

CAUSE NO. D-1-GN-26-001941

GLOBE EXPRESS TRUCKING INC;	§	
KIRSTINS CARE LLC; IPSUM GENERAL	§	
CONTRACTORS, LLC; MPULSE	§	
HEALTHCARE & TECHNOLOGY, LLC;	§	IN THE DISTRICT COURT OF
WILLIAMS PROFESSIONAL WATER	§	
RESTORATION SERVICE LLC;	§	
HOUSTON WIFI, LTD. CO. D/B/A	§	
HOUSTON CONSTRUCTION SERVICES	§	TRAVIS COUNTY, TEXAS
NAMC, INC. – GREATER HOUSTON	§	
CHAPTER	§	
	§	
<i>Plaintiff,</i>	§	
v.	§	
	§	
KELLY HANCOCK, ACTING TEXAS	§	53 RD DISTRICT COURT
COMPTROLLER OF PUBLIC	§	
ACCOUNTS; THE OFFICE OF THE TEXAS	§	
COMPTROLLER OF PUBLIC	§	
ACCOUNTS; ADRIANA CRUZ,	§	
EXECUTIVE DIRECTOR OF THE TEXAS	§	
ECONOMIC DEVELOPMENT &	§	
TOURISM OFFICE; MARC D.	§	
WILLIAMS, EXECUTIVE DIRECTOR OF	§	
THE TEXAS DEPARTMENT OF	§	
TRANSPORTATION; STEPHANIE	§	
MUTH, EXECUTIVE COMMISSIONER	§	
OF HEALTH AND HUMAN SERVICES;	§	
AND WILL MCKERALL, EXECUTIVE	§	
DIRECTOR OF THE TEXAS FACILITIES	§	
COMMISSION	§	
	§	
<i>Defendants.</i>	§	

BRIEF OF HARRIS COUNTY AS *AMICUS CURIAE*
SUPPORTING PLAINTIFFS

Harris County (the “County”) files this *amicus* brief in support of Plaintiffs. Harris County believes in the goals of State of Texas’s Historically Underutilized Business (HUB) Program and also relies on the HUB Program as part of its own procurement process.

HARRIS COUNTY’S INTEREST¹

Harris County files this brief to spell out the importance of the State’s HUB Program to the continued operation of Harris County’s MWBE’s Program and its procurement process more generally. The County also believes in the importance of HUB programs in providing equal opportunity in public contracting. Harris County is also deeply concerned by the egregious separation-of-powers problem at the heart of the Comptroller’s action—it is black-letter law that an executive officer of the State cannot usurp authority of the judicial and legislative branches by unilaterally deciding what is unconstitutional and eviscerating the HUB Program legislation.

Harris County adopted its Minority- and Woman-Owned Business Enterprise (MWBE) Program in November 2020 after a comprehensive disparity study.² The County’s MWBE Program relies on certification from other government agencies that a potential contractor is in fact minority- or woman-owned when determining eligibility for the MWBE Program.³ One of the primary certifications relied on by

¹ No counsel for a party authored this brief in whole or in part, and no entity, other than *Amicus*, its officers, employees, or counsel, has made a monetary contribution to this brief.

² See Exhibit 2: HARRIS COUNTY MINORITY- AND WOMAN-OWNED BUSINESS ENTERPRISE PROGRAM (Nov. 10, 2020), available at https://deco.harriscountytexas.gov/Portals/18/Documents/Harris_County_MWBE_Policy_Final_11-10-2020.pdf?ver=1puN3SpnUGekMcZpTaD4xw%3d%3d.

³ *Id.*

Harris County is the HUB certification through the State of Texas Comptroller's Office (Comptroller).⁴

SUMMARY OF ARGUMENT

No state or federal judge has ruled Texas's HUB program unconstitutional; nevertheless, Comptroller Kelly Hancock decided to declare the decades-old program rooted in a bipartisan state law unconstitutional all on his own. In doing so, Comptroller Hancock plunged thousands of HUB-certified businesses across the State into uncertainty. But his decision plainly violates the law—an executive officer cannot override the will of a legislative body through a duly enacted law. The Comptroller's unconstitutional action results in the following severe harm to Harris County: (1) damaging the stability of the County's procurement system; (2) narrowing the universe of bidders available to the county; and, consequently, (3) reducing investment, workforce development, and tax revenues in the County.

ARGUMENT

I. The Comptroller's unilateral and unlawful actions violate the separation of powers doctrine.

The Comptroller's unlawful actions blatantly violate the Texas Constitution's guarantee of separation of powers. *See* TEX. CONST. art. II, § 1; Plfs' Verified Orig.

⁴ *See* Exhibit 3: *Business Assistance*, HARRIS COUNTY DEPARTMENT OF ECONOMIC EQUITY & OPPORTUNITY (Mar. 25, 2026, 5:03 PM), <https://deeo.harriscountytexas.gov/Business-and-Worker-Services/Business-Assistance>.

Pet. at ¶¶ 103-113. Not only does eviscerating the legislatively enacted HUB Program usurp the express intent of the Legislature, but the Comptroller also appoints himself as judge by extrajudicially deciding that the legislation is unconstitutional.

1. The Legislature defined ‘HUB’ in statute, did not delegate making this definition, and recently rejected redefining ‘HUB’ as the Comptroller is seeking to do now.

The Legislature, through the HUB Program’s enacting legislation, never granted the Comptroller authority to change the definitions of “HUB.” Officers from one branch may only exercise powers of another branch in narrow circumstances that must be specified in the Constitution itself. *See Fin. Comm’n of Texas v. Norwood*, 418 S.W.3d 566, 570 (Tex. 2014) (“Exceptions to the constitutionally mandated separation of powers are never to be implied in the least; they must be ‘expressly permitted’ by the Constitution itself.”) (quoting TEX. CONST. art. II, § 1)).

The statutes implementing the HUB Program, *see* TEX. GOV’T CODE Chapter 2161 *et. seq.*, define HUBs as Texas small businesses that are majority owned by “economically disadvantaged persons”—specifically, “Black Americans,” “Hispanic Americans,” “women,” “Asian Pacific Americans,” “Native Americans,” and “veterans . . . who have suffered at least a 20 percent service-connected disability. . .” TEX. GOV’T CODE § 2161.001.

Although the enacting legislation delegates to the Comptroller authority to adopt rules to “efficiently and effectively administer” the program, § 2161.0012, the delegation of the Comptroller’s administration the program via rulemaking is further expressly limited to determining size standards for HUBs, § 2161.015; “administer[ing] Subchapters B and C,” § 2161.002(a); adopting rules based on the result of a disparity study, § 2161.0012(c); and “increasing the contract awards for the purchase of goods or services by the comptroller and other state agencies to businesses that qualify as historically underutilized businesses,” § 2161.0012(d).

First, none of the delegated rulemaking authority touches on changing the definition of “HUB,” which is included in Subchapter A. Second, Subchapter B and C also do not include fundamentally changing the definition of “HUB.” Instead, the Comptroller’s powers and duties under the HUB Program in Subchapters B and C are limited to:

- Certifying businesses as HUBs as defined in the statute, § 2161.061;
- Assisting HUBs in finding business opportunities and training, § 2161.062;
- Assisting state agencies in developing policies to utilize HUBs; § 2161.063;
- Compiling a directory of certified HUBs, § 2161.064;
- Developing mentoring and forums to support business relationship-building with HUBs, §§ 2161.065-2161.066; and

- Tracking and reporting utilization of HUBs in state contracting and conducting outreach programs, §§ 2161.121-2161.126.

Despite the plain language of the enabling legislation not delegating any authority to change the definitions of “HUB” from the definitions in Section § 2161.001, the Comptroller did so here by unlawfully issuing the Emergency Regulation.

And if there were any doubt as to whether the Legislature wanted to delegate the “HUB” definitions to the Comptroller—or even had any interest in changing the definition in light of recent case law—the answer during the 2025 Legislative Session was a resounding “no.” In the 2025 Regular Session, H.B. No. 167⁵ was introduced and proposed limiting the definition of “economically disadvantaged person” to solely veterans with disabilities, as the Comptroller is trying to do here. The bill did not even make it out of committee. Therefore, the Legislature, even after having a chance to consider recent case law, rejected fundamentally changing the current definition of “HUB”—and officers in the executive branch should not be granted an opportunity to make an end-run around the Legislature to revise the heart of a statute.

⁵ See Tex. H.B. 167, 89th Leg., R.S. (2025), available at <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/HB00167I.pdf>.

2. Under the Texas Constitution, the judiciary—not the Comptroller—adjudicates the constitutionality of statutes.

The judicial branch retains exclusive power to decide on the constitutionality of a statute. *City of Dallas v. Stewart*, 361 S.W.3d 562, 579 (Tex. 2012) (“The protections we have previously provided to common law claims should apply with special force to claims founded in our constitution, because the power of constitutional construction is inherent in, and exclusive to, the judiciary.”); *see Fin. Comm’n of Texas v. Norwood*, 418 S.W.3d 566, 572-73 (Tex. 2014). As a rule, agencies lack the authority to decide on the constitutionality of a statute or ordinance. *Edwards Aquifer Auth. v. Day*, 361 S.W.3d 841, 844 (Tex. 2012) (holding that the State Office of Administrative Appeals had no authority to decide on the constitutionality of the Edwards Aquifer Authority Act); *see Stewart*, 361 S.W.3d at 568 (holding that a municipal building standards board had the authority to decide on questions of historical fact but not on questions of law determining whether the demolition of a property was constitutional); *Norwood*, 418 S.W.3d 566 at 572.

The legislature may not delegate the power of constitutional construction to agencies. *See id.* Challenges to the constitutionality of statutes or ordinances are pure questions of law that only the judiciary has the power to decide. *Juliff Gardens, L.L.C. v. Texas Comm’n on Env’t Quality*, 131 S.W.3d 271, 279-80 (Tex. App. – Austin 2004, no pet.).

Texas courts have consistently rejected agencies' attempts to usurp the judiciary's power of constitutional construction. In *City of Richardson v. Bowman*, a motorist filed suit to enjoin enforcement of a red-light camera ordinance and for a declaration that the ordinance and its enabling statute were unconstitutional. 555 S.W.3d 670, 676 (Tex. App. –Dallas 2018, pet. denied). The Fifth Court of Appeals held that exhaustion of administrative remedies was not required, as administrative agencies “lack the ultimate power of constitutional construction.” *Id.* at 686. Similarly, in *Juliff Gardens L.L.C. v. Texas Comm’n on Env’t Quality*, the Third Court of Appeals held that the TCEQ had no authority to determine the constitutionality of a provision in the Texas Solid Waste Disposal Act. *Juliff Gardens L.L.C.*, 131 S.W.3d at 279, (“Here, the Commission has no statutory authority to determine the constitutionality of section 361.122 [of the Health and Safety Code], and a constitutional determination by the district court does not infringe on the Commission's permitting power.”).

The Comptroller improperly used the emergency rulemaking process to usurp the judiciary's exclusive authority of constitutional construction. His grounds for promulgating the Emergency Regulation eliminating HUB certifications from minority- and woman-owned businesses was the HUB Program's supposed violation of the Equal Protection Doctrine. The Emergency Regulation stated:

[T]he HUB program is not narrowly tailored to meet the strict scrutiny required for racial and ethnic classifications nor the immediate scrutiny

required for sex-based classifications under the state and federal constitutions. Therefore, the highest state and federal law requires the comptroller to undertake emergency rulemaking to remove such classifications from the comptroller's implementation of the HUB program.⁶

Because the judiciary branch has exclusive authority to decide whether a statute is constitutional, the Comptroller had no authority to decide on the constitutionality of the HUB statute. In removing race and gender classifications in the HUB program because of the statute's supposed unconstitutionality, the comptroller improperly exercised the power of the judicial branch.

II. Comptroller's disregard of the law directly harms Harris County.

The Comptroller's rule harms Harris County. The County relies on the State's HUB certification system as part of its own procurement processes. By arbitrarily issuing this rule, the Comptroller hampers the stability of the County's procurement system by impacting all aspects of procurement, from bidding to award to ongoing contract management.

The Comptroller's drastic diminishing of the HUB program also impacts Harris County by narrowing the universe of bidders that Harris County considers. Harris County relies on these certifications in its procurement, and bidders losing the certification may decide against bidding on Harris County projects to Harris

⁶ Plfs' Verified Orig. Pet., Ex. A: Emergency Regulation (Dec. 12, 2025), available at <https://www.sos.state.tx.us/texreg/archive/December122025/Emergency%20Rules/34.PUBLIC20FINANCE.html#1>.

County’s detriment. Ultimately, bigger vendor pools mean more competition leading to better pricing and innovation while also reducing the concentration of contracts in the hands of a few vendors.

For example, the Harris County 2020 Disparity Study found Harris County spent only about 9 percent with MWBEs, when MWBEs represented about 28 percent of the available market.⁷ As of August 2025, though, Harris County more than doubled the amount it spent with MWBEs—up to about 23 percent of the County’s contractual spending.⁸

Finally, programs like HUB strengthen local economies and communities. They help small and local businesses gain access to government contracts they might otherwise miss due to limited networks or visibility, barriers to capital, and historical exclusion from bidding systems.⁹ More local businesses help grow the County’s tax

⁷ Exhibit 4: *M/WBE Program: FY25 Mid-Year Report*, HARRIS COUNTY DEPARTMENT OF ECONOMIC EQUITY & OPPORTUNITY, at p. 3 (Aug. 2025), available at https://deeo.harriscountytexas.gov/Portals/18/Documents/MWBE%20Utilization%20Report/PRESENTATION_FY25-Mid-Year-MWBE_Aug6-2025.pdf?ver=mCWtrQpXYVwvrFESX013lQ%3d%3d.

⁸ *Id.*

⁹ See Exhibit 5: Colette Holt & Assoc., *Harris County Disparity Study 2020, Section IV.D: Evidence of Disparities in Access to Business Capital*, pp. 88-90, available at <https://deeo.harriscountytexas.gov/Portals/18/Documents/HarrisCountyDisparityStudyFinal2020.pdf>.

base. These businesses also help build intergenerational wealth.¹⁰ These benefits together bring immense improvement to the lives of Harris County's residents.

CONCLUSION

For the above reasons, Harris County encourages the Court to grant the injunctive relief sought by Plaintiffs and any other relief to which they are entitled.

Respectfully submitted,

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¹⁰ See *id.* at Section IV.E: Evidence of Disparities in Human Capital, p. 91.

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CERTIFICATE OF SERVICE

I certify that on March 27, 2026, I filed a true and correct copy of the foregoing brief and it has been sent electronically to all counsel of record who are admitted to practice before this Court.

/s/ Lori J. Yount
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