

Order filed February 24, 2026



In The
Fifteenth Court of Appeals

NO. 15-25-00231-CV

**APPELLANT, STATE OF TEXAS // CROSS-APPELLANTS, HARRIS
COUNTY, TEXAS, ET AL.,**

V.

**APPELLEE, HARRIS COUNTY, TEXAS, ET AL. // CROSS-APPELLEE,
STATE OF TEXAS, Appellee**

**On Appeal from the 152nd District Court
Harris County, Texas
Trial Court Cause No. 2025-85662**

ORDER

Pending before this Court is the State's motion for temporary relief.¹ The State asks this Court to prevent Harris County from funding, or referring persons to, a program that reimburses legal counsel for representing indigent persons facing deportation. For the following reasons, we deny temporary relief.

¹ See TEX. R. APP. P. 29.3.

Background

Six years ago, the Harris County Commissioners Court created an Immigrant Legal Services Fund (ILSF) to provide to residents of Harris County “direct legal representation to immigrants in detention or facing the threat of deportation.” The County contracts with private nonprofits to provide legal representation to local immigrants, and reimburses their costs monthly out of a pool of money allocated at the start of each year. Eligibility is limited to persons who are detained within fifty miles of Harris County, who reside in Harris County or plan to live there after release, and make less than 80% of the median income for the area. The County began funding the program in December of 2021, and has funded representation for 373 immigrants through August 31, 2025.

In 2024, the Commissioners Court contracted with a nonprofit to operate the Immigration Resources Hotline. As its name suggests, the purpose is to serve as the “central entry point” for County residents seeking assistance with immigration matters, and its role includes—but is not limited to—referring potential clients to the ILSF. The Commissioners Court funds the Hotline under a similar system of monthly reimbursements.

In November 2025, the Attorney General on behalf of the State sued the County and certain of its representative employees (“the County”) alleging that both the ILSF and the Hotline violate Article III, § 52(a) of the Texas Constitution—one of the “Gift Clauses” that prohibit gratuitous transfers of public funds to private parties. The County answered and filed a motion to show authority challenging the Attorney General’s authority to represent the State. The trial court denied the County’s motion to show authority, and also denied the State’s motion for a temporary injunction. The State appealed the latter, and filed a motion for temporary

relief² seeking an order that would stay payments to ILSF and prevent the Hotline from making referrals to legal services during the pendency of this appeal.³

Discussion

In an appeal of an interlocutory order, Rule 29.3 empowers us to “make any temporary orders necessary to preserve the parties’ rights until disposition of the appeal.”⁴ Because a stay pending appeal is a “kind of injunction,” the “familiar considerations” governing injunctive relief also apply here.⁵ Determining whether to grant temporary relief requires us to “make a preliminary inquiry into the likely merits of the parties’ legal positions” and balance the harms that “will befall either party”—as well as non-parties and the public—depending on the court’s decision.⁶ We may also consider case-specific factors when needed.⁷

I. The Attorney General’s authority to file suit

The first question presented is whether the Attorney General has the authority to bring this matter on behalf of the State. The Constitution grants the Attorney General authority to represent the State in all cases in the Supreme Court where the State is a party.⁸ The Legislature has expanded that authority to the courts of appeals in “all actions in which the state is interested,”⁹ and in certain actions in the district

² TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4).

³ Originally, the State asked for a stay of payments to both programs. In its reply, the State clarified that it “requests only that payments to the legal services fund be stopped completely, and that the hotline not be used to make referrals to the legal services program so long as the hotline is supported with County funds.”

⁴ TEX. R. APP. P. 29.3.

⁵ *In re State*, 711 S.W.3d 641, 645 (Tex. 2024).

⁶ *Id.*

⁷ *Id.* at 645–46.

⁸ TEX. CONST. art. IV, § 22.

⁹ TEX. GOV’T CODE § 402.021 (granting Attorney General authority to “prosecute and defend all actions in which the state is interested” in the courts of appeals).

courts.¹⁰ The parties cite no statute specifically authorizing that office to file suit on behalf of the State to enforce the Texas Constitution in general, or the Gift Clauses in particular.¹¹

The County claims “the absence of any statute or constitutional provision authorizing the Attorney General’s representation of the State in this case in the district court is dispositive,” citing *City of Galveston v. State*.¹² But *City of Galveston* rejected a suit by the Attorney General against a city for money damages, not for an injunction to stop a constitutional violation.¹³ Government officials who transgress the Texas Constitution commit an ultra vires act,¹⁴ and *anyone* with a legally cognizable injury has standing to sue to enjoin ultra vires acts since such suits “do not attempt to exert control over the state—they attempt to reassert the control of the state.”¹⁵ It is well-settled that the State may assert viable claims for a prospective injunction alleging that “Commissioners acted beyond their lawful authority.”¹⁶ So while the Attorney General needs specific statutory authority to sue

¹⁰ See, e.g., TEX. CIV. PRAC. & REM. CODE §§ 101.103 (requiring Attorney General to represent the State in certain actions under the Tort Claims Act), 104.004 (requiring Attorney General to defend state employees in certain suits); see also TEX. GOV’T CODE § 402.021 (granting Attorney General broad authority to “prosecute and defend all actions in which the state is interested” in the courts of appeals).

¹¹ But see *Borgelt v. Austin Firefighters Ass’n, IAFF Local 975*, 692 S.W.3d 288, 293 (Tex. 2024) (taxpayer suit under the Gift Clause in which no party challenged the Attorney General’s intervention on behalf of the State).

¹² 217 S.W.3d 466, 470 & n.25 (Tex. 2007).

¹³ *Id.* at 468.

¹⁴ *Tex. Educ. Agency v. Houston Indep. Sch. Dist.*, 660 S.W.3d 108, 116 (Tex. 2023).

¹⁵ *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009); see also *City of Buffalo v. Moliere*, 703 S.W.3d 350, 353 (Tex. 2024) (explaining “governmental immunity is not implicated if a party properly pleads an ultra vires claim against government actors in their official capacities”); *City of Elsa v. M.A.L.*, 226 S.W.3d 390, 392 (Tex. 2007) (reiterating that “suits for injunctive relief may be maintained against governmental entities to remedy violations of the Texas Constitution”).

¹⁶ See *Chambers-Liberty Ctys. Navigation Dist. v. State*, 575 S.W.3d 339, 349 (Tex. 2019).

local governments for money damages, he does not appear to need specific legislative authorization to enjoin ultra vires acts by local officials.¹⁷ For purposes of this interlocutory appeal,¹⁸ we hold the Attorney General had authority to bring this action.

II. A preliminary inquiry into the merits and balance of harms

The next question is whether the State is likely to be able to show the ILSF violates the Texas Constitution.¹⁹ “Several ‘Gift Clauses’ of the Texas Constitution prohibit governmental entities from making ‘gifts’ of public resources to private parties.”²⁰ The “Gift Clause” relevant here is Article III, Section 52(a), which provides:

the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.²¹

“Although the text refers to the legislature,” the Supreme Court has assumed that the Gift Clause applies to the actions of local governments.²² We assume the same.

A challenged expenditure satisfies the Gift Clause if (1) “the expenditure is

¹⁷ See *In re State*, 711 S.W.3d at 647 & n.4; *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020).

¹⁸ Harris County has filed a cross-appeal of the trial court’s denial of its plea to the jurisdiction but does not request any temporary relief.

¹⁹ The County asserts that paying for legal representation for the indigent does not even implicate the Gift Clause. We assume—without deciding—that the State is correct that the Gift Clause applies.

²⁰ *Borgelt v. Austin Firefighters Ass’n, IAFF Local 975*, 692 S.W.3d 288, 293 (Tex. 2024).

²¹ TEX. CONST. art. III, § 52(a). The others are Article III, Sections 50 and 51 and Article XVI, § 6(a).

²² See *Borgelt*, 692 S.W.3d at 299 and n.10 (assuming without deciding that the Gift Clause applies to municipal contracts).

not gratuitous but instead brings a public benefit”; (2) “the predominant objective is to accomplish a legitimate public purpose, not to provide a benefit to a private party”; and (3) “the government retains control over the funds to ensure that the public purpose is in fact accomplished.”²³ An expenditure is presumptively constitutional until proven otherwise.²⁴ Although we make no final decision, the State has not shown a likely basis for rebutting that presumption here.

Not gratuitous. First, the preliminary evidence suggests the ILSF pays only for legal services rendered. The County had no legal duty to provide those services, but did not make them a gift to the attorneys who did provide them as their rendition of time and resources represents consideration for the ILSF funds. The federal immigration courts face daunting caseloads; in Texas alone “there are more than 400,000 pending cases statewide.”²⁵ The County’s program may not have made a substantial dent in that backlog (the record reflects it covered only 373 cases, with most closed cases resulting in either removal or voluntary departure), but public programs with limited success are not thereby rendered gratuitous.

The provision of legal services to indigents has long been recognized as a public benefit rather than a private gift. In criminal prosecutions and parental termination cases, the appointment of counsel is a legal *requirement*, not an unconstitutional *gift*.²⁶ While deportation proceedings are “purely civil action[s]”²⁷

²³ *Id.* at 301.

²⁴ *Id.* at 303.

²⁵ Michelle Saenz-Rodriguez, *U.S. Immigration Courts*, 89 Tex. B. J. 107, 107 (Feb. 2026).

²⁶ *Gideon v. Wainwright*, 372 U.S. 335, 342–45 (1963); *Robert Leroy McCoy v. Louisiana*, 584 U.S. 414, 421 (2018); see *In re D.T.*, 625 S.W.3d 62, 69–70 (Tex. 2021) (recognizing importance of “competent and effective” counsel to represent parents when the State sues to terminate their parental rights).

²⁷ *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (“A deportation proceeding is a purely civil action to determine eligibility to remain in this country”).

with no right to government-funded counsel,²⁸ Texas has long recognized that “procuring counsel” for indigent persons in civil cases “is the performance of a needed public service.”²⁹ The Texas Disciplinary Rules deem the provision of free legal counsel to indigents “a moral obligation of each lawyer as well as the profession generally.”³⁰ The State has not explained why providing counsel to indigents facing federal deportation is unconnected to these programs and concerns.

Public purpose. Second, we are similarly unconvinced that ILSF lacks a predominant public purpose. The State argues that the “real purpose” of ILSF is to “oppose” the “federal government’s current immigration enforcement policies.” But “unless a court can say that the purposes for which public funds are expended are *clearly not* public purposes, it would not be justified in holding invalid a legislative act ... providing funds for such purposes.”³¹ Many public purposes, policies, and programs are favored by one faction or political party but not another; yet unless we can say that a program is “clearly not” for a public purpose, such policy choices “belong to the other branches, and the judiciary may not second-guess them.”³²

Government control. The State seems unlikely to be able to show insufficient control of the ILSF. The Gift Clause requires a political subdivision to retain sufficient control of public funds “to ensure that the public purpose is accomplished and to protect the public’s investment.”³³ So the County cannot “make a ‘no-strings-

²⁸ 8 U.S.C. § 1362 (persons facing deportation have the right to be represented by counsel “at no expense to the Government”).

²⁹ *Touchy v. Houston Legal Found.*, 432 S.W.2d 690, 695 (Tex. 1968).

³⁰ TEX. DISCIPLINARY RULES PROF’L CONDUCT, preamble ¶6.

³¹ *Borgelt*, 692 S.W.3d at 304.

³² *Id.* at 301.

³³ *In re State*, 711 S.W.3d at 646 (quoting *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers’ Comp. Comm’n*, 74 S.W.3d 377, 384 (Tex. 2002)).

attached’ payment” of public funds to private legal service providers.³⁴

But as a preliminary matter, that does not appear to be the case here. The County’s contracts require providers to document client eligibility and provide relevant records upon request; to provide monthly reports to the County reflecting the number of cases, clients, family data, and case outcomes. Providers must submit monthly invoices detailing services rendered, the dates and time involved, and the total amount billed. After review by the County Auditor, each invoice is forwarded to the Commissioners’ Court for final approval and payment. The County has the contractual right to audit the service providers “at any time whether before or after payment,” and payments are subject to “refund or withholding of future payments conditioned on the results of the audit.”³⁵ The County has a right to cancel any provider for any reason with 30 days’ notice, a right it has exercised twice before.

The State argues that under *Borgelt*,³⁶ adequate controls consist of “real-time discretionary authority” to deny payments before they issue. But the Supreme Court never indicated that the Gift Clause *always* requires pre-payment control. Government entities contract with many private entities to perform governmental functions or deliver benefits,³⁷ and future services by those providers as well as the professional obligations of the attorneys retained here do not reflect a “no-strings attached” relationship. Again as a preliminary matter, it appears the County retained sufficient controls to protect the public’s investment.³⁸

³⁴ See *Borgelt*, 692 S.W.3d at 308.

³⁵ Cf. *In re State*, 711 S.W.3d at 646 (staying a welfare program that provided monthly cash payments because the County had no way to determine how recipients used the money).

³⁶ *Borgelt*, 692 S.W.3d at 308–10.

³⁷ E.g., TEX. TRANSP. CODE § 452.056(a)(3) (public transportation system); TEX. CODE CRIM. PROC. art. 26.044(a)(4)(A)(ii) (allowing county to contract with nonprofit corporation to act as public defender).

³⁸ *Borgelt*, 692 S.W.3d at 310.

Turning to the balance of harms, we recognize the State may still prevail in showing that ILSF is unconstitutional, and violation of the Texas Constitution or statutes by local officials “clearly inflicts irreparable harm on the State.”³⁹ But ILSF is presumptively constitutional,⁴⁰ and has been operating since 2021 without apparent objection or controversy. That of course does not estop the State from seeking to enforce the Gift Clauses in this or any other case.⁴¹ But the State has yet to produce proof that despite several years in operation, the program has resulted in any *actual* harm to residents of Harris County or the state.

Conclusion

“What is a public purpose cannot be answered by any precise definition further than to state that if an object is beneficial to the inhabitants and directly connected with the local government it will be considered a public purpose.”⁴² Because the State has not yet shown that the purposes behind the ILSF here are “clearly not public purposes,” we deny the State’s Rule 29.3 motion for temporary relief.

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

Justice Farris concurs without opinion

³⁹ *In re State*, 711 S.W.3d at 647.

⁴⁰ *See Borgelt*, 692 S.W.3d at 303.

⁴¹ *See PDT Holdings, Inc. v. City of Dallas*, 712 S.W.3d 597, 606 n.9 (Tex. 2025) (noting that the “general rule barring estoppel against cities, as set forth in [*City of White Settlement v. Super Wash, Inc.*, 198 S.W.3d 770 (Tex. 2006)] is derived from our general rule barring estoppel against the State.”).

⁴² *Borgelt*, 692 S.W.3d at 304 (quoting *Davis v. City of Taylor*, 67 S.W.2d 1033, 1034 (Tex. 1934)).