceeding) (per curiam). Thus, the Court reviews questions of law de novo. *Loe*, 692 S.W.3d at 226.

ARGUMENT

I. This Case Presents Issues of Statewide Importance Regarding the Legislature's Ability to Confer Rulemaking Authority on Administrative Agencies.

The court of appeals committed at least two serious errors that make this case worthy of review. First, it held that an administrative agency's rulemaking authority can never be implied, even though this Court has held the opposite. Second, it imposed a "magic words" requirement on the Legislature to confer express rulemaking authority, effectively holding that, unless the Legislature uses highly specific phrases like "'adopt,' 'prescribe,' or 'establish' 'rules,'" it cannot delegate rulemaking authority. *Garza*, 2025 WL 3764955, at *3. These newfound legal principles, working in tandem, will hamstring agencies' abilities to carry out their statutory charges and significantly limit the ability of the Legislature to empower agencies to accomplish state business—a particularly critical task in a State with a Legislature that meets for only six months every two years. Tex. Const. art. III § 5(a).

Moreover, because the Fifteenth Court has "exclusive intermediate appellate jurisdiction" over most "matters brought by or against" an "agency in the executive branch of the state government," Tex. Gov't Code § 22.220(d)(1)-(3), its decision sweeps broadly and will apply to every administrative agency in the State, not just the Office of the Attorney General. These issues of "importance to the state's jurisprudence" should be addressed by this Court. Tex. R. App. P. 56.1(a)(5).

A. The court of appeals' decision eliminates the concept of implied rulemaking authority.

It is axiomatic that "[a]n agency can adopt only such rules as are authorized by and consistent with its statutory authority." *Lone Star Gas*, 844 S.W.2d at 685 (quoting *State Bd. of Ins. v. Deffebach*, 631 S.W.2d 794, 798 (Tex. App.—Austin 1982, writ ref'd n.r.e.); *PUC of Tex. v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001). But this Court has long held that rulemaking authority may be expressly or impliedly conferred by statute: an "[a]gency's authority to promulgate rules and regulations 'may be expressly conferred on it by statute *or implied from other powers and duties given or imposed by statute.*'" *Lone Star Gas*, 844 S.W.2d at 685 (emphasis added) (quoting *Stein*, 771 S.W.2d at 580). This Court has continually reaffirmed this express-or-implied framework. *See Patient Advocs.*, 136 S.W.3d at 652 ("A state administrative agency only has those powers that the Legislature expressly confers upon it or that are implied to carry out the express functions or duties given or imposed by statute." (citations omitted)); *Pruett v. Harris Cnty. Bail Bond Bd.*, 249 S.W.3d 447, 452 (Tex. 2008) ("Such authority may be either expressly conferred by statute or implied from other powers and duties given or imposed by statute.").

The decision below conflicts with this precedent, flatly denying that the Legislature can *ever* delegate rulemaking authority in the first instance by implication: "The existence of an agency's rulemaking power cannot be conferred by implication." *Garza*, 2025 WL 3764955, at *3. That reasoning starkly conflicts with this Court's repeated recognition that the Legislature may do so. *See Pruett*, 249 S.W.3d at 452; *Lone Star Gas*, 844 S.W.2d at 685.

The court of appeals distinguished *Pruett* and *Lone Star Gas* by noting that "in every case in which courts have implied rulemaking power, the Legislature had already granted the agencies express rulemaking power." *Garza*, 2025 WL 3764955, at *3. But that is a non sequitur. That the facts of previous cases involved express rulemaking authority and then looked to the scope of that authority by implication does not mean that rulemaking authority cannot be delegated by implication. And while the court of appeals acknowledged that "an agency may have 'implied powers that are reasonably necessary to carry out [its] *express* responsibilities,'" *id.* (quoting *PUC*, 53 S.W.3d at 316), it misapplied that operative principle by holding that "whether an agency has implied rulemaking power is analyzed only when deciding whether an agency exceeded the *scope* of its express rulemaking power," *id.* Whether an agency properly acted within the scope of its *express* rulemaking authority is a different inquiry from whether rulemaking authority can be implied in the first place. Under the proper inquiry, the court of appeals should have asked whether the Legislature's express conferral of power on the Attorney General to obtain reports from prosecutors implies the conferral of rulemaking authority. Tex. Gov't Code § 41.006.

Given this Court's precedent recognizing that the Legislature can confer rulemaking authority by implication, the court of appeals was not at liberty to hold the opposite. The Court should grant review to clarify this area of the law, which implicates rulemaking authority not just for the Office of the Attorney General, but for every agency in the State. *See* Tex. R. App. P. 56.1(a)(5).

B. The court of appeals improperly imposes a "magic words" requirement on the Legislature to delegate rulemaking authority.

The court of appeals doubly erred by imposing a "magic words" requirement on the Legislature anytime it wishes to delegate rulemaking authority to a state agency. *S.C. v. M.B.*, 650 S.W.3d 428, 444 (Tex. 2022). This Court has never imposed such a requirement on the Legislature, but the decision below effectively did.

Surveying other statutes conferring rulemaking authority on the Attorney General that use words such as "adopt," "prescribe," or "establish," together with "rules," *Garza*, 2025 WL 3764955, at *3-4, the court of appeals' decision appears to conclude that the use of those words is the *only* way the Legislature may confer rulemaking authority: "Because the Legislature has expressly granted rulemaking authority to the Attorney General in numerous other statutes and clearly knows how to expressly grant rulemaking authority when it intends to do so, we cannot conclude Section 41.006 grants express rulemaking authority here." *Id.* at *4 (citations omitted).

That the Fifteenth Court effectively now requires the Legislature to use specific phrases like "adopt rules" anytime it wishes to delegate rulemaking authority independently warrants this Court's review as a question of statewide importance. Tex. R. App. P. 56.1(a)(5).

C. The court of appeals erred by holding that section 41.006 does not delegate rulemaking authority to the Attorney General.

The court of appeals also erred by holding that section 41.006 does not delegate rulemaking authority either expressly or impliedly.

1. Section 41.006 provides that district and county attorneys "shall report" certain information upon the Attorney General's request "[a]t the times and in the form that the attorney general directs." Tex. Gov't Code § 41.006. The verb "directs" provides the textual anchor for express rulemaking authority. The Court "look[s] to the specific words chosen by the Legislature and give[s] them their plain meaning, as informed by the context in which the enacted text appears." *Am. Pearl Grp., L.L.C. v. Nat'l Payment Sys., L.L.C*, 715 S.W.3d 383, 387 (Tex. 2025). Where, as here, the relevant phrase "is not defined," "we typically look first to dictionary definitions to determine a term's common, ordinary meaning." *Id.* (citations omitted).

Dictionaries from the 19th century, contemporaneous with the enactment of section 41.006, onward demonstrate that the word "direct" confers rulemaking authority. "Direct" means "to regulate; to govern" and "to instruct as a superior; to order." *Direct*, An American Dictionary of the English Language 377 (rev. ed. 1882); *see Direct*, 1 Webster's New International Dictionary of the English Language 631 (rev. ed. 1911) (defining "direct" as "to order in the way to a certain end; to guide; conduct; regulate; govern" and "[t]o point out to with authority; to instruct as a superior or authoritatively; to order"). More contemporary dictionaries provide similar definitions. One states that to "direct" means "to prescribe, especially by formal or mandatory instruction or legal enactment," "to regulate the activities or course of," or "to guide and supervise." *Direct*, Webster's Third New International Dictionary 640 (3d ed. 2002). So, in the context of a statute empowering the Attorney General to "direct" the manner and means of a given task, the word "direct" includes the power to make rules to accomplish that task.

The court of appeals' focus on language that the Legislature did *not* use led it to glide past the operative language that the Legislature *did* use. While the court of appeals conceded that the word "directs" provides "some type of authority," *Garza*, 2025 WL 3764955, at *4, its fixation on particular absent phrases like "adopt rules" caused it to fail to grapple with the plain meaning of the term that the Legislature chose. *Id.*

2. Alternatively, section 41.006 at least implies rulemaking authority. The court of appeals recognized that the term "directs" confers "some type of authority." *Garza*, 2025 WL 3764955, at *4. But the court then held that the term did not provide rulemaking authority because "[w]hat is before us is whether Section 41.006 clearly and unmistakably delegates express rulemaking authority." *Garza*, 2025 WL 3764955, at *4.

Again, this holding overlooks this Court's body of cases concerning *implied* rulemaking authority. *Supra* at 11. As the Court has explained, "when the Legislature expressly confers a power on an agency, it also impliedly intends that the agency have whatever powers are reasonably necessary to fulfill its express functions and duties." *PUC*, 53 S.W.3d at 316. And in the context of rulemaking, that means that an "[a]gency's authority to promulgate rules and regulations may be expressly conferred on it by statute or implied from other powers and duties given or imposed by statute." *Lone Star Gas*, 844 S.W.2d at 685 (quoting *Stein*, 771 S.W.2d at 580). By holding that section 41.006 "provides some type of authority," *Garza*, 2025 WL 3764955, at *4, the court of appeals acknowledged that the Legislature did, in fact, "expressly confer[] a power on an agency," *PUC*, 53 S.W.3d at 316, so it should have

analyzed whether the statutory language implied rulemaking authority, even if it was not express.

It does. Section 41.006 obligates prosecutors to provide "information from their districts and counties that the attorney general desires relating to criminal matters and interests of the state" "[a]t the times and in the form that the attorney general directs." Tex. Gov't Code § 41.006. That language "is expansive and lacking in detail, leaving it to" the Attorney General "to fill in the gaps," *Hartzell v. S.O.*, 672 S.W.3d 304, 315 (Tex. 2023), as to the manner and means of supplying the requested information. At the very least, by expressly imposing reporting obligations on district and county attorneys that are enforced by the Attorney General, the Legislature conferred implied authority on the Attorney General "to promulgate rules and regulations necessary to accomplish" the statute's ends. *Pruett*, 249 S.W.3d at 453.

The result of the Fifteenth Court's decision is quite unusual. As Chief Justice Brister acknowledged, section 41.006 "likely authorizes the attorney general to request some of the information at issue on an individual basis." *Garza*, 2025 WL 3764955, at *7. (Brister, C.J., concurring). In other words, the Fifteenth Court effectively held that the Attorney General may randomly request at least some of the information that the Rules contemplate and as frequently as he desires, but he may not set out those requests in advance in the Texas Register. That is backwards. Rulemaking provides transparency and predictability. With a statute as broad as section 41.006, all parties and the public should want more rulemaking, not less.

II. The Trial Court's Alternative Reasons for Temporarily Enjoining the Rules Are Legally Flawed.

In addition to an alleged lack of rulemaking authority, the trial court also accepted Plaintiffs' arguments that the Rules exceed the scope of the section 41.006, violate the APA's reasoned-justification requirement, and violate the Separation of Powers Clause. CR.392-93. The court of appeals did not address these three arguments, which were fully briefed before it, because it held that section 41.006 did not delegate rulemaking authority. *Garza*, 2025 WL 3764955, at *5 n.6. But for purposes of judicial economy, this Court should address each of these issues that independently merit this Court's review. *See* Tex. R. App. P. 56.1(a)(3), (4).

A. The Rules do not exceed the scope of section 41.006.

Plaintiffs contended below that the Rules impose "additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions." Brief of the Travis County, Harris County, El Paso County, Dallas County, Bexar County and Williamson County Appellees, *Paxton v. Garza*, No. 15-25-00116-CV, at 48 ("Appellees' Brief") (quoting *Tex. State Bd. of Exam'rs of Marriage & Fam. Therapists v. Tex. Med. Ass'n*, 511 S.W.3d 28, 33 (Tex. 2017)). That is wrong.

Section 41.006 broadly empowers the Attorney General to seek any information from any prosecutor that he "desires," "[a]t the times and in the form that the attorney general directs," so long as it relates to criminal matters and the interests of the State. Tex. Gov't Code § 41.006. This capacious grant of statutory authority leaves the Attorney General free to issue ad hoc requests at a time, in a form, and with the content of his choosing. But under the Rules, the Attorney General has

formalized what is required by providing advance notice of what information he requires, which district and county attorneys he seeks that information from, what form that submission should take, and by when it should be submitted. Thus, far from promulgating rules exceeding statutory requirements, the Rules *narrow* and clarify the scope of Plaintiffs' reporting obligations.

Start with timing. The Rules specify that district and county attorneys in jurisdictions with more than 400,000 persons must submit initial, quarterly, and annual reports on a specific schedule set out by the Rules. *See* 1 Tex. Admin. Code § 56.5; *see also id.* § 56.1. By contrast, the reporting statute sets no deadlines and authorizes the Attorney General to issue requests for information to any county, no matter the size, monthly or weekly—or even on a sporadic or irregular basis. Tex. Gov't Code § 41.006. Next consider content. Under the Rules, annual reports must include five explicit categories of required information, 1 Tex. Admin. Code § 56.4, while the initial and quarterly reports list twelve types of carefully defined information, *id.* § 56.3(a). Yet under the reporting statute, the Attorney General is free to seek a wider band of information broadly "relating to criminal matters and the interests of the state" Tex. Gov't Code § 41.006.

The Rules, therefore, do not create any burdens, conditions, or restrictions inconsistent with section 41.006. Instead, they specifically define the prosecutors' reporting obligations at a more granular level. But even if any part of the Rules exceeds the Attorney General's statutory authority, that portion would be severable under the Rules' robust severability clause. 1 Tex. Admin. Code § 56.10.

B. The Rules do not violate the APA's reasoned-justification requirement.

The Rules do not violate the APA because they, at minimum, substantially comply with the APA's reasoned-justification requirement. *Contra* Appellees' Brief at 52-57.

The APA requires each promulgated rule to have a "reasoned justification . . . in the order adopting it." *Patient Advocs.*, 136 S.W.3d at 648. "[T]he order must include how and why the agency reached the conclusions it did for adopting the rule, and the conclusions must be presented in a relatively clear, precise, and logical fashion." *Id.* "The order also must provide (1) a summary of the comments received from interested parties; (2) a restatement of the factual basis for the rule; and (3) the reasons why the agency disagrees with the comments." *Id.* (citing Tex. Gov't Code § 2001.033(a)(1)(A)-(C)). An agency's order need only substantially comply with these procedural requirements to be valid. *See Nat'l Ass'n of Indep. Insurers v. TDI*, 925 S.W.2d 667, 669 (Tex. 1996) (citing Tex. Gov't Code § 2001.035(a)). And an agency's order "substantially complies with the reasoned[-]justification requirement if it (1) accomplishes the legislative objectives underlying the requirement and (2) comes fairly within the character and scope of each of the statute's requirements in specific and unambiguous terms." *Id.*; Tex. Gov't Code § 2001.035(c).

The Attorney General's order adopting the Rules substantially complied with the APA's procedural requirements. The order lays out the explanations and justifications for the Rules and then undertakes a provision-by-provision analysis of each. *See* 50 Tex. Reg. at 2173-74. This is "a relatively clear, precise, and logical"

explanation for "how and why the agency reached the conclusions it did for adopting the rule." *Patient Advocs.*, 136 S.W.3d at 648. "Throughout the adoption order," the Attorney General "provided factual evidence, policy objectives, and legal rationale" for his decisions. *Id.* at 649. And the Attorney General substantially complied with section 2001.033(a)(1)'s comment-summary provision by summarizing the comments received, restating the factual bases for the Rules, and explaining why he disagreed with the comments. *See* 50 Tex. Reg. at 2175-80. These "extensive explanation[s]" satisfy the reasoned-justification requirement. *Patient Advocs.*, 136 S.W.3d at 649.

C. The Rules comply with the Separation of Powers Clause.

The Rules do not violate the Separation of Powers Clause, either. *Contra* Appellees' Brief at 57-64. The Texas Constitution expressly provides that "no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted." Tex. Const. art. II, § 1. And "[i]f one branch seeks to seize power belonging solely to another, the constitutional implication is obvious—the offending branch's claim is invalid." *Webster v. Comm'n for Law. Discipline*, 704 S.W. 3d 478, 487 (Tex. 2024). In such circumstances, the Court must "determine whether a coordinate branch's exercise of power . . . rises to the level of constitutionally forbidden impairment of another branch's ability to perform its powers." *Id.* at 489 (cleaned up).

The Rules do not unconstitutionally impair the prosecutors' duties. District and county attorneys' "main function" is "to prosecute the pleas of the state in criminal cases." *Brady v. Brooks*, 89 S.W. 1052, 1056 (Tex. 1905). But nothing about the Rules' required provision of information prevents Plaintiffs from continuing to prosecute cases. Plaintiffs have suggested that the task of collecting and supplying the requested information nevertheless somehow interferes with their ability to prosecute, but they overlook that the Attorney General has also been empowered with legislatively delegated authority to obtain information from those prosecutors. *See* Tex. Gov't Code § 41.006. As this Court has explained, the "legislative-inquiry power" has deep roots in the common law and "has long been treated as an attribute of the power to legislate." *In re Tex. House of Representatives*, 702 S.W.3d 340, 341 (Tex. 2024) (orig. proceeding). Absent extraordinary circumstances, one branch of government may request information from another without violating the separation of powers, even if doing so imposes costs.

For example, "discovery is obviously a proper judicial tool, but . . . in extraordinary cases, a court could violate the separation of powers by authorizing discovery that 'interfer[es] with a coequal branch's ability to discharge its constitutional responsibilities.'" *Id.* at 344-45 (second alteration in original) (citation omitted). And the Legislature has broad authority to compel witness testimony from executive-branch officers, even if it is burdensome. *See id.* at 340-41; Tex. Gov't Code § 301.028. Similarly, the Public Information Act gives legislators the power to request reams of documents from the executive branch if they wish. Tex. Gov't Code § 552.008(b). Those requests can be burdensome too. But they generally do not

violate the separation of powers even if they are costly. Section 41.006's reporting requirements and the Rules implementing them are of a piece with these other information-gathering tools. Even if they are burdensome, the mere fact that they request information from another branch does not transgress the separation of powers.

III. The Remaining Temporary-Injunction Factors Favor the Attorney General.

Because Plaintiffs have no probable right to relief on their claims, *supra* at 10-22, the Court need not address the remaining temporary-injunction factors, including "irreparable harm," and "[t]he equitable balancing of the[] harm." *In re State*, 711 S.W.3d 641, 645 (Tex. 2024) (orig. proceeding). Regardless, they favor the Attorney General.

For one thing, the temporary injunction harms the Attorney General because prosecutors are engaging in *ultra vires* conduct by failing to comply with the Rules, which "automatically results in harm to the sovereign as a matter of law." *Id.* at 647 (citation omitted). By refusing to comply with the Rules, Plaintiffs are hampering the Attorney General's efforts to enforce state law, Tex. Gov't Code § 41.006, which undercuts "the State['s]" "intrinsic right to . . . enforce its own laws." *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020). By the same token, Plaintiffs are "not harmed by being required to follow" the law. *In re State*, 711 S.W.3d at 648.

The court of appeals held to the contrary because "a significant amount of staff and attorney time are required to prepare the reports" and "the Rules would require providing privileged and confidential information." *Garza*, 2025 WL 3764955, at *5. But as to the former, such compliance costs are exaggerated. Some Plaintiffs have

already sought funding to defray any anticipated costs, CR.93, while others have concluded that they will hire a handful more employees, CR.272. And if the Rules were as burdensome as Plaintiffs claim, they could have used any of the Rules' three different provisions that allow them to request exceptions or extensions for the reports. 1 Tex. Admin. Code §§ 56.3(b)(1), 56.5(a)(5), 56.9(d). Meanwhile, the Cameron County, Williamson County, Hidalgo County, Montgomery County, Tarrant County, and Collin County district attorneys' offices have already submitted their initial and quarterly reports to the Attorney General, suggesting that the Rules are less burdensome than Plaintiffs contend.

Nor is it evident that the Rules will invariably require the production of "privileged and confidential information" such as "case files" that include "privileged communications, attorney work product, grand jury material, victim and witness identities, medical records, and photos depicting sexual assault of minors." *Garza*, 2025 WL 3764955, at *5. In the first place, the Office of the Attorney General is subject to the same confidentiality obligations as the district attorneys' offices. *Cf.* Tex. Gov't Code § 552.101. Nor is it clear that these Plaintiffs even possess the type of "case files" containing confidential information that the Rules require to be disclosed. *See* 1 Tex. Admin. Code § 56.3(a)(4)-(6). And if producing certain information would truly require a prosecutor to violate "privacy laws," *Garza*, 2025 WL 3764955, at *5, then the prosecutor may seek an exception for hardship. 1 Tex. Admin. Code § 56.9(d). If that fails, he may bring an as-applied challenge to prevent the production of the relevant information: "If, as the suing prosecutors suggest, there are *particular* kinds of information that may not properly be disclosed, then discrete

challenges as to the applicability of the rules in that context will remain available." *In re Paxton*, 2025 WL 3706697, at *2. But the equities do not support facial invalidation of the Rules on the ground that a particular request might implicate documents not legally subject to disclosure.

The balance of equities heavily favors the Attorney General. On the one hand, Plaintiffs are faced with exaggerated compliance costs and the highly speculative harm of disclosing confidential information. Conversely, the temporary injunction enjoins the Attorney General from enforcing all of the Rules against Plaintiffs, even when this Court recognized that as-applied challenges are available. *Id.*

Prayer

The Court should grant the petition for review and reverse and render judgment denying the temporary injunction. Petitioners further request all such relief, in law or in equity, to which they may show themselves to be justly entitled.

Respectfully submitted.

Ken Paxton
Attorney General of Texas

Brent Webster
First Assistant Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

William R. Peterson
Solicitor General

/s/ William F. Cole
William F. Cole
Principal Deputy Solicitor General
State Bar No. 24124187
William.Cole@oag.texas.gov

Benjamin Wallace Mendelson
Assistant Solicitor General

Christopher J. Pavlinec
Assistant Attorney General

Counsel for Petitioners

Certificate of Compliance

Microsoft Word reports that this document contains 6,475 words, excluding the parts of the brief exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ William F. Cole
William F. Cole

No. 26-0110

In the Supreme Court of Texas

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF TEXAS, AND THE OFFICE OF THE ATTORNEY GENERAL FOR THE STATE OF TEXAS,

Petitioners,

v.

DELIA GARZA, IN HER OFFICIAL CAPACITY AS TRAVIS COUNTY ATTORNEY, ET AL.; JOHN CREUZOT, IN HIS OFFICIAL CAPACITY AS DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY, ET AL.; AND BRIAN MIDDLETON, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF FORT BEND COUNTY (268TH JUDICIAL DISTRICT), ET AL.,

Respondents.

On Petition for Review
from the 15th Court of Appeals

APPENDIX

TAB

Tab A:
Court of Appeals' Majority Opinion

Affirmed in Part and Reversed in Part and Remanded and Majority and Concurring Opinions filed December 30, 2025.

In The

Fifteenth Court of Appeals

NO. 15-25-00116-CV

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF TEXAS, AND THE OFFICE OF THE ATTORNEY GENERAL FOR THE STATE OF TEXAS, Appellants

V.

DELIA GARZA, IN HER OFFICIAL CAPACITY AS TRAVIS COUNTY ATTORNEY; JOSÉ P. GARZA, IN HIS OFFICIAL CAPACITY AS TRAVIS COUNTY DISTRICT ATTORNEY; TRAVIS COUNTY; JAMES MONTOYA, IN HIS OFFICIAL CAPACITY AS EL PASO COUNTY DISTRICT ATTORNEY; CHRISTINA SANCHEZ, IN HER OFFICIAL CAPACITY AS EL PASO COUNTY ATTORNEY; EL PASO COUNTY; JOHN CREUZOT, IN HIS OFFICIAL CAPACITY AS DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY; DALLAS COUNTY; JOE GONZALES, IN HIS OFFICIAL CAPACITY AS BEXAR COUNTY CRIMINAL DISTRICT ATTORNEY; BEXAR COUNTY; SEAN TEARE, IN HIS OFFICIAL CAPACITY AS HARRIS COUNTY DISTRICT ATTORNEY; HARRIS COUNTY; BRIAN MIDDLETON, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF FORT BEND COUNTY (268TH JUDICIAL DISTRICT); AND SHAWN W. DICK, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF WILLIAMSON COUNTY, TEXAS (26TH JUDICIAL DISTRICT), Appellees

On Appeal from the 459th District Court
Travis County, Texas
Trial Court Cause No. D-1-GN-25-003445

OPINION

This is an interlocutory appeal of an order that temporarily enjoins enforcement of administrative rules promulgated by the Attorney General. *See* 1 Tex. Admin. Code §§ 56.1–56.10 (the Rules). The Rules require local prosecutors in Texas's most populated counties to prepare and produce reports containing multiple categories of information regarding criminal matters.

This appeal concerns only whether the Attorney General had authority to promulgate the Rules at issue, not whether the Attorney General has authority to obtain information on criminal matters from local district attorneys on an ad hoc basis. We conclude that Appellees established a probable right to relief because Section 41.006 of the Texas Government Code does not confer rulemaking authority on the Attorney General, and that the trial court did not abuse its discretion in finding irreparable harm in the interim. We further conclude that the temporary injunction order should be limited to enjoining the enforcement of the Rules against only the prosecutors who applied for the temporary injunction. Accordingly, we affirm in part and reverse and remand in part.

BACKGROUND

Section 41.006 of the Texas Government Code provides

> At the times and in the form that the attorney general directs, the district and county attorneys shall report to the attorney general the information from their districts and counties that the attorney general desires relating to criminal matters and the interests of the state.

Relying solely on this statute, the Attorney General adopted administrative rules that require district and county attorneys presiding in a county with a population of 400,000 or more to provide initial, quarterly, and annual reports. *See* 1 Tex. Admin. Code §§ 56.1, .3, .4. The Rules specify twelve categories of required information for the initial and quarterly reports, including the number of instances certain prosecution events occurred, "case files" for certain categories of cases, and "all correspondence" on certain topics. *Id.* § 56.3(a)–(b). The Rules require five categories of information for the annual reports, including internal policies, operating procedures, and records reflecting the use of funds received through civil asset forfeiture, foundations, or associations under Texas Government Code Section 41.108. *Id.* § 56.4.

The Rules also create an Oversight Advisory Committee, which can issue notices of overdue reports and has the power to request "entire case files based on submitted reports or any other information the Oversight Advisory Committee desires relating to criminal matters and the interests of the state on a case-by-case basis." *Id.* § 56.9(b)–(c). Noncompliance with the Rules is considered "official misconduct" under Section 87.011 of the Local Government Code and permits the Attorney General to file a petition for quo warranto to remove a county or district attorney from office. *Id.* § 56.8(1)–(2). The Attorney General adopted the Rules in March 2025, and they took effect April 2, 2025.

Before the first reporting due date, district and county attorneys from Travis, El Paso, Dallas, Bexar, Harris, Fort Bend, and Williamson counties (Appellees) filed suit seeking declaratory and injunctive relief prohibiting enforcement of the Rules.[1] Appellees challenge the validity of the Rules, arguing that the Attorney General

[1] Three groups of district and county attorneys filed suit separately. The cases were consolidated in the trial court.

lacked rulemaking authority to promulgate the Rules under Section 41.006 of the Texas Government Code. Appellees also claim that even if the Attorney General had rulemaking authority, the Rules exceed the scope of Section 41.006, that the Rules were not adopted in substantial compliance with the Administrative Procedure Act (APA), that the Rules are unconstitutional because they violate separation of powers, and that Attorney General Paxton committed *ultra vires* acts by enacting the Rules. The Appellees also applied for a temporary injunction.

At the temporary injunction hearing, Appellees presented two live witnesses and offered twenty-three exhibits without objection by the Attorney General. The Attorney General did not present any evidence at the hearing. After the hearing, the trial court granted the temporary injunction. This interlocutory appeal followed.[2]

STANDARD OF REVIEW AND APPLICABLE LAW

The purpose of a temporary injunction is to preserve the status quo pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). To obtain a temporary injunction, an applicant must plead and prove three elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Id.*

We review a trial court's order granting a temporary injunction for an abuse of discretion. *Abbott v. Anti-Defamation League, Austin, Sw., and Texoma Regions*, 610 S.W.3d 911, 916 (Tex. 2020). In resolving evidentiary issues, a trial court does not abuse its discretion if some evidence reasonably supports the court's ruling. *Id.* (citing *Henry v. Cox*, 520 S.W.3d 28, 34 (Tex. 2017)). The court has no discretion, however, to "incorrectly analyze or apply the law." *Id.* at 916–17 (citing *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992)).

[2] This Court temporarily stayed the reporting requirements pending resolution of this appeal.

DISCUSSION

On appeal, the Attorney General argues (1) Appellees lack a probable right to relief on any of their claims; (2) Appellees suffer no probable, imminent, and irreparable injury in the interim; and (3) the temporary injunction order is overbroad because it extends to nonparties. We address each argument in turn.

A. Appellees established a probable right to relief because Section 41.006 does not grant the Attorney General rulemaking authority.

Appellees established a probable right to relief on their claim that the Rules are invalid because the Attorney General lacked rulemaking authority under Section 41.006. The Attorney General argues Section 41.006 expressly grants rulemaking authority, and even if not express, it impliedly grants the Attorney General rulemaking authority. We disagree. Based on the plain language of Section 41.006, the Legislature did not expressly grant rulemaking authority to the Attorney General, nor can rulemaking power be implied where no such authority is expressly granted.

Administrative agencies are creatures of the Legislature and therefore do not have any inherent authority. *PUC of Tex. v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001). Thus, "[t]he basic rule is that a state administrative agency has only those powers that the Legislature expressly confers upon it." *Id.* at 315. Administrative rulemaking is a lawmaking power that the Legislature delegates to agencies to carry out legislative purposes, so long as the Legislature establishes reasonable standards to guide the agency. *R.R. Comm'n of Tex. v. Lone Star Gas Co.*, 844 S.W.2d 679, 689 (Tex. 1992). An agency "can adopt only such rules as are authorized by and consistent with its statutory authority." *Id.* at 685. Although the Attorney General is a constitutionally created officer, TEX. CONST. art. 4, § 1, the Office of the Attorney General is part of the executive branch and therefore has rulemaking authority only if the Legislature grants it such authority.

The existence of an agency's rulemaking power cannot be conferred by implication. To be certain, an agency may have "implied powers that are reasonably necessary to carry out [its] *express* responsibilities." *PUC of Tex.*, 53 S.W.3d at 315 (emphasis added). "[W]hen the Legislature expressly confers a power on an agency, it also impliedly intends that the agency have whatever powers reasonably necessary to fulfill its *express* functions or duties." *Id.* at 316 (emphasis added). In every case in which courts have implied rulemaking power, the Legislature had already granted the agencies express rulemaking power. *See, e.g.*, *Lone Star Gas Co.*, 844 S.W.2d at 685 (Railroad Commission had general rulemaking authority under Section 81.052 of the Texas Natural Resources Code to regulate persons within the oil and gas industry and their operations); *PUC of Tex.*, 53 S.W.3d at 312 (under Section 35.002 of Texas Utility Code, PUC has authority to "adopt rules relating to wholesale transmission service, rates, and access"); *Pruett v. Harris Cnty. Bail Bond Bd.*, 249 S.W.3d 447, 452 (Tex. 2008) (bail bond board had authority to adopt rules necessary to implement Bail Bond Act and broad power to "regulate each phase of the bonding business"). Accordingly, whether an agency has implied rulemaking power is analyzed only when deciding whether an agency exceeded the *scope* of its express rulemaking power, not whether the agency has rulemaking power to begin with. "An agency may not . . . exercise what is effectively a new power, or a power contradictory to the statute, on the theory that such a power is expedient for administrative purposes." *PUC of Tex.*, 53 S.W.3d at 316 (citing *PUC of Tex. v. GTE-Southwest, Inc.*, 901 S.W.2d 401, 407 (Tex. 1995)).

Unlike other agencies, such as the Public Utility Commission or the Railroad Commission, the Legislature did not pass enabling legislation that grants the Office of the Attorney General broad rulemaking power. *Cf.* Tex. Util. Code § 14.002 ("The [Public Utility] commission shall adopt and enforce rules reasonably required

in the exercise of its powers and jurisdiction."); Tex. Nat. Res. Code § 81.052 ("The [Railroad] commission may adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the commission . . . ."). The Legislature has, however, expressly granted rulemaking authority to the Attorney General in numerous other statutes, as illustrated below, to adopt rules in specific contexts. In each example, the Legislature expressly provided that the Attorney General may "adopt," "prescribe," or "establish" "rules." No similar language is used in Section 41.006.

Texas Government Code § 41.006	**Examples of Express Grant of Rulemaking Authority to the Attorney General[3]**
At the times and in the form that the attorney general directs, the district and county attorneys shall report to the attorney general the information from their districts and counties that the attorney general desires relating to criminal matters and the interests of the state.	The Attorney General "**may adopt rules** as necessary to implement and administer" this section relating to the provision of legal services. Tex. Gov't Code § 402.0212(f) (emphasis added)
	"The attorney general **may adopt rules** to administer the submission and collection of information under this section." *Id.* § 402.035(f-3) (relating to

[3] The statutes cited in the chart are just a sample. There are many other statutes in which the Legislature granted the Attorney General express rulemaking authority. *See* Tex. Gov't Code § 420.011(a) ("The attorney general may adopt rules . . . ."); *id.* § 420.108 ("The attorney general may adopt rules . . . ."); *id.* § 552.262(a) ("The attorney general shall adopt rules for use by each governmental body . . . ."); *id.* § 552.3031(c) ("The attorney general may adopt rules necessary to implement this section . . . ."); *id.* § 1202.004(e) ("The attorney general may adopt rules . . . ."); *id.* § 2107.002(c) ("the attorney general by rule may establish collection procedures for the agency"); Tex. Code Crim. Proc. art. 56B.460(f) ("The attorney general shall adopt rules . . . ."); *id.* art. 56A.309 ("The attorney general and the department shall each adopt rules as necessary to implement this subchapter."); *id.* art. 58.052(e) ("The attorney general shall adopt rules to administer the program."); *id.* art. 2A.205(e) ("the attorney general shall adopt rules to administer this article"); Tex. Bus. & Com. Code § 102.101(b) ("The attorney general by rule shall prescribe . . . ."); *id.* § 114.0002 ("The attorney general by rule shall . . . ."); *id.* § 303.004 ("The attorney general may adopt rules . . . ."); *id.* § 17.464(d) ("the attorney general may adopt rules"); Tex. Transp. Code § 371.051(g) ("The attorney general by rule shall . . . ."); Tex. Ins. Code § 848.151 ("the attorney general may adopt reasonable rules").

	collecting information on human trafficking) (emphasis added)
	"The attorney general **by rule shall prescribe** the design and content of a sign required to be posted under this section." *Id.* § 402.0351(b) (relating to posting sign containing information on services for human trafficking) (emphasis added)
	"The attorney general **by rule shall establish**" guidelines and reporting for the Support Adoption account in accordance with this section. *Id.* § 402.036(e) (emphasis added)

Because the Legislature has expressly granted rulemaking authority to the Attorney General in numerous other statutes and clearly knows how to expressly grant rulemaking authority when it intends to do so, we cannot conclude Section 41.006 grants express rulemaking authority here. *See Laidlaw Waste Sys. (Dallas), Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995) ("When the Legislature employs a term in one section of a statute and excludes it in another section, the term should not be implied where excluded."); *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981) ("[W]e believe every word excluded from a statute must [] be presumed to have been excluded for a purpose").

Although the Attorney General has not cited, nor have we located, any case holding that the term "directs" grants express rulemaking authority, the Attorney General nevertheless argues the term expressly grants rulemaking power, citing

various dictionary definitions.[4] Appellees provide their own definitions of "direct" to demonstrate the term does not always mean some type of authority.[5] Appellees further argue "direct" is not a replacement for terms like "adopt" or "rules" that the Legislature routinely uses when it expressly grants rulemaking authority.

We agree with Appellees that "direct" does not confer express *rulemaking* authority here. To be clear, whether the term "direct" gives the Attorney General the authority to request and receive the information that he "desires" relating to criminal matters from local prosecutors is not the question before us; certainly the word "direct" provides some type of authority, even if not rulemaking authority. What is before us is whether Section 41.006 clearly and unmistakably delegates express *rulemaking* authority, and we conclude it does not—especially in light of the language used in countless other statutes in which the Legislature did expressly grant rulemaking authority to the Attorney General.

Because Section 41.006 does not grant express rulemaking authority, no such authority can be implied. The Attorney General primarily relies on *Pruett* to argue rulemaking authority should be implied here. *Pruett* is inapplicable because that case decided "the *scope* of the [Bail Bond] Board's rule-making authority." *Pruett*, 249 S.W.3d at 452 (emphasis added). There was no dispute the Board had express rulemaking powers; the question was whether the solicitation rules it adopted fell

---

[4] *See Direct*, WEBSTER'S NEW INTERNATIONAL DICTIONARY (3d ed. 1961) ("direct" means "to prescribe, especially by formal or mandatory instruction or legal enactment," "to regulate the activities or course of," or "to guide and supervise"); *see also Direct*, BLACK'S LAW DICTIONARY (5th ed. 1979) (defining "direct" as "to guide; order; command; instruct"); *Direct*, RANDOM HOUSE COLLEGE DICTIONARY (rev. ed. 1988) (defining "direct" as "to regulate the course of" or "to administer, manage, supervise").

[5] *Main St. Legal Servs., Inc. v. Nat'l Sec. Council*, 811 F.3d 542, 556 (2d Cir. 2016) ("'Direct' can mean 'to manage or guide by advice, helpful information, instruction, etc.'") (quoting RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY 558 (2d ed. 2001)); *Direct*, MERRIAM-WEBSTER.COM DICTIONARY ("to show or point out the way for").

within the scope of that express authority. *Id.* Because the Board had authority to "supervise and regulate each phase of the bonding business," the Texas Supreme Court concluded the Board had implied authority to promulgate the solicitation rules even though the Bail Bond Act at the time did not expressly address restrictions on solicitation practices. *Id.* at 453. The Texas Supreme Court explained "[b]y conferring upon an agency the power to make rules and regulations necessary to carry out the purposes of an act, the Legislature forecloses the argument that it intended to spell out the details of regulating an industry." *Id.* (citation modified).

The Legislature did not grant the Attorney General broad authority to promulgate rules, nor did it expressly grant rulemaking power in Section 41.006 and, therefore, none can be implied. Accordingly, we conclude Appellees established a probable right to relief on their claim that the Rules are invalid because the Attorney General lacked rulemaking authority.[6]

B. Appellees established a probable, imminent, and irreparable injury in the interim.

The last element an applicant is required to plead and prove to obtain a temporary injunction is that the applicant will suffer "a probable, imminent, and irreparable injury in the interim." *Butnaru*, 84 S.W.3d at 204. "An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard." *Id.*

There is ample evidence supporting the trial court's findings of probable, imminent, and irreparable harm to Appellees in the interim. The due dates for the

[6] Because we conclude the Attorney General did not have rulemaking authority, we need not address whether Appellees established a probable right to recovery on their other claims. *See* Tex. R. App. P. 47.1.

initial and first quarterly report were imminent when Appellees requested relief. Testimony and declarations show a significant amount of staff and attorney time are required to prepare the reports as required under the Rules. For example, the Rules require an initial report containing information of a "reporting event" that has occurred since January 1, 2021. *See* 1 Tex. Admin. Code § 56.3(b). According to testimony Appellees presented to the trial court, preparing this report is a burdensome process, and it is challenging to determine if a case falls under certain categories given how the Rules define terms like "indictment" and "violent crime." For the Travis County Attorney's Office alone, over 10,000 cases are implicated involving at least 130 terabytes of data. The Travis County Assistant Attorney testified attorneys and staff have already spent hundreds of hours preparing the reports. As another example, El Paso County estimates it will take 12,000 hours to comply. Testimony and declarations from the Appellees explain that these efforts to comply with the Rules divert time and resources away from prosecuting crimes.

In addition, Appellees presented evidence that the Rules would require providing privileged and confidential information. For certain types of cases, the Rules require production of "case files." 1 Tex. Admin. Code §§ 56.2(1), 56.3(a)(4)–(7). Case files contain confidential and privileged information protected from disclosure such as privileged communications, attorney work product, grand jury material, victim and witness identities, medical records, and photos depicting sexual assault of minors. Such information is protected from unauthorized disclosure under other state and federal laws that contain both civil and criminal penalties.[7]

[7] The Attorney General challenges this finding by arguing Appellees failed to identify which confidentiality laws they would violate if they complied with the Rules. But the record shows the Appellees referenced a nonexhaustive list including: the identity of confidential informants protected under Tex. R. Evid. 508; grand jury information protected under Tex. Code Crim. Proc. art. 20A.201–.205; information collected in connection with pre- and/or post-sentence reports protected under Tex. Code Crim. Proc. art. 42A.251–.259; mental health records and information protected under Tex. R. Evid. 510, Tex. Health & Safety Code §§ 611.001–.005; drug and alcohol

Therefore, the local prosecutors are left to evaluate the risk of noncompliance with these privacy laws, the risk of noncompliance with the Rules, and the threat of a quo warranto proceeding to remove them from office. *See* 1 Tex. Admin. Code § 56.8(2). Further, Appellees presented evidence that disclosure of highly sensitive data will discourage people from reporting, investigating, or participating in prosecution of crimes.

The Attorney General argues the balance of equities weighs more in his favor. *See In re State*, 711 S.W.3d 641, 645 (Tex. 2024) ("Another essential consideration attendant on any request for injunctive relief . . . is the injury that will befall either party depending on the court's decision."). Specifically, the Attorney General argues Appellees are acting *ultra vires* by not complying with the Rules and therefore there is automatic harm to the State. *See State v. City of San Marcos*, 714 S.W.3d 224, 245 (Tex. App.—15th Dist. 2025, pet. denied). The Attorney General also argues that Appellees could have asked for exceptions or extensions under the Rules to alleviate any burdens. *See* 1 Tex. Admin. Code §§ 56.3(b)(1), .5(a)(5), .9(d). These arguments assume, however, that the Rules were validly promulgated. As explained above, the Attorney General did not have rulemaking authority.

Because there is some evidence to support the trial court's findings, the trial court did not abuse its discretion in finding probable, imminent, and irreparable harm to Appellees in the interim.

C. The relief granted in the temporary injunction should be limited to the plaintiffs.

The Attorney General argues the temporary injunction is overbroad because

---

treatment records and information protected under 42 C.F.R. § 2.13 and 42 U.S.C.S. § 290dd-2; disclosure of diseases or health conditions protected under Tex. Health & Safety Code §§ 81.046, 81.103; medical records and information protected under the Texas Medical Privacy Act, the Texas Emergency Medical Services Act, and the Health Insurance Portability and Accountability Act ("HIPAA").

it enjoins enforcement of the Rules against anyone subject to them, including nonparties. We agree. In our order granting Appellees' motion for temporary relief to reinstate the temporary injunction, we limited the relief to only the named Appellees. *See* Order at 4 n.1, *Paxton v. Garza*, No. 15–25–00116-CV (Tex. App.—15th Dist., July 17, 2025). Our order relied on *In re Abbott*, which concluded the plain text of Texas Rule of Appellate Procedure 29.3 only allows a court of appeals to issue a temporary stay to "preserve *the parties'* rights" and, therefore, a temporary stay could not reinstate a temporary injunction enjoining enforcement of a rule on a statewide basis. 645 S.W.3d 276, 282–83 (Tex. 2022). Although *In re Abbott* did not decide the scope of a district court's power to temporarily enjoin an administrative rule, *see id.*, the same principles the Texas Supreme Court applied to Rule 29.3 apply to temporary injunctions. *See In re State*, 711 S.W.3d at 645 ("[a] stay pending appeal is, of course, a kind of injunction").

Temporary injunctions are just that—temporary. The purpose of the temporary injunction is to preserve the "status quo" pending a trial on the merits. *Butnaru*, 84 S.W.3d at 204. The temporary nature of the injunction justifies finding only a probable right to relief, rather than deciding if there is a right to relief for a permanent injunction. And, the party seeking a temporary injunction has to show that imminent, probable, and irreparable harm will occur between the time of the order and trial if not granted. Because there is no proof of a probable, imminent, and irreparable injury in the interim to nonparties, the temporary injunction cannot extend beyond the parties to the case.

Accordingly, we reverse the trial court's temporary injunction order to the extent it enjoins the Attorney General from enforcing the Rules against nonparties.

CONCLUSION

We affirm the trial court's order granting the temporary injunction as to the named parties, because (1) the Attorney General lacked rulemaking authority to promulgate the Rules and (2) the trial court did not abuse its discretion in finding an imminent, probable, irreparable injury in the interim. We reverse the temporary injunction to the extent it applies to nonparties. We remand for further proceedings consistent with this opinion.

/s/Scott K. Field
Scott K. Field
Justice

Panel consists of Chief Justice Brister and Justices Field and Farris.

Tab B:
Court of Appeals' Concurring Opinion

Concurring Opinion filed December 30, 2025.

In The

Fifteenth Court of Appeals

NO. 15-25-00116-CV

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF TEXAS, AND THE OFFICE OF THE ATTORNEY GENERAL FOR THE STATE OF TEXAS, Appellants

V.

DELIA GARZA, IN HER OFFICIAL CAPACITY AS TRAVIS COUNTY ATTORNEY; JOSÉ P. GARZA, IN HIS OFFICIAL CAPACITY AS TRAVIS COUNTY DISTRICT ATTORNEY; TRAVIS COUNTY; JAMES MONTOYA, IN HIS OFFICIAL CAPACITY AS EL PASO COUNTY DISTRICT ATTORNEY; CHRISTINA SANCHEZ IN HER OFFICIAL CAPACITY AS EL PASO COUNTY ATTORNEY; EL PASO COUNTY; JOHN CREUZOT, IN HIS OFFICIAL CAPACITY AS DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY; DALLAS COUNTY; JOE GONZALES, IN HIS OFFICIAL CAPACITY AS BEXAR COUNTY CRIMINAL DISTRICT ATTORNEY; BEXAR COUNTY; SEAN TEARE IN HIS OFFICIAL CAPACITY AS HARRIS COUNTY DISTRICT ATTORNEY; HARRIS COUNTY; BRIAN MIDDLETON, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF FORT BEND COUNTY (268TH JUDICIAL DISTRICT); AND SHAWN W. DICK, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF WILLIAMSON COUNTY, TEXAS (26TH JUDICIAL DISTRICT), Appellees

On Appeal from the 459th District Court
Travis County, Texas
Trial Court Cause No. D-1-GN-25-003445

CONCURRING OPINION

I join the Court's opinion and judgment. I agree that the absence in Government Code § 41.006 of any express rule-making authority for the attorney general—coupled with dozens of statutes where the Legislature has explicitly granted such authority in other contexts[1]—makes it highly unlikely that the Legislature intended to grant that authority here. Against this backdrop of explicit grants, "[t]he best inference from the Legislature's silence is that the law-making branch has not authorized" it in this case, not that it "has impliedly authorized such controversial [authority] without saying so."[2]

The Attorney General replies that all these other rule-making statutes "were enacted during the last thirty-five years," while the earliest precursor of § 41.006 "was first enacted in 1879." But if that were the whole story, it is odd that no attorney general for almost 150 years ever thought to adopt rules like those before us, despite regularly adopting hundreds of rules in dozens of other contexts over several decades.

But I would add that the text of § 41.006, while it likely authorizes the attorney general to request some of the information at issue on an *individual basis*, does not authorize the same by statewide rules. The text of § 41.006 requires prosecutors to

---

[1] In addition to the 16 statutes the Court lists that expressly grant rule-making power to the attorney general, there are likely many others. *See, e.g.*, TEX. GOV'T CODE § 402.036(e)(1) (rules regarding support adoption accounts); TEX. CODE CRIM. PROC. art. 56B.004 (rules for administration of crime victims' compensation); *id*. art. 56B.057(d) (rules to prevent unjust enrichment of same); *id*. art. 56C.002 (rules for compensation for criminal property damage); TEX. EDUC. CODE § 51.010 (rules for collection of delinquent obligations).

[2] *Pecos Cnty. Appraisal Dist. v. Iraan-Sheffield ISD*, 672 S.W.3d 401, 412 (Tex. 2023).

report information "that the attorney general *desires*" and "at the times and in the form that the attorney general directs." "Desire" in this context generally means "to express a wish for: request."[3] That would contemplate specific requests to specific prosecutors regarding specific criminal matters. This text does not easily encompass the general, permanent, mandatory, across-the-board reports that the proposed rules require, unless we assume all attorneys general always "desire" such information "at the times" the rules perpetually require.

Finally, two other statutes enacted in 2023 seem to repudiate the Attorney General's interpretation of § 41.006. First, the Legislature addressed the problem of finding out what prosecutors are actually doing by adopting article 2A.213 of the Code of Criminal Procedure as part of a general revision.[4] Article 2A.213 provides that "*[o]n written request by the attorney general*," court clerks and prosecuting attorneys must provide "information in court records that relates to *a criminal matter*, including information requested for purposes of federal habeas review."[5] This plainly requires a specific "written request" for information related to "a criminal matter"; if we construe § 41.006 to dispense with that requirement, we would create a conflict between the two statutes rather than harmonize them. And if the two statutes "are irreconcilable, the statute latest in date of enactment prevails."[6] That weighs against finding broad rule-making power hidden within a statute almost 150 years old.

---

[3] *See Desire*, MERRIAM-WEBSTER COLLEGIATE DICTIONARY 338 (12th ed. 2025); RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 987 (unabridged ed. 1966) ("to express a wish to obtain; ask for; request").

[4] *See* Act of June 12, 2023, 88th Leg., R.S., ch. 765, § 1.001, 2023 TEX. GEN. LAWS 1837, 1860 (codified as TEX. CODE CRIM. PROC. art. 2A.213).

[5] TEX. CODE CRIM. PROC. art. 2A.213.

[6] *City of Dallas v. Emps.' Ret. Fund of City of Dallas*, 687 S.W.3d 55, 61 (Tex. 2024).

In the second statute, the Legislature addressed what to do about recalcitrant prosecutors. Again in 2023, the Legislature amended § 87.011 of the Local Government Code to provide for removal of prosecutors for "official misconduct," which the amendment redefined to include:

- "adoption or enforcement of a policy of refusing to prosecute a class or type of criminal offense under state law";
- "instructing law enforcement to refuse to arrest individuals suspected of committing a class or type of offense under state law"; or
- "permitting an attorney who is employed by or otherwise under the direction or control of the prosecuting attorney" to do the same.[7]

Yet the Legislature did not authorize the attorney general to remedy these problems by rules; it authorized local residents to file a petition to remove a local prosecutor in court.[8] Section 87.011 does not even mention the attorney general, or delegate any role for that office in such suits. The Legislature having recently provided a different remedy than agency rule-making, we cannot interpret § 41.006 to supplant it.

I would take note that these recent actions by the Legislature and the Attorney General reflect that both the legislative and executive officials of state government obviously perceive a real problem: the refusal by some prosecutors to enforce criminal laws *despite* their oaths to "faithfully execute" the duties of office and "preserve, protect, and defend the Constitution and laws of the United States and of this State."[9] "[O]ur place in a government of separated powers requires us to

---

[7] *See* Act of June 7, 2023, 88th Leg., R.S., ch. 366, § 1, 2023 TEX. GEN. LAWS 800, 800 (codified as TEX. LOC. GOV'T CODE § 87.011(3)).

[8] *See id*. §§ 3–5, 2023 TEX. GEN. LAWS at 800–01 (codified as TEX. LOC. GOV'T CODE §§ 87.015.–.0151, 87.018).

[9] TEX. CONST. art. XVI, § 1.

consider also the priorities of the other branches of Texas government."[10] Local citizens may not even know if or when this is occurring without avenues for obtaining the information or doing something about it.

There has long been room in our customs and laws for prosecutorial discretion and for allocating resources among criminal cases.[11] But a prosecutor's legal duties extend to the letter of the law as well as its spirit. Prosecutors cannot expect their discretionary decisions to be respected unless they extend the same respect to the discretionary decisions by those whose duty it is to write the laws.[12]

/s/ Scott A. Brister
Scott A. Brister
Chief Justice

Before Chief Justice Brister and Justices Field and Farris.

---

10 *In re McAllen Med. Ctr., Inc*., 275 S.W.3d 458, 461 (Tex. 2008).

11 *See Discretion*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("**prosecutorial discretion**. A prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court.").

12 *See, e.g.*, *Tex. Dep't of Fam. & Protective Servs. v. Grassroots Leadership, Inc*., 717 S.W.3d 854, 863 (Tex. 2025) ("But beyond that, we can hardly expect the other branches and the public to respect constitutional boundaries if the courts are anything less than punctilious in doing so, particularly if we are perceived as aggrandizing our own power.").

Tab C:
Court of Appeals' Judgment

December 30, 2025

JUDGMENT

The Fifteenth Court of Appeals

NO. 15-25-00116-CV

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF TEXAS AND THE OFFICE OF THE ATTORNEY GENERAL FOR THE STATE OF TEXAS, Appellants

V.

DELIA GARZA, IN HER OFFICIAL CAPACITY AS TRAVIS COUNTY ATTORNEY; JOSÉ P. GARZA, IN HIS OFFICIAL CAPACITY AS TRAVIS COUNTY DISTRICT ATTORNEY; TRAVIS COUNTY; JAMES MONTOYA, IN HIS OFFICIAL CAPACITY AS EL PASO COUNTY DISTRICT ATTORNEY; CHRISTINA SANCHEZ, IN HER OFFICIAL CAPACITY AS EL PASO COUNTY ATTORNEY; EL PASO COUNTY; JOHN CREUZOT, IN HIS OFFICIAL CAPACITY AS DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY; DALLAS COUNTY; JOE GONZALES, IN HIS OFFICIAL CAPACITY AS BEXAR COUNTY CRIMINAL DISTRICT ATTORNEY; BEXAR COUNTY; SEAN TEARE, IN HIS OFFICIAL CAPACITY AS HARRIS COUNTY DISTRICT ATTORNEY; HARRIS COUNTY; BRIAN MIDDLETON, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF FORT BEND COUNTY (268TH JUDICIAL DISTRICT); AND SHAWN W. DICK, IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF WILLIAMSON COUNTY, TEXAS (26TH JUDICIAL DISTRICT), Appellees

---

This cause, an appeal from the temporary injunction order in favor of Appellees, was heard on the appellate record. We have inspected the record and find the trial court erred to the extent the temporary injunction applies to nonparties. We find no error in the remainder of the order. We therefore order the order of the court below **AFFIRMED IN PART** and **REVERSED IN PART** and **REMAND** for further proceedings consistent with the opinion.

We further order that each party pay its costs by reason of this appeal.

We further order this decision certified below for observance.

Judgment Rendered December 30, 2025.

Panel consists of Chief Justice Brister and Justices Field and Farris.
Opinion delivered by Justice Field.
Concurring Opinion by Chief Justice Brister.

Tab D:
Trial Court's Order Granting Temporary Injunction

CAUSE NO. D-1-GN-25-003445

DELIA GARZA, in her official capacity as Travis County Attorney; JOSÉ P. GARZA, in his official capacity as Travis County District Attorney; TRAVIS COUNTY; JAMES MONTOYA, in his official capacity as El Paso County District Attorney; CHRISTINA SANCHEZ, in her official capacity as El Paso County Attorney; and EL PASO COUNTY, and JOHN CREUZOT, in his official capacity as Dallas County Criminal District Attorney; DALLAS COUNTY; JOE GONZALES, in his official capacity as Bexar County Criminal District Attorney; BEXAR COUNTY; SEAN TEARE, in his official capacity as Harris County District Attorney; and HARRIS COUNTY, and BRIAN M. MIDDLETON, in his official capacity as District Attorney of Fort Bend County, Texas (268th Judicial District) and SHAWN W. DICK, in his official capacity as District Attorney of Williamson County, Texas (26th Judicial District), *Plaintiffs*, v. KEN PAXTON, in his official capacity as Attorney General for the State of Texas, and the OFFICE OF THE ATTORNEY GENERAL for the State of Texas, *Defendants.*	§	CAUSE NOS. D-1-GN-25-003445 D-1-GN-25-003531 D-1-GN-25-003581 IN THE DISTRICT COURT 459th JUDICIAL DISTRICT TRAVIS COUNTY, TEXAS

DISTRICT COURT OF TRAVIS COUNTY TEXAS

ORDER GRANTING PLAINTIFFS' APPLICATIONS FOR TEMPORARY INJUNCTION

On June 16, 2025, the Court considered Plaintiffs' applications for a temporary injunction in the above-captioned consolidated cases filed against the Office of the Attorney General of Texas ("OAG") and Warren Kenneth Paxton, Jr., in his official capacity as the Attorney General of Texas ("Attorney General Paxton" or "Attorney General") (collectively, "Defendants"). Plaintiffs are district and county attorneys Travis County Attorney Delia Garza, Travis County District Attorney José P. Garza, El Paso County District Attorney James Montoya, El Paso County Attorney Christina Sanchez, Dallas County Criminal District Attorney John Creuzot, Bexar County Criminal District Attorney Joe Gonzales, Harris County District Attorney Sean Teare; 268th Judicial District Attorney Brian M. Middleton, and 26th Judicial District Attorney Shawn W. Dick (collectively, "Prosecutor Plaintiffs"), and Travis County, El Paso County, Dallas County, Bexar County, and Harris County (collectively "County Plaintiffs") (together, "Plaintiffs").

Plaintiffs challenge Defendants' adoption of a new Chapter 56 in Title 1 of the Texas Administrative Code (the "Challenged Rules"). Based on the facts and law set forth in Plaintiffs' applications, the supporting declarations, and briefs submitted by the Parties, as well as the testimony and other evidence and arguments of counsel presented at the June 16, 2025, hearing on Plaintiffs' applications, this Court finds sufficient cause to enter a Temporary Injunction. Plaintiffs state a valid cause of action against each Defendant; they have a probable right to the declaratory and permanent injunctive relief they seek; and they will suffer probable, imminent, and irreparable injury absent a temporary injunction.

Plaintiffs are likely to prevail after a trial on the merits of their claims that: (1) Texas Government Code Section 41.006 does not confer any administrative rulemaking authority on the OAG and the Challenged Rules are therefore invalid and Defendants' promulgation and

enforcement is an ultra vires act; (2) even if the statute confers rulemaking authority, the Challenged Rules impermissibly impose burdens and conditions not authorized by the statute; (3) the Challenged Rules are not in substantial compliance with the reasoned justification requirement of Section 2001.033 of the Administrative Procedure Act; and (4) the Challenged Rules violate the Separation of Powers Clause of the Constitution because they permit the Executive Branch (the OAG) to interfere with Judicial Branch officers' performance of their prosecutorial duties.

The Court further finds that Plaintiffs will suffer imminent and irreparable harm if they are forced to comply with the Challenged Rules because, among other reasons:

1. They will need to expend a significant amount of resources, personnel time, and taxpayer funds to provide the first quarterly report and initial report due on June 30, 2025, and July 1, 2025, respectively, and subsequent quarterly and annual reports. Compliance with the Challenged Rules has already diverted and will continue to divert resources and personnel time from performing necessary tasks related to the investigation and prosecution of criminal activity.

2. The Challenged Rules require disclosure of case files, explicitly including confidential work product and privileged communications, as well as documents containing, without limitation, private personal information about law enforcement officers, crime victims, arrestees, criminal defendants, and witnesses; protected information such as grand jury testimony and materials, medical information, mental health information, and information concerning substance abuse disorders and treatments; sexually explicit images of both adults and children; and law enforcement investigation materials.

3. Plaintiffs will be forced to disclose confidential information about previous and ongoing criminal prosecutions and law enforcement investigations, including records and information that are specifically protected from unauthorized disclosure by Plaintiffs under other state and/or federal laws that contain both civil and criminal penalties.

4. Plaintiffs will be forced to disclose the private and confidential information provided to the district and county attorneys in connection with the performance of their prosecutorial duties and such disclosure of confidential and private information containing highly sensitive and personal matters to Defendants will discourage people from reporting crimes, investigating crimes, and/or participating in the prosecution of crimes, thereby decreasing the Plaintiffs' ability to perform their constitutionally assigned duties and protect their communities from criminal activity.

This Court further finds that the Challenged Rules changed the *status quo* by requiring Plaintiffs to prepare and produce reports they have never been required to prepare.

Plaintiffs are not seeking and would not be entitled to receive damages or an adequate remedy at law.

The Temporary Injunction being entered by the Court today maintains the status quo prior to March 28, 2025, the date the Challenges Rules were adopted, and should remain in effect until the conclusion of this litigation, including on appeal.

IT IS THEREFORE ORDERED that, until all issues in this lawsuit are finally and fully determined, Defendants are immediately enjoined and restrained from enforcing the Challenged Rules, adopted on March 28, 2025. This Temporary Injunction restrains the following actions by the Defendants: (1) further implementing the Challenged Rules; (2) enforcing the Challenged Rules; (3) taking any actions for alleged non-compliance with the Challenged Rules; (4) assisting or encouraging other persons to take any action, administrative or otherwise, based upon an alleged non-compliance with the Challenged Rules; (5) investigating for alleged non-compliance with the Challenged Rules; (6) declaring non-compliance with the Challenged Rules and/or taking any actions due to alleged non-compliance, as set forth in Section 56.8 of the Challenged Rules; (7) implementing or enforcing any of the Office of Attorney General's policies and internal operating procedures to the extent that they have been updated in response to the adoption of the Challenged Rules; and (8) imposing reporting requirements in any way related to the Challenged Rules.

It is further ORDERED that Defendants shall publish a copy of this Court's order on the OAG's website before June 30, 2025.

It is further ORDERED that a trial on the merits of this case is to begin on December 8, 2025 at 9:00 am.

It is finally ORDERED that this Temporary Injunction Order is effective under the law, and a cash bond in the amount of $10.00 shall be required of the Plaintiffs.

SIGNED on this 20th day of June 2025.

JUDGE PRESIDING

I, VELVA L. PRICE, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office
On 07/07/2025 10:23:12

VELVA L. PRICE
DISTRICT CLERK
By Deputy: SH

Tab E:
Tex. Gov't Code § 41.006

V.T.C.A., Government Code § 41.006

§ 41.006. Report to Attorney General

Currentness

At the times and in the form that the attorney general directs, the district and county attorneys shall report to the attorney general the information from their districts and counties that the attorney general desires relating to criminal matters and the interests of the state.

Credits

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

V. T. C. A., Government Code § 41.006, TX GOVT § 41.006
Current through the end of the 2025 Regular and Second Called Sessions of the 89th Legislature.

End of Document

Tab F:
1 Tex. Admin Code §§ 56.1-56.10

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 56. DISTRICT AND COUNTY ATTORNEY REPORTING REQUIREMENTS

1 TAC §§56.1 - 56.10

The Office of the Attorney General (OAG) adopts new chapter 56 in Title 1 of the Texas Administrative Code (TAC), relating to reporting requirements for district attorneys and county attorneys presiding in a district or county with a population of 400,000 or more persons. Adopted new chapter 56 consists of §§56.1 - 56.10. New chapter 56 is necessary to implement Government Code §41.006 and is in the public's interest. These new rules are adopted with changes to the proposed text as published in the September 13, 2024, issue of the *Texas Register* (49 TexReg 7139). The new rules will be republished. The changes are in response to public comments.

EXPLANATION OF AND JUSTIFICATION RULES

Texas Government Code §41.006 states that "[a]t the times and in the form that the attorney general directs, the district and county attorneys shall report to the attorney general the information from their districts and counties that the attorney general desires relating to criminal matters and the interests of the state." Adopted new chapter 56 helps ensure that county and district attorneys are consistently complying with statutory duties, including seeking justice for citizens who have been harmed by a criminal act, appropriately administering funds, and appropriately prosecuting crimes. Whether a public official and office whose purpose is to fairly prosecute crimes and keep communities safe is enforcing criminal prosecution laws is a criminal matter and within the interest of the state.

Section 41.006 also states that the information must be submitted to the OAG at the times and in the form the OAG directs. New chapter 56 is necessary to implement §41.006. The adopted chapter prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices.

SECTION-BY-SECTION SUMMARY

Adopted new §56.1 specifies that district attorneys and county attorneys presiding in a district or county with a population of 400,000 or more are required to submit initial, quarterly, and annual reports relating to criminal matters and the interests of the state to the OAG in a manner prescribed by the OAG.

Adopted new §56.2(1) defines the term "case file" as all documents, notes, memoranda, and correspondence, in any format such as handwritten, typed, electronic, or otherwise, including drafts and final copies, that were produced within or received by the reporting entity's office, including work product and otherwise privileged and confidential matters. A "case file" does not include a reporting entity employee's correspondence that is purely personal in nature and has no connection with the transaction of official business.

Adopted new §56.2(2) defines the term "correspondence" as any email, letter, memorandum, instant message, text message, or direct message, received or issued by an employee of the reporting entity. "Correspondence" does not include a reporting entity employee's correspondence that is purely personal in nature and has no connection with the transaction of official business.

Adopted new §56.2(3) defines the term "electronic copies" as a digital version of a record that can be stored on a computer device.

Adopted new §56.2(4) defines the term "reporting year" as the period of September 1 through August 31.

Adopted new §56.2(5) defines the term "report" as all information submitted to the OAG by a reporting entity under this chapter.

Adopted new §56.2(6) defines the term "reporting entity" as the office of a District Attorney or County Attorney serving a population of 400,000 or more persons.

Adopted new §56.2(7) defines the term "violent crime" to include capital murder, murder, other felony homicides, aggravated assault, sexual assault of an adult, indecency with a child, sexual assault of a child, family violence assault, aggravated robbery, robbery, burglary, theft, automobile theft, riot, any crime listed in Code of Criminal Procedure §17.50(3), and any attempt to commit such crimes.

Adopted new §56.3(a) specifies the content of the reports that must be electronically submitted to the OAG on a quarterly basis each reporting year.

Adopted new §56.3(b) specifies that reporting entities must submit an initial report containing the contents of the reports described in adopted new §56.3(a) for reporting events that occurred between January 1, 2021, and the effective date of this rule. This section provides exceptions to the initial report requirement.

Adopted new §56.4 specifies the content of the reports that must be electronically submitted to the OAG on an annual basis.

Adopted new §56.5(a) sets forth the deadlines for reporting entities to electronically submit each type of report. Quarterly reports must be submitted within 30 days of the beginning of each new reporting quarter. Annual reports must be submitted at the end of each reporting year and not later than September 30. The initial reports must be submitted within 90 days of the effective date of this rule. Adopted new §56.5(a) also provides that the OAG's

Oversight Committee may grant exceptions to the deadlines on a case-by-case basis if the reporting entity can establish good cause for not meeting the reporting deadlines.

Adopted new §56.5(b) establishes that a reporting entity must submit all reports under this chapter electronically. Information on how to submit reports electronically will be found on the OAG's website.

Adopted new §56.6 establishes that reporting entities must implement document retention policies reasonably designed to preserve all documents which are, or may be, subject to the requirements in this chapter. The retention policies must preserve documents for at least two years after the dates when they are due to be reported.

Adopted new §56.7 establishes that if an entity fails to comply with this chapter, the OAG may send notice to the reporting entity identifying the reporting entity of its failure to comply. A reporting entity must remedy the identified reporting failure within 30 days after receipt of notice. Any reporting entity that fails to timely comply with this chapter's reporting requirements may be identified on the OAG's website as being out of compliance with both this chapter as well as Texas Government Code §41.006.

Adopted new §56.8 establishes that if a district attorney or county attorney violates adopted new chapter 56, without limitation, the Attorney General may (1) construe the violation to constitute "official misconduct" under Local Government Code §87.011; (2) file a petition for quo warranto under Civil Practice and Remedies Code 66.002; or (3) file a petition for an injunction in a civil proceeding ordering the District Attorney or County Attorney to comply.

Adopted new §56.9 specifies the makeup and responsibilities of the Oversight Advisory Committee as it relates to adopted new chapter 56. The Oversight Advisory Committee is an internal OAG committee composed of OAG employees who will review, collect, and advise on the reports submitted under new adopted chapter 56. Adopted new §56.9 also states that the Oversight Advisory Committee may request entire case files from reporting entities based on submitted reports or any other information that the Oversight Advisory Committee desires relating to criminal matters and the interests of the state on a case-by-case basis, as consistent with Texas Government Code §41.006.

Adopted new §56.10 specifies that all provisions of new adopted chapter 56 are severable.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Josh Reno, the Deputy Attorney General for Criminal Justice, has determined that for the first five-year period the adopted rules are in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of state government.

Mr. Reno has determined that there may be minimal costs to local governments for gathering and submitting quarterly and annual reports to OAG. Because the content of the reports will differ between reporting entities, the OAG cannot predict the cost amounts but expects the cost to be minimal and likely absorbed into reporting entities' ongoing operations with minimal, if any, fiscal impact.

According to Texas SmartBuy, the cooperative purchasing program provided by the Texas Comptroller of Public Accounts, scanners range from $50 to $10,000, and the price will depend on the scanner's quality, speed, and if it is a portable or self-loading model. However, it is likely that reporting entities already maintain a scanner in their respective offices. Because the reporting entities are required to submit the information electronically, there will be no postage or printing cost to do so.

The OAG acknowledges it will take some time for county employees to compile the required reporting data. However, the OAG estimates such time will be minimal as the reporting entity should maintain standard law enforcement record keeping practices. The OAG estimates individual employee compensation for an administrative assistant to be $21.29 an hour, and the OAG estimates one to ten hours of work to scan and electronically submit documents to the OAG. This wage is based on the national median hourly wage for each classification as reported in the May 2023 National Industry Specific Occupational Employment and Wage Estimates. Bureau of Labor Statistics, Occupational Employment Statistics, United States Dep't of Labor (August 8, 2024 2:38 p.m.), www.bls.gov/oes/current/oes436014.htm.

PUBLIC BENEFIT AND COST NOTE

Mr. Reno has determined that for the first five-year period the adopted rules are in effect, the public will benefit because the rule will help ensure that county and district attorneys are consistently complying with statutory duties, appropriately administering funds, appropriately prosecuting crimes, and seeking justice for citizens who have been harmed by a criminal act.

Mr. Reno has also determined that for each year of the first five-year period the adopted rules are in effect, there are minimal anticipated costs to the county and district attorneys that are required to comply with the adopted rules. The costs detailed below are the same costs detailed in the Public Benefit and Cost Note section of this adoption order.

Because the content of the reports will differ between reporting entities, the OAG cannot predict the cost amounts but expects the cost to be minimal and likely absorbed into reporting entities' ongoing operations with minimal, if any, fiscal impact.

According to Texas SmartBuy, the cooperative purchasing program provided by the Texas Comptroller of Public Accounts, scanners range from $50 to $10,000, and the price will depend on the scanner's quality, speed, and if it is a portable or self-loading model. However, it is likely that reporting entities already maintain a scanner in their respective offices. Because the reporting entities are required to submit the information electronically, there will be no postage or printing cost to do so.

The OAG acknowledges it will take some time for county employees to compile the required reporting data. However, the OAG estimates such time will be minimal as the reporting entity should maintain standard law enforcement record keeping practices. The OAG estimates individual employee compensation for an administrative assistant to be $21.29 an hour, and the OAG estimates one to ten hours of work to scan and electronically submit documents to the OAG. This wage is based on the national median hourly wage for each classification as reported in the May 2023 National Industry Specific Occupational Employment and Wage Estimates. Bureau of Labor Statistics, Occupational Employment Statistics, United States Dep't of Labor (August 8, 2024 2:38 p.m.), www.bls.gov/oes/current/oes436014.htm.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

Mr. Reno has determined that the adopted rules do not have an impact on local employment or economies because the adopted rules only impact governmental bodies. Therefore, no local em-

ployment or economy impact statement is required under Texas Government Code §2001.022.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

Mr. Reno has determined that for each year of the first five-year period the adopted rules are in effect, there will be no foreseeable adverse fiscal impact on small business, micro-businesses, or rural communities as a result of the adopted rules.

Since the adopted rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

TAKINGS IMPACT ASSESSMENT

The OAG has determined that no private real property interests are affected by the adopted rules, and the adopted rules do not restrict, limit, or impose a burden on an owner's rights to the owner's private real property that would otherwise exist in the absence of government action. As a result, the adopted rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code §2001.0221, the agency has prepared a government growth impact statement. During the first five years the adopted rules are in effect, the adopted rules:

- will not create a government program;

- will not require the creation or elimination of employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not lead to an increase or decrease in fees paid to a state agency;

- will create a new regulation;

- will not repeal an existing regulation;

- will not result in a decrease in the number of individuals subject to the rule; and

- will not positively or adversely affect the state's economy.

PUBLIC COMMENTS

The OAG held a public hearing on November 18, 2024, and received verbal and written comments on the proposed rule from several county attorneys, district attorneys, organizations and individuals.

Comments regarding the OAG's authority

Commenters commented that the OAG lacks authority to adopt this rule. Commenters state that the Texas Legislature did not delegate express or implied authority to the OAG to adopt rules under Government Code §41.006.

OAG Response:

The OAG considered the comments and declines to make changes to the rule as the OAG has authority to implement Government Code §41.006.

Commenters also commented that the rule violates the nondelegation doctrine in Article 3, Section 56(2) of the Texas Constitution. Commenters state Government Code §41.006 is so broad and lacking in reasonable standards that it is an impermissible exercise of legislative authority.

OAG Response

The OAG considered the comment and declines to make changes to the rule as Article 3, Section 56(2) of the Texas Constitution does not apply to the rulemaking authority of the OAG, but instead it imposes requirements and limitations on the Legislature.

Commenters also commented that Government Code §41.006 does not authorize the OAG to remove duly elected district attorneys and county attorneys from office. Commenters stated Texas law already delineates a specific set of criteria for removing prosecuting attorneys from office under Local Government Code Chapter 87 and the definition of "official misconduct" that can result in removal from office does not include failure to make a report to the Office of the Attorney General.

OAG Response

The OAG reviewed the comments and declines to make changes to the rule as the OAG does not purport to have authority to remove district or county attorneys under Local Government Code Chapter 87. Under Local Government Code 87.012, only a district judge may remove a district or county attorney from office. The rule states the OAG may construe the violation to constitute "official misconduct." Section 87.015 sets forth procedures for petitioning a district court for the removal of an attorney. It does not state the OAG may remove a district or county attorney from office.

Commenters also commented that the OAG does not have original jurisdiction to prosecute state criminal offenses and has no legitimate law enforcement purpose in receiving or reviewing this information.

OAG Response

The OAG considered the comment and declines to make changes to the rule as the rule does not state the OAG has original jurisdiction to prosecute criminal offenses nor is there a "legitimate law enforcement purpose" requirement for receiving information under Government Code §41.006.

Comments regarding Separation of Powers

Commenters commented that the rule violates the separation of powers provision of the Texas Constitution because the respective duties of district and county attorneys shall be regulated by the Texas Legislature.

OAG Response:

The OAG considered the comments and declines to make changes to the rule as the OAG determined the requirements in the rule do not violate the separation of powers provision in the Texas Constitution. The rule implements Government Code §41.006 as it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices.

Commenters further commented that the rule implies that the OAG has original jurisdiction over the criminal matters in the State of Texas.

OAG Response:

The OAG considered the comments and declines to make changes to the rule because the rule does not imply that the OAG has original jurisdiction over the criminal matters in the State of Texas. The rule implements Government Code §41.006 as it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices.

Commenters also commented that the OAG misrepresents the primary duty of prosecuting attorneys under the Texas Constitution.

OAG Response:

The OAG considered the comments and declines to make changes to the rule as the rule does not make any representation of the primary duty of prosecuting attorneys. The rule implements Government Code §41.006 as it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices.

Comments regarding fiscal impact, cost, and burden

Commenters commented that the rule is an unfunded mandate that imposes significant financial and operational burdens on reporting entities.

Commenters commented that compliance with the rule would require the diversion of significant resources from the essential functions of reporting entities and divert critical resources from the reporting entity's central purpose.

Commenters also commented that the rule is likely to cost counties and taxpayers millions of dollars in additional staff time and by acquiring new staff to comply with the initial and annual reporting requirements in the rule. Commenters commented that the rule's financial impact analysis underestimates operational, technology, and labor costs and fails to consider and specify cumulative costs.

Commenters further commented that compiling the initial report will require making case-by-case determinations in each case file as to whether the circumstances of a particular case fall within the parameters of the required reports, which would require enormous resources and could effectively bring everyday operations to a halt.

OAG Response:

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

Comments regarding the purpose of the rules

Commenters commented that the purpose of this rule is purely political and designed to allow the OAG to influence arrests, indictments, and prosecutions. Commenters also commented that the purpose of the rule is to target specific groups and organizations that the OAG disagrees with and to protect certain groups and organizations that the OAG agrees with. Commenters stated the purpose of the rule is for the OAG to determine who should or should not be prosecuted.

Commenters also commented that the purpose of the rule is to provide a method to remove elected district and county attorneys over failures to comply with the rule or scrutinize or remove district and county attorneys if the attorney general disagrees with a district or county attorneys' approach on a particular case.

Commenters also commented that the purpose of the rule is to gain information pertaining to elections because the Attorney General has not been successful in prosecuting election related crimes due to lack of information. Commenters stated that review of case files pertaining to elections serves to intimidate election workers around the state.

OAG Response

The OAG considered the comments and declines to make changes to the rule as the purpose of the rule is to prescribe the time, form, and content of reports the OAG requires from certain district and county attorneys' offices under Government Code §41.006.

Comments regarding confidential, sensitive, and privileged information

Commenters commented that the proposed rules, and broad definition of "case file," would require reporting entities to disclose to the OAG confidential information that they are not legally permitted to disclose. Commenters stated that reporting entities are not permitted to disclose specific information, including, but not limited to: Grand jury information, healthcare records, juvenile justice information, criminal history information, information pertaining to victims and child victims, and DNA information.

OAG Response:

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

Commenters also commented that the rule may require reporting entities to submit information to the OAG that is subject to the work product or attorney-client privileges. Commenters state that once the privileged material has been knowingly and voluntarily disclosed to a third party, even in response to a governmental reporting requirement, the privilege as to that information is waived.

OAG Response:

The OAG has reviewed the comments and declines to make changes to the rule as submitting information to the OAG under the rule and Government Code §41.006 will not waive the work product or attorney-client privileges.

Commenters also commented that there is no provision in the rule to ensure the privacy of sensitive case information, including crime victim and witness information. Because of this, commenters state the rule will have a chilling effect on crime victims and witnesses from coming forward to report crimes, which could result in increased crime. Commenters stated that should these rules go into effect, victims will no longer be assured of how sensitive case information will be accessed, shared, or utilized.

OAG Response:

The OAG has reviewed the comments and declines to make changes to the rule as the law requires the OAG to comply with the same confidentiality statutes for which the reporting entities are required to comply.

Commenters commented that the rules violate Article 1. §30 of the Texas Constitution; Rights of Crime Victims.

OAG Response:

The OAG reviewed the comments and declines to make changes to the rule because the rule does not violate the Texas Constitution.

Comments regarding data storage:

Commenters commented that the rule does not indicate where and how the OAG will store the information received from reporting entities. Commenters commented that the rule does not provide assurances as to the security of the data it receives from reporting entities.

OAG Response:

The OAG considered the comments and declines to make changes to the rule because the OAG has a legal duty to, and does secure, safeguard, and properly maintain data.

Commenters further commented that it may not be possible for reporting entities to transmit electronically the volume of data required to be reported under the rule.

OAG Response:

The OAG considered the comments and declines to make changes to the rule as reporting entities currently routinely submit electronically their entire case files to the OAG in various manners and in compliance with other statutes.

Comments regarding the population requirement for compliance with the rule

Several commenters commented that the fact that the reporting requirements are only for district attorneys and county attorneys presiding in a district or county with a population of 400,000 or more persons is arbitrary and lacks a statutory basis.

OAG Response:

The OAG considered the comments and declines to make changes to the rule. The population requirement for compliance with the rule allows the OAG to review data from the largest counties in the state which will indicate trends for all counties in the state.

Comments regarding the rule's definition of "violent crime"

Commenters commented that the fact that the definition of "violent crime" in §56.2(7) includes crimes the commenters described as nonviolent, such as theft, and any attempt to commit such crimes, is a misleading and overly broad re-categorization of the term violent crime. Commenters state this will generate statistical reports which might incorrectly imply to the public that there has been a significant increase in actual violent crimes. Commenters further state that defining "violent crime" is a legislative issue.

OAG Response:

The OAG reviewed the comments and declines to make changes to the rule because the definition of "violent crime" in §56.2(7) is only applicable to the reporting requirements in the rule. The rule does not purport to amend the definition of "violent crime" in any other context. Further, the rule does not speak to generation of statistical reports. The rule implements Government Code §41.006 as it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices.

Comments regarding the Oversight Advisory Committee

Commenters commented that the work of the Oversight Advisory Committee has no scope at all in the rule.

OAG Response:

The OAG considered the comments and declines to make changes to the rule as 1 TAC §56.9 specifies the makeup and responsibilities of the Oversight Advisory Committee.

Comments regarding Quarterly Reports

Commenters asked whether the quarterly reports should repeat information each quarter if the status of the cases has not changed. Commenters also asked whether cases that are declined initially but refiled upon further investigation should be included in the quarterly reports.

OAG Response:

The OAG considered the comments and declines to make changes to the rule as the rule does not require clarification. The quarterly reports must include a running list of the required reporting information, including cases that were declined initially but refiled upon further investigation.

Commenters commented that the quarterly reports are not "reports" but instead are quarterly demands by the OAG for any case file it wants.

OAG Response:

The OAG considered the comments and declines to make changes to the rule as reporting requirements are only for information that relates to criminal matters and the interests of the state, which is consistent with Texas Government Code §41.006. The term "report" is defined in 1 TAC §56.2(5) as all information submitted to the OAG by a reporting entity under this chapter.

Comments regarding Annual Reports:

Commenters commented that §56.4(a)(2) is unclear and ask what state and federal ordinances would be responsive to the section.

OAG Response:

The OAG considered the comment and declines to make changes to the rule as the rule clearly identifies the information the OAG is requesting. The term ordinance is part of an inclusive list of actions that refers not just to actions of state and federal entities, but also to local and county entities who may pass ordinances.

Commenter commented §56.4(a)(4) and (5) are very unclear and asks if the requirement includes ARPA funds, government grants, or general fund disbursements.

OAG Response:

The OAG considered the comment and declines to make changes to the rule as §56.4(a)(4) and (5) specify the requested information relates to funds accepted by the commissioners court of their county pursuant to Texas Government Code §41.108. Section 41.108 states "the commissioners court of the county or counties composing a district may accept gifts and grants from any foundation or association for the purpose of financing adequate and effective prosecution programs in the county or district."

Comments regarding 1 TAC §56.3(a)(1)

Commenters asked whether the reporting requirement for indictment of police officers includes cases in which officers are indicted for personal conduct.

OAG Response:

The OAG considered the comment and included clarifying language in §56.3(a)(1) to indicate that the reporting requirement is only for indictment of a peace officer for conduct that occurred while the peace officer was conducting official duties.

Commenters commented that the rule creates a deterrent to the indictment of peace officers which will result in a risk of increased violence to Texans from law enforcement.

OAG Response:

The OAG considered the comments and declines to make changes to the rule as the rule does not regulate the indictment of peace officers. The rule implements Government Code §41.006 as it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices.

Comments regarding 1 TAC §56.3(a)(2)

Commenters commented that the reporting requirement in §56.3(a)(2) regarding a decision to indict a poll watcher presents a conflict of interest for the OAG and a safety risk to voters.

OAG Response:

The OAG considered the comments and declines to make changes to the rule as the reporting requirement does not present a conflict of interest to the OAG nor a safety risk to individuals. The rule implements Government Code §41.006 as it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices.

Commenters also commented that §56.3(a)(2) contains a typographical error as "Teas" is not a word.

OAG Response:

The OAG considered the comment and corrected the error to read "Texas" in §56.3.

Comments Regarding 1 TAC §56.3(a)(3)

Commenters commented that §56.3(a)(3) is unclear because it does not define how a defendant "raises a justification under Chapter 9 of the Penal Code."

OAG Response:

The OAG considered the comments and revised §56.3(a)(3) to clarify that the request is for the number of prosecutions involving a defendant's discharge of a firearm where any prosecutorial decision was based on Title 9 of the Penal Code.

Comments regarding 1 TAC §56.3(a)(4)

Commenters requested clarification as to what party recommends to a judicial body that a person subject to a final judgment of conviction be released from prison before the expiration of their sentence; resentenced to a lesser sentence; or granted a new trial based on a confession of error.

OAG Response:

The OAG considered the comment and included clarifying language in §56.3(a)(4) that the recommendation to a judicial body that a person subject to a final judgment of conviction be released from prison before the expiration of their sentence; resentenced to a lesser sentence; or granted a new trial based on a confession of error is a recommendation made by the reporting entity.

Comments regarding 1 TAC §56.3(a)(6)

Commenters commented that the language in §56.3(a)(6) regarding cases where "substantial doubt" for probable cause is extremely broad.

OAG Response:

The OAG considered the comment and declines to make changes as substantial doubt is at the discretion of the OAG's Oversight Advisory Committee.

Comments Regarding 1 TAC §56.3(a)(7)

Commenters commented that the requirement is unclear as to whether the section only refers to a violent crime or if it includes any case that was resolved by deferred prosecution or any case where all charges were dropped for cases that do not fall under the definition of violent crime.

OAG Response:

The OAG considered the comment and declines to make changes to the rule. The reporting requirement in 1 TAC §56.3(a)(7) only applies to arrests for violent crime as defined in the rule.

Comments Regarding 1 TAC §56.3(a)(11)

Commenters commented that 1 TAC §56.3(a)(11) is broad and unclear. Commenters ask whether the required communication include communications with the Children's Advocacy Center, local crisis shelters, and other community partners.

OAG Response

The OAG considered the comment and included clarifying language in 1 TAC §56.3(a)(11) that the reporting requirement is for correspondence with any non-profit organization, not for profit organization, and non-governmental organization regarding a decision to indict an individual. The requirement includes communications with the Children's Advocacy Center, local crisis shelters, and other community partners that are a non-profit organization, not for profit organization, and/or a non-governmental organization.

Comments regarding 1 TAC §56.3(a)(12)

Commenters commented that §56.3(a)(12) is unclear and does not define the term "complaint."

OAG Response:

The OAG considered the comments and revised §56.3(a)(12) to clarify that the information the OAG is requesting is all correspondence written at any time by an assistant district attorney or assistant county attorney regarding the attorney's resignation under a formal or informal complaint process. This section does not include communications regarding salary negotiations or retirement policies.

Comments regarding retention

Commenters commented that the reporting requirements for the initial report are impractical and legally dubious, as many reporting entities either do not maintain certain categories of information or have already disposed of records in accordance with lawful document retention policies.

OAG Response:

The OAG considered the comments and declines to make changes to the rule as §56.3(b)(1) provides exceptions to the initial reporting requirement in §56.3(a). The exceptions include the option for reporting entities to provide a sworn affidavit that states the information cannot be produced because it was destroyed or otherwise discarded pursuant to a *bona fide* document retention policy that existed prior to the effective date of this rule and that is described in detail and transmitted to the Oversight Advisory Committee.

Commenters also commented that the rules seek information that reporting entities may not possess or have no existing obligation to track. Commenters further commented that the rule creates numerous new data and case information reporting requirements for prosecutor offices and require the collection, storage, documentation, and dissemination of records that are not ordinarily retained as part of a criminal case file.

OAG Response:

The OAG considered the comments and declines to make changes to the rule as §56.6 establishes that reporting entities must implement document retention policies reasonably designed to preserve all documents which are, or may be, subject to the requirements in this Chapter. The retention policies must preserve documents for at least two years after the dates when they are due to be reported.

Commenters also commented that §56.6 requires retention of any documents required by this report but provides no exception for expunged matters which could cause a conflict with the penal violations for maintaining records which have been expunged. Additionally, the OAG's office will need to be included in future expunctions for any cases related to these reports.

OAG Response:

The OAG has considered the comment and declines to make changes to the rule as laws regarding expunged matters take precedence over administrative rules. Additionally, the OAG will implement a process to be included in future expunctions for any cases related to reports submitted to the OAG under the rule.

Comments Regarding Procedure

Commenters commented that providing only a seven-day notice of comment and hearing is insufficient and does not allow for the interests of our communities to be adequately represented.

OAG Response:

The OAG considered the comment and declines to make changes as the proposal was published on September 13, 2024, and provided for a 30-day public comment period.

Commenters also comment that the *Texas Register* notice fails to ensure that stakeholders understand the implications of this rule and that stakeholders won't understand that highly personal and confidential information from case files could be transmitted to the attorney general likely without notice or consent given the points in the process when this must occur, under a range of circumstances.

OAG Response:

The OAG reviewed the comment and declines to make changes to the rule as the proposal complies with the notice requirements in Government Code Chapter 2001.

Additional Comments

Commenters commented that if the OAG makes recommendations on charges in cases obtained under this rule and the county fails to obtain convictions in the resulting proceedings, the government would be exposed to greater financial and legal liabilities.

OAG Response:

The OAG has considered the comments and declines to make changes to the rule as the rule does not contemplate OAG recommendations on cases. The rule implements Government Code §41.006 as it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices.

Commenters commented that the data collection in the rule focuses on "arrests" and very often an arrest is made that is not adequately supported by probable cause. A number of "arrests" should never be used as a measure of criminality because Americans are not guilty at the point of arrest. Commenters further stated that district attorneys have a responsibility to the Texas taxpayer to pursue only those indictments where probable cause clearly exists.

OAG Response:

The OAG has considered the comments and declines to make changes to the rule as the rule does not contemplate the measure of criminality or pursuit of indictments. The rule implements Government Code §41.006 as it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices.

Commenters commented that the information required to be reported under the rule is too specific and at the same time so broad such that it will reveal very little about the actual performance of a district attorney's office.

OAG Response:

The OAG considered the comment and declines to make changes to rule as the rule implements Government Code §41.006 as it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices. Government Code §41.006 authorizes the attorney general to direct districts and counties attorneys' offices to report the information that the attorney general desires.

Commenters also commented that the rule interferes with the professional responsibilities and discretion of local prosecutors.

OAG Response:

The OAG considered the comments and declines to make changes to the rule as the rule does not speak to how a local prosecutor executes their duties. The rule implements Government Code § 41.006 as it prescribes the time, form, and content of reports the OAG requires from certain district and county attorneys' offices.

Other changes

The OAG corrected identified, non-substantive typographical errors.

STATUTORY AUTHORITY

New 1 TAC Chapter 56 is adopted pursuant to Texas Government Code §41.006.

CROSS-REFERENCE TO STATUTE

This regulation clarifies Texas Government Code §41.006. No other rule, regulation, or law is affected by this proposed rule.

§56.1. General Reporting Requirements.

District Attorneys and County Attorneys presiding in a district or county with a population of 400,000 or more persons must submit an initial, and quarterly and annual reports relating to criminal matters, and the interest of the state, to the Office of the Attorney (OAG) in a manner prescribed by the OAG and as set forth in this chapter.

§56.2. Definitions.

The following words and terms, when used in this subchapter, have the following meanings:

(1) "Case file" means all documents, notes, memoranda, and correspondence, in any format such as handwritten, typed, electronic, or otherwise, including drafts and final copies, that were produced within or received by the reporting entity's office, including work product and otherwise privileged and confidential matters. A "case file" does not include a reporting entity employee's correspondence that is purely personal in nature and has no connection with the transaction of official business.

(2) "Correspondence" means any email, letter, memorandum, instant message, text message, or direct message, received or issued by an employee of the reporting entity. "Correspondence" does not include a reporting entity employee's correspondence that is purely personal in nature and has no connection with the transaction of official business.

(3) "Electronic copies" means a digital version of a record that can be stored on a computer device.

(4) "Reporting year" means the period of September 1 through August 31.

(5) "Report" means all information submitted to the OAG by a reporting entity under this chapter.

(6) "Reporting entity" means the office of a District Attorney or County Attorney serving a population of 400,000 or more persons.

(7) "Violent crime" includes capital murder, murder, other felony homicides, aggravated assault, sexual assault of an adult, indecency with a child, sexual assault of a child, family violence assault, aggravated robbery, robbery, burglary, theft, automobile theft, riot, any crime listed in Code of Criminal Procedure §17.50(3), and any attempt to commit such crimes.

§56.3. Quarterly and Initial Reporting Requirements.

(a) Content of reports. Reporting entities must submit electronic copies of the following information to the OAG quarterly in accordance with this chapter.

(1) The number of instances that the Reporting Entity indicted a peace officer for the peace officer's conduct during official duties;

(2) The number of instances that the reporting entity indicted an individual for a criminal violation under the Texas Election Code.

(3) The number of prosecutions involving a defendant's discharge of a firearm resulting in any prosecutorial decision based on Title 9 of the Penal Code;

(4) The case file for instances a recommendation made by the Reporting Entity is made to a judicial body that a person subject to a final judgment of conviction be released from prison before the expiration of their sentence; resentenced to a lesser sentence; or granted a new trial based on a confession of error;

(5) The case file for prosecutions for which the Texas Governor has announced that The Office of the Texas Governor is considering a pardon;

(6) Any case file for prosecutions relating to criminal matters and the interests of the state, as requested by the Attorney General through the Oversight Advisory Committee, including cases where there are substantial doubts by the Oversight Advisory Committee whether probable cause exists to support a prosecution;

(7) The number of instances that an arrest was made for a violent crime but no indictment was issued, the case was resolved by deferred prosecution or a similar program, or all charges were dropped;

(8) All correspondence requested by OAG's Oversight Advisory Committee for a matter listed in response to paragraph (7) of this subsection on a prior quarterly report;

(9) All correspondence and other documentation describing and analyzing a reporting entity's policy not to indict a category or sub-category of criminal offenses;

(10) All correspondence with any employee of a federal agency regarding a decision whether to indict an individual;

(11) All correspondence with any non-profit organization regarding a decision whether to indict an individual; and

(12) All correspondence written at any time by an assistant district attorney or assistant county attorney regarding the attorney's resignation under a formal or informal complaint process. This section does not include communications regarding salary negotiations or retirement policies.

(b) Initial Report. A reporting entity must submit an electronic copy of the information outlined in this section for which a reporting event occurred between January 1, 2021, and the effective date of this rule, unless:

(1) The reporting entity obtains a written exception, in whole or in part, from the OAG;

(2) The reporting entity provides a sworn affidavit that states the information:

(A) was the exclusive product of a previous District or County Attorney; and

(B) is not reflective of the reporting entity's current operations due to a formal change in the office's policies, and the formal

change is described in detail and transmitted to the Oversight Advisory Committee; or

(3) The reporting entity provides a sworn affidavit that states the information cannot be produced because it was destroyed or otherwise discarded pursuant to a *bona fide* document retention policy that existed prior to the effective date of this rule and that is described in detail and transmitted to the Oversight Advisory Committee.

§56.4. Annual Reports.

Reporting entities must submit electronic copies of the following information for the prior reporting year in accordance with this chapter.

(1) All policies, rules, and orders, including internal operating procedures and public policy documents, that were modified during the prior 12 months;

(2) A list of all local, county, state, and federal ordinances, statutes, laws, and rules for which the reporting entity files reports, whether that requirement is regular or arises upon the occurrence of an event;

(3) A list of individual expenditures and purchases made based on funds or assets received through civil asset forfeiture;

(4) All information regarding funds accepted by the commissioners court of their county pursuant to Texas Government Code §41.108 that were passed on to the reporting entity. The reporting entity must detail how much of the funds were passed on to the reporting entity and provide a detailed accounting of how the reporting entity disposed of any funds received; and

(5) All information regarding funds accepted by the commissioners court of their county pursuant to Texas Government Code §41.108 that were not passed on to the reporting entity, but were used to benefit the reporting entity, its personnel, or its operations. The report must include any correspondence regarding accepted funds, as well as a detailed account of how the funds were used to benefit the reporting entity, its personnel, or its operations.

§56.5. Report Submission Deadlines and Requirements

(a) Deadlines.

(1) The quarterly report under §56.3 of this chapter (relating to Quarterly and Initial Reporting Requirements) is due within 30 days of the beginning of each new reporting quarter for all reporting events that occurred in the prior reporting quarter.

(2) The reporting quarters are as follows:

(A) Quarter one: September through November;

(B) Quarter two: December through February;

(C) Quarter three: March through May; and

(D) Quarter four; June through August.

(3) The annual report under §56.4 of this chapter (relating to Annual Reports) is due at the end of each reporting year and no later than September 30.

(4) The initial report under this section is due within 90 days of the effective date of this rule.

(5) The Oversight Advisory Committee may grant an extension on a case-by-case basis if the reporting entity can establish good cause for not meeting the reporting deadlines.

(b) Electronic Submissions. A reporting entity submit all reports under this chapter electronically. Information on how to submit reports electronically can be found on the OAG's website.

§56.6. Document Retention.

Reporting entities must implement document retention policies reasonably designed to preserve all documents which are, or may be, subject to the requirements in this chapter. The retention policies must preserve documents for at least two years after the dates when they are due to be reported.

§56.7. Overdue reports.

If an entity fails to comply with this chapter, in whole or in part, the OAG may send notice to the reporting entity identifying the reporting entity of its failure to comply. A reporting entity must remedy the identified reporting failure within 30 days after receipt of notice. Any reporting entity that fails to timely comply with this chapter's reporting requirements may be identified on the OAG's website as being out of compliance with both this chapter as well as Texas Government Code §41.006.

§56.8. Compliance.

If a reporting entity violates this chapter, without limitation:

(1) The OAG may construe the violation to constitute "official misconduct" under Local Government Code §87.011;

(2) The OAG may file a petition for quo warranto under Civil Practice and Remedies Code §66.002 for the performance of an act that by law causes the forfeiture of the County or District Attorney's office; or

(3) The OAG may initiate a civil proceeding seeking to order the County or District Attorney to comply with this chapter.

§56.9. Oversight Advisory Committee.

(a) The Attorney General will establish an Oversight Advisory Committee composed of three members of the Office of the Attorney General designated by the Attorney General.

(b) The Oversight Advisory Committee may issue notifications of overdue reports under §56.7 of this chapter (relating to Overdue reports).

(c) The Oversight Advisory Committee may request entire case files based on submitted reports or any other information that the Oversight Advisory Committee desires relating to criminal matters and the interests of the state on a case-by-case basis,

(d) The Oversight Advisory Committee may waive any provision of this chapter if a reporting entity demonstrates that compliance would impose an undue hardship.

§56.10. Severability.

(a) All provisions of this chapter are severable.

(b) If any application of any provision of this rule is held to be invalid for any reason, all valid provisions are severable from the invalid provisions and remain in effect. If any section or portion of a section is held to be invalid in one or more of its applications, in all valid applications the provisions remain in effect and are severable from the invalid applications.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 13, 2025.

TRD-202500891

Justin Gordon
General Counsel
Office of the Attorney General
Effective date: April 2, 2025
Proposal publication date: September 13, 2024
For further information, please call: (512) 475-4291

♦ ♦ ♦

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1306

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §353.1306, concerning Comprehensive Hospital Increase Reimbursement Program for Program Periods on or after September 1, 2021.

Section 353.1306 is adopted with changes to the proposed text as published in the September 13, 2024, issue of the *Texas Register* (49 TexReg 7143). This rule will be republished.

BACKGROUND AND JUSTIFICATION

HHSC has been working since September 2022 to evaluate the future of the Medicaid hospital financing system in a post-public health emergency environment. With the combination of new Medicaid fee-for-service and managed care rules at the federal level, the unwinding of the Medicaid caseload coverage from the public health emergency, and the interplay between directed payment programs and new supplemental payment programs (e.g., the private graduate medical education (GME) and Hospital Augmented Reimbursement program (HARP)), hospital financing in Medicaid and for the uninsured has been challenging to forecast. With the support of hospitals and their representatives, Medicaid managed care organizations and their representatives, and industry subject matter experts, HHSC made final decisions regarding the program design for CHIRP that will be implemented, beginning in state fiscal year (SFY) 2026.

Comprehensive Hospital Increase Reimbursement Program

Beginning in SFY 2025, CHIRP is composed of three components: Uniform Hospital Rate Increase Payment (UHRIP), Average Commercial Incentive Award (ACIA), and Alternate Participating Hospital Reimbursement for Improving Quality Award (APHRIQA). The amendment to §353.1306 updates the ACIA component calculation beginning in SFY 2026 to calculate the Average Commercial Reimbursement (ACR) gap on an aggregated, per-class basis. The amendment to §353.1306 also allocates available ACIA funds across hospital classes based on the proportion of the combined ACR gap of each hospital class within a Service Delivery Area (SDA) to the total ACR gap of all hospitals within the SDA. Lastly, the rule amendment to §353.1306 updates the maximum ACR Upper Payment Limit (UPL) percentage to 95 percent beginning in SFY 2027 and to 100 percent beginning in SFY 2028.

COMMENTS

The 31-day comment period ended October 15, 2024.

During this period, HHSC received comments regarding the proposed rule from three commenters: the Texas Association of Behavioral Health Systems, the Children's Hospital Association of Texas, and the Texas Hospital Association. A summary of comments relating to §353.1306 and HHSC's responses follow.

Comment: Multiple commenters requested that HHSC withdraw the CHIRP rule amendment due to new Federal reporting requirements and recent Centers for Medicare & Medicaid Services (CMS) guidance on the CHIRP program. Commenters believe that the CHIRP rule should be withdrawn and that HHSC should draft an alternative amendment to include greater details and clarity on CMS requirements for the program.

Response: HHSC appreciates the comment and understands the desire for greater clarity and transparency. The rule amendment, as proposed, describes the CHIRP Program as is; HHSC is continuing to work with CMS on requirements for future years. Depending on the outcomes of these discussions, additional rule amendments may be made in future years. No revision to the rule text was made in response to this comment.

Comment: Multiple commenters requested that HHSC provide greater clarity and transparency for program definitions and descriptions including class definitions and separation by managed care programs in alignment with new CMS requirements for the CHIRP program.

Response: HHSC appreciates the comment and understands the desire for greater clarity and transparency. HHSC is continuing to work with CMS on requirements for future years. Depending on the outcomes of these discussions, additional rule amendments may be made in future years. No revision to the rule text was made in response to this comment.

Comment: A commenter stated that, in light of recent CMS requirements for the CHIRP program for SFY 2025, it is important to ensure that all CHIRP payments are capped at 100 percent of the average commercial rate for all program components.

Response: HHSC appreciates this comment. In the rule text, language is included to increase the percentage of ACR UPL to 100 percent by the program period beginning on or after September 1, 2027. No revision to the rule text was made in response to this comment.

Comment: A commenter requested clarifications to the language of the ACIA allocation of available funds to take into consideration UHRIP payments because the ACIA distribution occurs after the UHRIP distribution.

Response: HHSC appreciates the comment and has updated subsection (g)(3)(A) to clarify that the allocation of available funds across hospital classes will be proportional to the combined ACR gap less UHRIP payments of each hospital class within an SDA to the total ACR gap of all hospital classes within the SDA. In addition, (g)(3)(D) is updated to clarify that the ACIA payment example is for program periods beginning on or before September 1, 2024.

Comment: A commenter requested that HHSC oppose CMS's requirement to limit the Medicare UPL gap to ACR gap limits.

Response: This comment is outside the scope of the rule amendment. No revision to the rule text was made in response to this comment.

Comment: A commenter stated that they believed that the new federal rule does not explicitly limit CHIRP payments at the aggregate ACR rate for inpatient behavioral health services in an

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:

Victor Hernandez on behalf of William Cole
Bar No. 24124187
victor.hernandez@oag.texas.gov
Envelope ID: 111547821
Filing Code Description: Petition
Filing Description: No. 26-0110 Petition for Review
Status as of 2/23/2026 8:05 AM CST

Associated Case Party: Harris County

Name	BarNumber	Email	TimestampSubmitted	Status
Christopher Garza	24078543	christopher.garza@harriscountytx.gov	2/20/2026 5:40:53 PM	SENT
Jonathan Fombonne	24102702	jonathan.fombonne@harriscountytx.gov	2/20/2026 5:40:53 PM	SENT
Bradely Snead		snead@wcbglaw.com	2/20/2026 5:40:53 PM	SENT
Andrea Mintzer		Andrea.Mintzer@harriscountytx.gov	2/20/2026 5:40:53 PM	SENT
Tiffany Bingham	24012287	tbingham@35711.com	2/20/2026 5:40:53 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Todd Clark	4298850	todd.clark@traviscountytx.gov	2/20/2026 5:40:53 PM	SENT
Randy Leavitt	12098300	randy@randyleavitt.com	2/20/2026 5:40:53 PM	SENT
Justin Pfeiffer	24091473	jpfeiffer@gavrilovlaw.com	2/20/2026 5:40:53 PM	SENT
Nancy Villarreal		nancy.villarreal@oag.texas.gov	2/20/2026 5:40:53 PM	SENT
C. Robert Heath		bheath@bickerstaff.com	2/20/2026 5:40:53 PM	SENT
Nicole Myette		nicole.myette@oag.texas.gov	2/20/2026 5:40:53 PM	SENT
Laura Ferguson		lferguson@milchev.com	2/20/2026 5:40:53 PM	SENT
Amy Pollock		amy.pollock@traviscountytx.gov	2/20/2026 5:40:53 PM	SENT
Sandra Silva		silva@wcbglaw.com	2/20/2026 5:40:53 PM	SENT
Joshua Woods		woods@wcbglaw.com	2/20/2026 5:40:53 PM	SENT
Michelle Heigelmann		heigelmann@wcbglaw.com	2/20/2026 5:40:53 PM	SENT
Jerri Coble		coble@wcbglaw.com	2/20/2026 5:40:53 PM	SENT
Alysa Slocum		slocum@wcbglaw.com	2/20/2026 5:40:53 PM	SENT
Victor Hernandez		victor.hernandez@oag.texas.gov	2/20/2026 5:40:53 PM	SENT

Associated Case Party: Jose Garza

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:

Victor Hernandez on behalf of William Cole
Bar No. 24124187
victor.hernandez@oag.texas.gov
Envelope ID: 111547821
Filing Code Description: Petition
Filing Description: No. 26-0110 Petition for Review
Status as of 2/23/2026 8:05 AM CST

Associated Case Party: Jose Garza

Name	BarNumber	Email	TimestampSubmitted	Status
Cynthia Veidt	24028092	cynthia.veidt@traviscountytx.gov	2/20/2026 5:40:53 PM	SENT
Leslie Dippel	796472	leslie.dippel@traviscountytx.gov	2/20/2026 5:40:53 PM	SENT
Christina Sanchez	24062984	christina.sanchez@epcounty.com	2/20/2026 5:40:53 PM	SENT

Associated Case Party: Ken Paxton, in his Official Capacity as Attorney General of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
William FCole		William.Cole@oag.texas.gov	2/20/2026 5:40:53 PM	SENT
Ben Mendelson		Ben.Mendelson@oag.texas.gov	2/20/2026 5:40:53 PM	SENT
William Farrell		biff.farrell@oag.texas.gov	2/20/2026 5:40:53 PM	SENT
Christopher Pavlinec	24149999	christopher.pavlinec@oag.texas.gov	2/20/2026 5:40:53 PM	SENT

Associated Case Party: El Paso County District Attorney James Montoya

Name	BarNumber	Email	TimestampSubmitted	Status
Bernardo Cruz		b.cruz@epcountytx.gov	2/20/2026 5:40:53 PM	SENT
Melissa Contreras		m.contreras@epcountytx.gov	2/20/2026 5:40:53 PM	SENT
Isela Baeza		i.baeza@epcountytx.gov	2/20/2026 5:40:53 PM	SENT
Isela Jones		carl.jones@epcountytx.gov	2/20/2026 5:40:53 PM	SENT
Pam Lopez		Pam.Lopez@epcountytx.gov	2/20/2026 5:40:53 PM	SENT

Associated Case Party: El Paso County Attorney Christina Sanchez

Name	BarNumber	Email	TimestampSubmitted	Status

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:

Victor Hernandez on behalf of William Cole
Bar No. 24124187
victor.hernandez@oag.texas.gov
Envelope ID: 111547821
Filing Code Description: Petition
Filing Description: No. 26-0110 Petition for Review
Status as of 2/23/2026 8:05 AM CST

Associated Case Party: El Paso County Attorney Christina Sanchez

Name	BarNumber	Email	TimestampSubmitted	Status
Bernardo Cruz		b.cruz@epcountytx.gov	2/20/2026 5:40:53 PM	SENT

Associated Case Party: El Paso County

Name	BarNumber	Email	TimestampSubmitted	Status
Bernardo Cruz		b.cruz@epcountytx.gov	2/20/2026 5:40:53 PM	SENT

Associated Case Party: Dallas County Criminal District Attorney John Cruezot

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Satin		msatin@milchev.com	2/20/2026 5:40:53 PM	SENT
Alexandria Oberman		aoberman@milchev.com	2/20/2026 5:40:53 PM	SENT

Associated Case Party: Bexar County Criminal District Attorney Joe Gonzales

Name	BarNumber	Email	TimestampSubmitted	Status
Alexandria Oberman		aoberman@milchev.com	2/20/2026 5:40:53 PM	SENT
Michael Satin		msatin@milchev.com	2/20/2026 5:40:53 PM	SENT