

Cause No. _____

HARRIS COUNTY, TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
v.	§	
	§	
GLENN HEGAR, IN HIS OFFICIAL	§	
CAPACITY AS TEXAS COMPTROLLER	§	
OF PUBLIC ACCOUNTS; AND AIMEE	§	TRAVIS COUNTY, TEXAS
SNODDY, IN HER OFFICIAL CAPACITY	§	
AS DIRECTOR OF THE CRIMINAL	§	
JUSTICE DIVISION OF THE OFFICE OF	§	455TH, DISTRICT COURT
THE GOVERNOR,	§	
	§	
Defendants.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S VERIFIED ORIGINAL PETITION AND
APPLICATION FOR A TEMPORARY RESTRAINING ORDER, TEMPORARY
INJUNCTION, AND PERMANENT INJUNCTION**

This is a case about state officials disregarding statutory duties and failing at basic math to disrupt Harris County’s budget and property tax rate adoption processes.

Since January 2022, Local Government Code Chapter 120 has required large counties to get voter approval before making certain reductions to a police agency’s budget from one fiscal year to the next. If the county makes a prohibited reduction without obtaining the required voter approval, a penalty is imposed: the county is prohibited from adopting a tax rate higher than its no-new-revenue rate unless it restores the agency’s funding or holds an election. Chapter 120 permits any resident of a county to submit a defunding complaint about that county and requires the Comptroller to determine whether the county made a prohibited reduction.

The Comptroller failed to follow Chapter 120’s mandatory, straightforward rules for making defunding determinations on a complaint filed by the Harris County Precinct 5 Constable. After the County changed its fiscal year from March 1 to October 1 and used a short fiscal year to bridge the interim period (“SFY22”), the Comptroller issued a determination that Harris County

improperly reduced the budget of the Precinct 5 Constable. He made that determination by taking the Precinct 5 budget for SFY22, annualizing it, and then reasoning that because that annualized number was greater than Precinct 5's budget for fiscal year 2023 ("FY23"), the county violated Chapter 120.

The Comptroller's determination is both clearly erroneous and *ultra vires*. **First**, Chapter 120 authorizes the Comptroller to compare only Harris County's last two "adopted" budgets. It is undisputed that the Precinct 5 budget adopted for FY23 is greater than its budget adopted for SFY22. Harris County never adopted an "annualized" fiscal year 2022 budget, and nowhere in Chapter 120 is the Comptroller authorized to annualize a county budget and make determinations based on those calculations. **Second**, even if the Court accepts the Comptroller's annualization method, he failed to follow Chapter 120's mandatory analysis for determining whether there's been a prohibited reduction. The law says that if a county's *overall* budget *decreases* from one budget year to the next, a prohibited funding reduction occurs only if the police agency's share of the county's overall budget has decreased. Tex. Loc. Gov't Code § 120.002(a)(1)(B).¹ Even applying the Comptroller's own math, Harris County did not violate this standard because the County's overall budget *decreases* from SFY22 (annualized) to FY23, while *Precinct 5's share of the budget increases*.

The Comptroller has "abated" his determination in hopes that Harris County will reallocate

¹ For example, if a county's overall budget decreased from \$13 million in year 1 to \$10 million in year 2, and the police agency's budget decreased from \$6 million to \$5 million, the county did not violate the law, because the agency's share of the county budget in year 1 was 46.15% (\$6mm / \$13mm), and its share in year 2 was 50% (\$5mm / \$10mm). The statute provides a different mandatory analysis if the county's overall budget *increases* from one budget year to the next. In that case, the Comptroller simply determines whether the police agency's budget appropriation decreased from year 1 to year 2 in absolute terms. Tex. Loc. Gov't Code § 120.002(a)(1)(A). For example, if a county's overall budget increased from \$10 million in year 1 to \$13 million in year 2, and the police agency's budget decreased from \$6 million to \$5 million, the county violated the law.

funds to Precinct 5 to correct an imaginary defunding of that department. Harris County instead asks this Court to intervene, require the Comptroller to follow the law, and block him from continuing his *ultra vires* antics.

State officials like the Comptroller “have no discretion or authority to misinterpret the law or the rules of arithmetic.” *In re Brown*, 614 S.W.3d 712, 720 (Tex. 2020) (requiring the Comptroller to follow the applicable statute and get his math right) (cleaned up). The Comptroller’s unlawful determination regarding Constable Precinct 5 has cast a cloud of uncertainty and insecurity over Harris County’s future budgeting and tax rates. And he has made clear to the public his belief that his legally incorrect analysis not only applies to the other seven constable precincts in Harris County, but also will require Harris County to reallocate \$8.8 million from other departments to those constable precincts to avoid losing its taxing power. He has invited complaints about those other precincts, and the moment he receives one he will use the same *ultra vires* approach to issue more erroneous determinations.

Harris County requests that this Court enjoin the Comptroller from reinstating his determination as to Precinct 5 and prohibit him from issuing his contemplated determinations as to other police agencies in Harris County.

Harris County also requests that the Court grant injunctive relief against Aimee Snoddy, Director of the Criminal Justice Division of the Office of the Governor. Chapter 120 provides that the Director must give the county notice of a potentially valid complaint and an opportunity to address alleged deficiencies in funding before referring the complaint to the Comptroller. Director Snoddy referred the Precinct 5 complaint to the Comptroller before giving Harris County proper notice and an opportunity to address the allegations. Harris County requests that she be enjoined from doing so again on future expected complaints.

Because the Comptroller's and the Director's unlawful actions threaten imminent, irreparable injury, Harris County is entitled to a temporary restraining order and temporary injunction pending a trial on the merits of its claims.

DISCOVERY LEVEL

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

PARTIES

2. Plaintiff Harris County, Texas is the largest county in Texas and operates through the Harris County Commissioners Court, the County's principal governing body.

3. Defendant Glenn Hegar ("the Comptroller" or "Comptroller Hegar" or "Hegar") is the Texas Comptroller of Public Accounts and is sued in his official capacity. Harris County alleges the Comptroller's imminent threatened enforcement of SB23 against Harris County is *ultra vires* because that enforcement is outside of his legal authority. He may be served at 111 East 17th Street Austin, Texas 78774.

4. Defendant Aimee Snoddy ("the Director" or "Director Snoddy" or "Snoddy") is the Director of the Criminal Justice Division of the Office of the Governor ("the Division") and is sued in her official capacity. Harris County alleges Snoddy is acting *ultra vires* acts by referring SB23 complaints to the Comptroller without providing Harris County the notice and opportunity to address required by SB23. Director Snoddy may be served at 1100 San Jacinto Blvd., Austin, Texas 78701.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter pursuant to article V, section 8 of the Texas Constitution and section 37.003 of the Civil Practice and Remedies Code.

6. This Court has personal jurisdiction over each Defendant because the Defendants reside in Texas.

7. Venue is appropriate in Travis County pursuant to sections 15.002(a)(1) and 65.023(a) of the Civil Practice and Remedies Code.

BACKGROUND FACTS

A. Senate Bill 23

8. In June 2021, Governor Abbott signed into law Senate Bill 23 (“SB23”), compelling, under specific circumstances, large counties to obtain voter approval to reduce funding for police agencies. SB23 provides an enforcement mechanism whereby a county’s ad valorem tax rate may be capped at the “no-new-revenue” rate if the county implements a reduction without the required voter approval. This tax-rate cap severely limits a county’s ability to raise new revenue to pay for services to benefit its residents.

9. The stated purpose of SB23 was to address concerns over counties “responding to certain demands to defund the police.” The statute became effective January 1, 2022. Act of May 30, 2021, 87th Leg., R.S., ch. 201, § 2, 2021 Tex. Sess. Law Serv. ch. 201. It was codified in Chapter 120 of the Local Government Code.

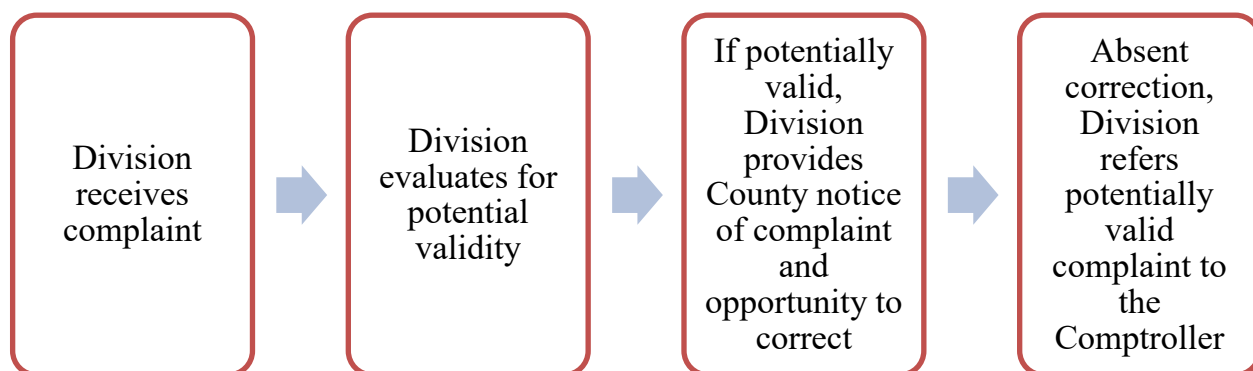
Procedures for Evaluation of SB23 Complaints by the Governor’s Office

10. SB23 has a required procedure for enforcing compliance with its election requirement, starting with a complaint:

Sec. 120.006. COMPLAINT.

- (a) A person who believes that a county has implemented a proposed reduction or reallocation described by Section 120.002(a) without the required voter approval and who resides in the county may file a complaint with the criminal justice division of the office of the governor.
- (b) The criminal justice division of the office of the governor shall determine whether a complaint filed under Subsection (a) is potentially valid or frivolous or false.
- (c) The criminal justice division of the office of the governor shall provide written notice of a potentially valid complaint filed under Subsection (a) to the county that is the subject of the complaint. The division shall provide the county an opportunity to correct the action that is the subject of the complaint before referring the complaint to the comptroller.

11. Enforcement thus begins with a “complaint” from a county resident “who believes that a county has implemented a proposed reduction or reallocation described by” the law “without the required voter approval” filed “with the criminal justice division of the office of the governor” (“Division”). Tex. Loc. Gov’t Code § 120.006(a). Upon receipt, the Division must “determine whether” the complaint “is potentially valid or frivolous or false.” *Id.* § 120.006(b). If the Division determines that the complaint is potentially valid, it must provide “written notice” of that complaint “to the county” and then allow the county an “opportunity to correct the action that is the subject of the complaint.” *Id.* § 120.006(c). Only after those steps, and absent correction, may the Division “refer[] the complaint to the comptroller.” *Id.*



Determination under SB23 by the Comptroller

12. After the Division refers the complaint to the Comptroller, SB23 requires the Comptroller to evaluate the complaint:

Sec. 120.007. COMPTROLLER INVESTIGATION; TAX RATE LIMITATION.

(a) On request by the criminal justice division of the office of the governor, the comptroller shall determine whether a county has implemented a proposed reduction or reallocation described by Section 120.002(a) without the required voter approval. The comptroller shall issue a written determination to the governor, lieutenant governor, speaker of the house of representatives, and governing body of the county. . . .

13. Thus, the Comptroller's authority to act is narrow. He must make a specific determination: solely whether a county has implemented a reduction "described by Section 120.002(a)" without voter approval. The § 120.002(a) analysis is set forth in ¶¶ 15-20.

14. If the Comptroller determines under the statute that a county budget implemented a reduction "described by Section 120.002(a)" without voter approval, the result is a cap on the county's ad valorem tax rate. Tex. Loc. Gov't Code § 120.007(c). This cap is an intrusion on the power to set ad valorem taxes delegated to counties by the Texas Constitution. *See* Tex. Const. art. VIII, §§ 1-a, 9; *Vinson v. Burgess*, 773 S.W.2d 263, 266 (Tex. 1989).

Sec. 120.007. COMPTROLLER INVESTIGATION; TAX RATE LIMITATION.

. . .

(c) Notwithstanding any other law, if the comptroller determines that a county implemented a proposed reduction or reallocation described by Section 120.002(a) without the required voter approval, the county may not adopt an ad valorem tax rate that exceeds the county's no-new-revenue tax rate until the earlier of:

(1) the date the comptroller issues a written determination that the county has, as applicable:

(A) reversed each funding reduction, adjusted for inflation, and personnel reduction that was a subject of the determination; or

(B) restored all reallocated funding and resources that were subjects of the determination to the original law enforcement agency; or

(2) the date on which each reduction and reallocation that was a subject of the determination has been approved in an election held in accordance with this chapter.

Thus, a lawful determination by the Comptroller under the statute caps the county's tax rate and so wrests from the county its authority to set rates. The county only gets its authority to set tax rates back if it obtains voter approval or the Comptroller issues another determination that the funding reduction has been reversed.

The required funding analysis

15. The Comptroller has authority to determine only whether a county had implemented a reduction "described by Section 120.002(a)." Tex. Loc. Gov't Code § 120.007(a),(c). Section 120.002(a) mandates a specific analysis to determine if a county has reduced funding for a police agency:

Sec. 120.002. ELECTION REQUIRED.

(a) . . . [A] county shall hold an election in accordance with this chapter if the county adopts a budget for a fiscal year that, compared to the budget adopted by the county for the preceding fiscal year:

(1) reduces for a law enforcement agency, excluding a 9-1-1 call center, with primary responsibility for policing, criminal investigation, and answering calls for service:

(A) for a fiscal year in which the overall amount of the budget is equal to or greater than the amount for the preceding fiscal year, the appropriation to the agency;

(B) for a fiscal year in which the overall amount of the budget is less than the amount for the preceding fiscal year, the appropriation to the agency as a percentage of the total budget;

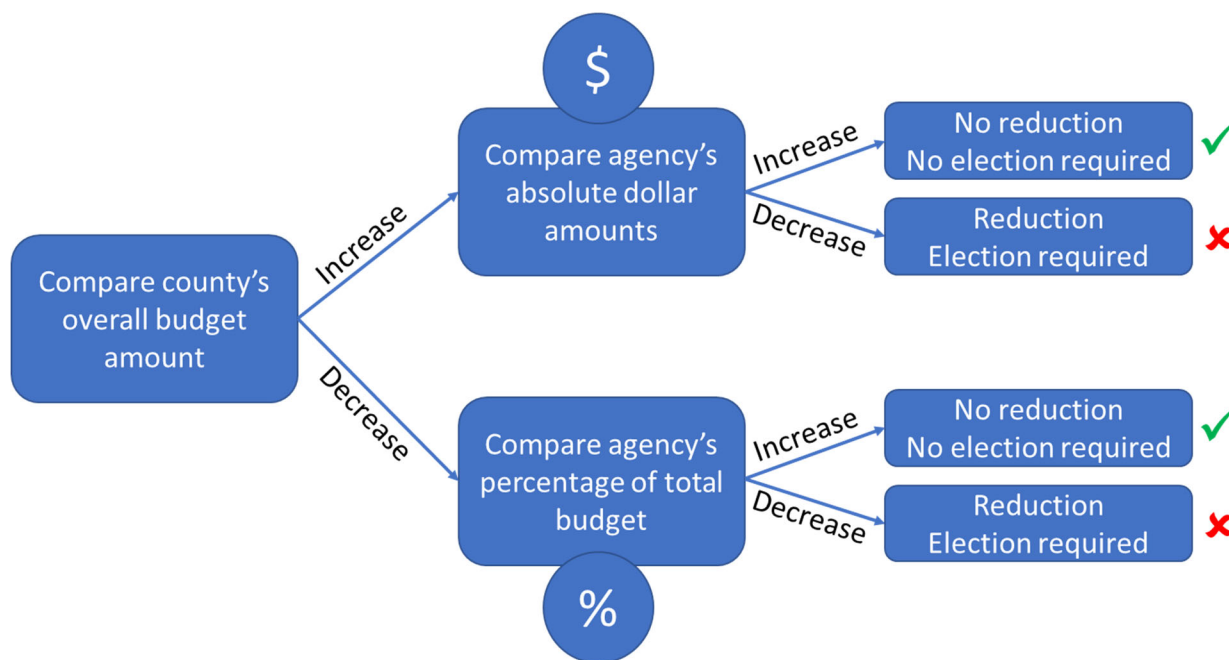
16. SB23 thus requires a comparison between two successive, adopted, fiscal-year budgets. *See* Tex. Loc. Gov't Code § 120.002(a) (“if the county adopts a budget for a fiscal year that, compared to the budget adopted by the county for the preceding fiscal year”).

17. The relevant comparison must proceed in two steps, beginning with a comparison between the “overall amount of the budget” for the county for two fiscal years. *Id.* § 120.002(a)(1)(A)-(B).

18. This first step is crucial, but the Comptroller skipped it in his prior analysis.

19. If the county’s total budget goes up or stays the same, then apply Subsection (A) and compare “the appropriation” to the police agency; if the county’s total budget goes down, then apply Subsection (B) and compare “the appropriation to the agency as a percentage of the total budget.” *Id.*

20. Where the appropriate second comparison shows a reduction for the police agency from one fiscal year to the next, an election is required; otherwise, no reduction occurs under SB23 and no election is required. Here is the required analysis as a decision tree:



B. Harris County’s Fiscal Year 2022-2023 Budget Increases Funding for All Police Agencies.

21. The Local Government Code generally provides for a county fiscal year to be a “one-year period” from January 1 to December 31. Tex. Loc. Gov’t Code § 112.010(a)-(b). However, it also provides for a fiscal year “shorter than a 12-month period” should a county decide to transition the start date of its fiscal year to or from October 1 or March 1. See *id.* § 112.010(c).

22. As permitted by state law, and to align the adoption of the budget with the process of setting property tax rates, Harris County opted to change its fiscal-year start date from March 1 to October 1. To accomplish that change, it designated a fiscal year of seven months, the SFY22, which lasted from March 1 to September 30, 2022.

23. Harris County then adopted the budget for SFY22 (the “SFY22 Budget”).

24. Harris County then adopted the budget for FY23, which lasts from October 1, 2022, to September 30, 2023 (the “FY23 Budget.”)

Comparing SFY22 Budget to FY23 Budget

25. The overall FY23 Budget is \$2,588,914,023 while the overall SFY22 Budget was \$1,780,665,984. As the “overall amount of the” FY23 Budget “is equal to or greater than the amount for the preceding fiscal year,” Local Government Code § 120.002(a)(1)(A) applies. Under that provision, the appropriate comparison for any police agency in FY23 is between “the appropriation to the agency”—the absolute sum of money set aside for the agency’s use²—in the FY23 Budget and the appropriation to that agency “for the preceding fiscal year.” *Id.*

² See *Appropriation*, WEBSTER’S THIRD NEW WORLD UNABRIDGED DICTIONARY 106 (2002) (“a sum of money set aside or allotted by official or formal action for a specific use (as from public revenue by a legislative body that stipulates the amount, manner, and purpose of items of expenditure)”).

26. Compared to the SFY22 Budget, the FY23 Budget increased the sum of money set aside for each Constable Precinct and for the Sheriff's Office. Thus, all police-agency appropriations *increased*, and no election is required under § 120.002.

27. Where the "overall amount of the budget" decreases from "the preceding fiscal year," the appropriate comparison for any police agency is between the agency's "percentage of the total budget" across the two fiscal years. *Id.* § 120.002(a)(1)(B). Compared to the SFY22 Budget, the FY23 Budget increased the appropriation for each Constable Precinct and the Sheriff's Office "as a percentage of the total budget" for the county. As a result, even if § 120.002(a)(1)(B) applied, no election would be required under § 120.002.

28. In no scenario did a reduction occur under § 120.002, and no election is required.

29. The chart below shows the increase in appropriations for the Constable Precincts and Sheriff's Office in the FY23 Budget and the SFY22 Budget in absolute amounts and as a percentage of the total budget (data from Exhibit A):

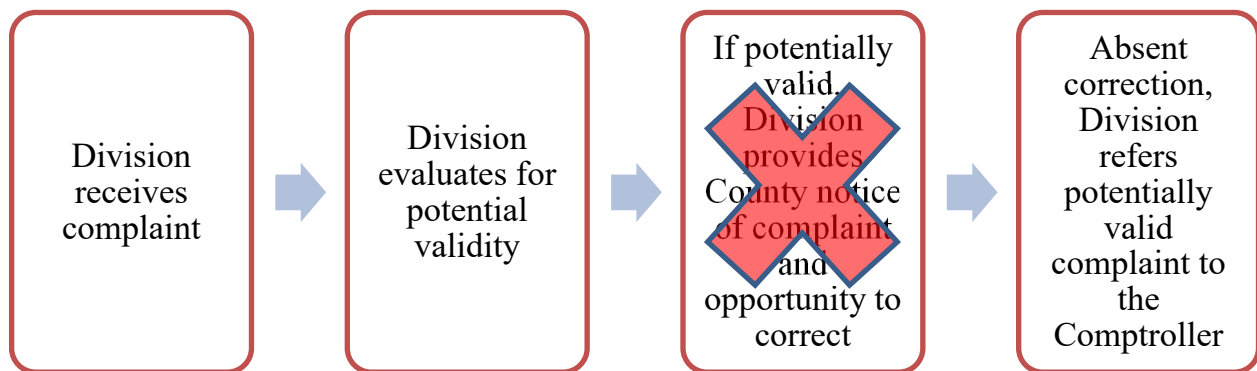
	SFY22 Budget Absolute Amounts	FY23 Budget Absolute Amounts	SFY22 Percentage of Total Budget	FY23 Percentage of Total Budget
Constable Precinct 1	\$27,687,202	\$45,364,315	1.55%	1.75%
Constable Precinct 2	\$7,203,497	\$11,757,948	0.40%	0.45%
Constable Precinct 3	\$12,215,262	\$19,919,058	0.69%	0.77%
Constable Precinct 4	\$38,725,117	\$63,147,400	2.17%	2.44%
Constable Precinct 5	\$28,554,047	\$46,582,350	1.60%	1.80%
Constable Precinct 6	\$6,998,207	\$11,414,038	0.39%	0.44%
Constable Precinct 7	\$9,582,988	\$15,647,290	0.54%	0.60%
Constable Precinct 8	\$6,157,362	\$10,039,046	0.35%	0.39%
Sheriff's Office	\$366,848,810	\$603,706,426	20.60%	23.32%
Total Budget	\$1,780,665,984	\$2,588,914,023	100%	100%

The Comptroller's Precinct 5 Determination

30. Notwithstanding Harris County's indisputable compliance with section 120.002, on February 10, 2023, the Comptroller issued a letter titled "Notice of Determination under Local Government Code, Section 120.007(a)." *See* Exhibit B. The letter was addressed to the parties listed in § 120.007(a) as required to receive notice.

31. The letter advised: "On December 14, 2022, my office received a request from the Criminal Justice division of the Office of the Governor to investigate a complaint from Constable Ted Heap of Harris County Constable Office Precinct 5" that the *"Harris County 2023 fiscal year adopted budget reduced the resources available to Precinct 5 by \$2,367,444 compared to the previous year's annualized budget."*

32. The Division had not provided the required notice of that complaint and had never offered Harris County an opportunity to address that complaint before the Division referred the complaint to the Comptroller. Thus, the Division plainly violated Local Government Code § 120.006(c).



33. In the Comptroller's letter, he announced his determination that, as to Constable Precinct 5, "Harris County implemented a proposed reduction described by Section 120.002(a) without the required voter approval" (the "Precinct 5 Determination"). As a result, the Comptroller asserted control over Harris County's power to set ad valorem tax rates, announcing, "Harris

County may not . . . adopt an ad valorem tax rate that exceeds the county’s No-New-Revenue tax rate until the earlier of either the date my office issues a written determination the county has reversed the funding reduction that is the subject of this determination or the date when the funding reduction has been approved in an election.”

34. The Comptroller did not compare either “the appropriation to” Constable Precinct 5 in the two fiscal years or “the appropriation to” Constable Precinct 5 “as a percentage of the total budget” in the two fiscal years when making his determination. Tex. Loc. Gov’t Code § 120.002(a)(1)(A)-(B). Instead, the Comptroller explained in his letter that he compared the “*annualized* SFY 2022 adopted budget for Precinct 5 . . . to . . . the FY 2023 adopted budget.” (emphasis added). The Comptroller concluded that the “annualized SFY 2022 adopted budget for Precinct 5 was \$48,949,795, as compared to \$46,582,350 for the FY 2023 adopted budget. The funding shortfall is \$2,367,444.86 (see Appendix).”

35. The Comptroller annualized the amounts for the seven-month SFY22 budget by multiplying them by 12/7.

36. This attempted Precinct 5 Determination was unlawful because it conflicted with the requirements of Local Government Code § 120.002(a) in at least two ways.

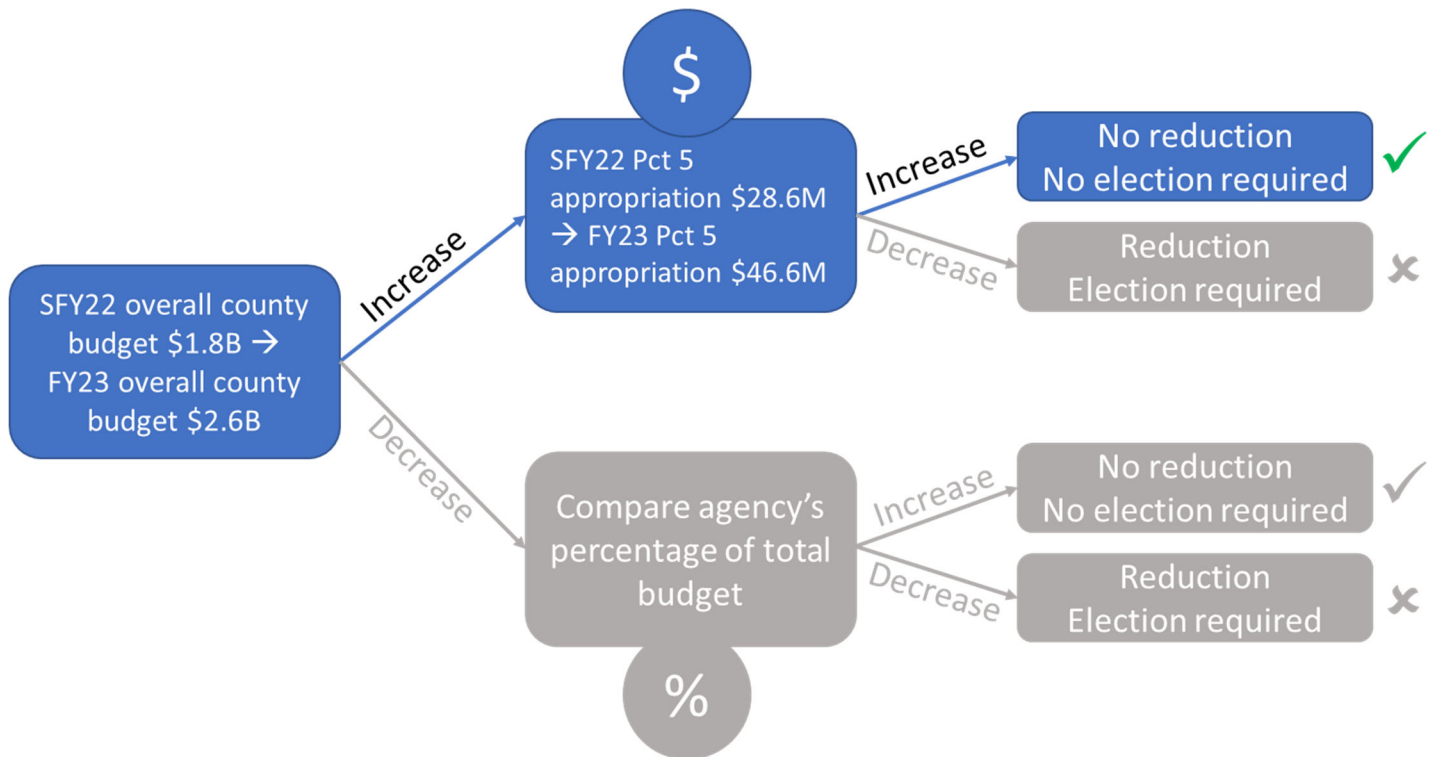
37. First, the plain meaning of section 120.002(a) required the Comptroller to compare absolute dollar amounts for both the overall amount and the appropriation to Constable Precinct 5, which precludes the Comptroller from annualizing a budget before making the relevant comparisons. Section 120.002(a) says a budget for a fiscal year should be “compared to the budget adopted by the county for the preceding fiscal year”—not “compared to the annualized budget” adopted for the prior year. Likewise, § 120.002(a)(1)(A) provides for a comparison of “the appropriation to the agency”—not “the annualized appropriation to the agency.” But that

unauthorized comparison is exactly what the Comptroller did: he expressly compared the FY23 Budget to the “annualized SFY 2022 adopted budget for Precinct 5.”

38. Section 120.002(a) does not provide for comparison of annualized budgets or annualized appropriations, despite the Legislature’s familiarity with the concept of annualization and with a short fiscal year for Harris County. See, e.g., Tex. Fin. Code § 303.008; Tex. Gov’t Code § 659.124(c); Tex. Educ. Code § 58.009(d); Tex. Loc. Gov’t Code § 112.010(c) (allowing short fiscal year for a county with more than 3.3 million people). Indeed, Harris County had officially decided to employ the short, interim SFY22 by January 2021, months before SB23 was enacted in May 2021, yet the Legislature did not authorize the Comptroller to employ any special analysis for short fiscal years.

39. Because section 120.002(a) “is void of any language” suggesting comparison of annualized budgets or annualized appropriations, “we can only conclude that the Legislature did not intend to” permit that comparison. *Ojo v. Farmers Grp., Inc.*, 356 S.W.3d 421, 433-34 (Tex. 2011); *see also Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, No. 21-0291, 2023 WL 176287, at *8 (Tex. Jan. 13, 2023) (Courts “may not judicially amend a statute to add words that are not there.”) (cleaned up).

40. Below is a diagram showing the proper analysis without annualizing:



41. Second, even if the proper way to compare the SFY22 Budget to the FY23 Budget were to annualize the SFY22 Budget by multiplying by 12/7, that would result in application of § 120.002(a)(1)(B) and its required comparison of *percentages*, which the Comptroller did not do.

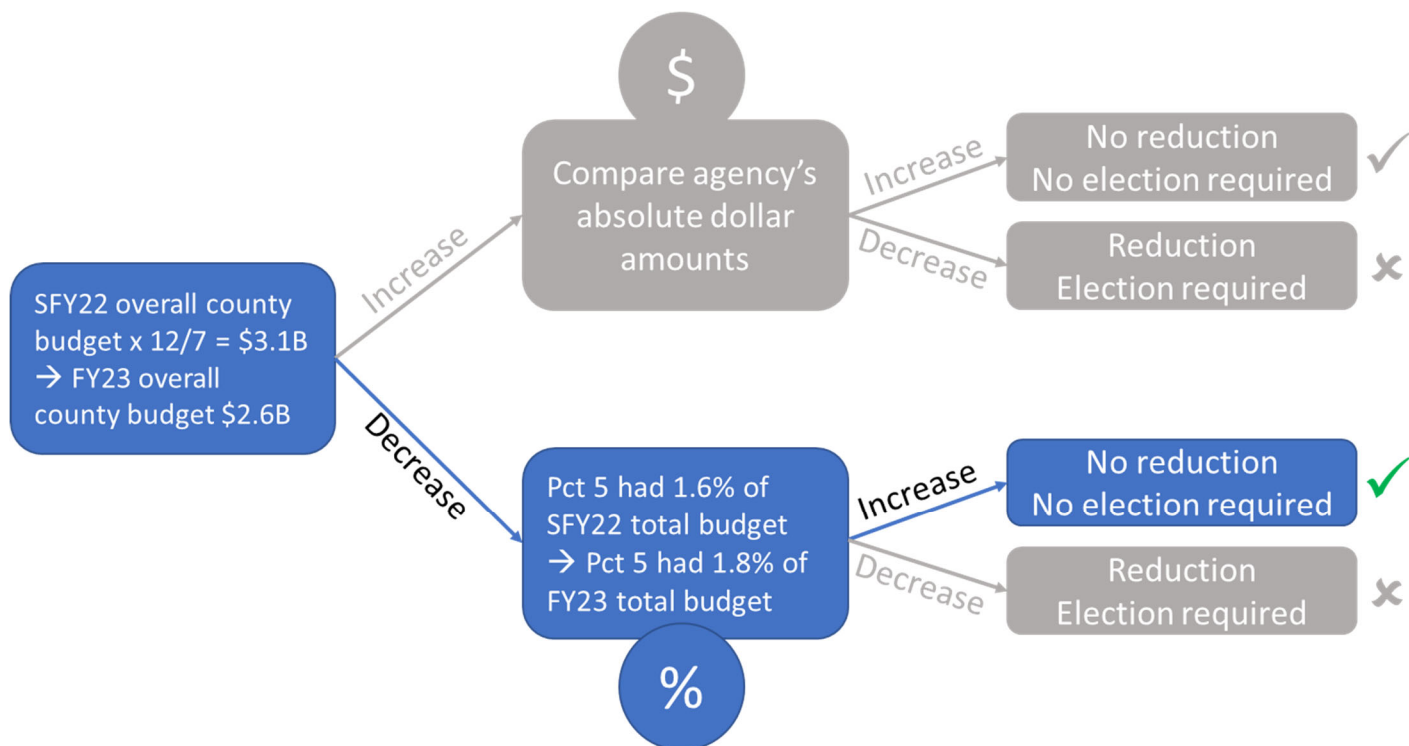
42. Assuming the Comptroller's annualization were permissible, the Comptroller failed to correctly perform the first step: comparing the "overall amount" of the county budgets. Tex. Loc. Gov't Code § 120.002(a)(1)(A), (B). For that first step, the overall amount of the FY23 Budget decreased from the overall amount of the annualized SFY22 Budget:

SFY22 Adopted Overall Budget	Comptroller's Multiplier	Annualized SFY22 Overall Budget	FY23 Overall Budget
\$1,780,665,984	$\times 12/7$	= \$3,052,570,258	>> \$2,588,914,023

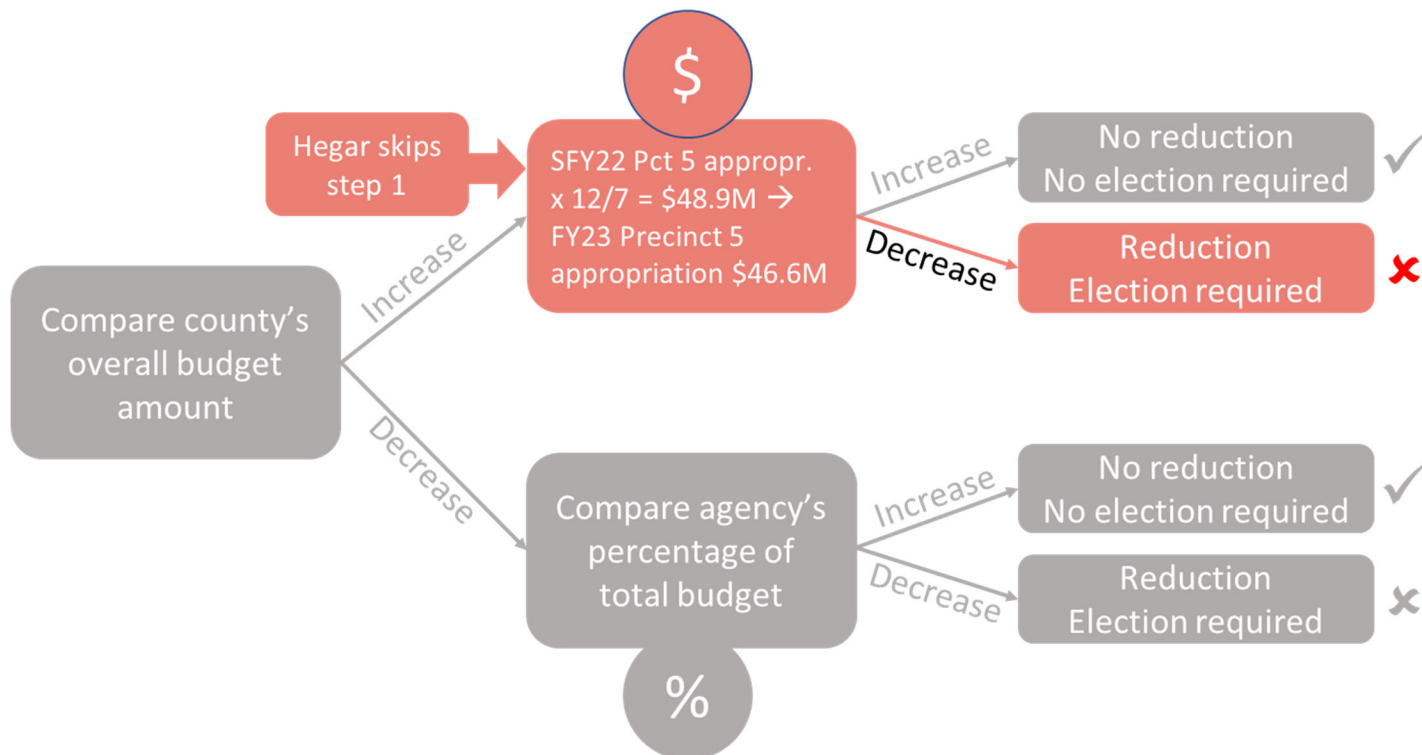
43. Because the overall amount of the FY23 Budget is less than the overall amount of the Annualized SFY22 Budget, the appropriate comparison would be “the appropriation to the agency as a percentage of the total budget,” which the Comptroller did not do. *Id.* § 120.022(a)(1)(B) (emphasis added). Thus, even using the Comptroller’s preferred annualization method, he failed to follow the analysis required by the law: comparing the agencies’ percentages of the total budget.

44. Had the Comptroller compared percentages, he would have found Constable Precinct 5 increased from 1.6% of the SFY22 budget to 1.8% of the FY23 Budget, so no reduction occurred under § 120.002 and no election would be required.

45. Below is a diagram showing the analysis using the Comptroller’s annualization method:



46. It is unclear why the Comptroller did not properly perform the two-step analysis as required by the law. His Precinct 5 Determination never mentions a comparison between overall budget amounts, so it appears he just skipped that first part of the required analysis, as shown below:



47. Skipping the first step or otherwise failing to properly analyze whether the “overall amount of the budget” decreased exceeds the bounds of the Comptroller’s lawful authority and conflicts with the law itself. Tex. Loc. Gov’t Code § 120.002(a)(1)(A), (B). Had the Comptroller followed the law, he would have concluded that no reduction occurred under § 120.002(a) and that no election would be required.

48. Whatever caused the Comptroller to fail in his analysis, his determination did not follow the analysis required by the statute and thus was *ultra vires*.

The Comptroller's Abatement

49. On February 28, 2023, more than two weeks after the Comptroller issued his determination regarding the Precinct 5 complaint, Director Snoddy sent Harris County a letter discussing that complaint. She alleged that her office and Harris County “had communications regarding this defunding complaint” before her office referred it to the Comptroller,³ and she asserted her office was now “providing [Harris County] with an opportunity to correct the action that is the subject of that complaint.” Director Snoddy gave Harris County a deadline of March 10, 2023, to address the defunding complaint.

50. After the Harris County Administrator sent a letter to Director Snoddy requesting information regarding other potential complaints and making clear the County was not given the proper opportunity to address the Precinct 5 complaint before the Comptroller issued his determination, the Comptroller, on February 28, 2023, abated his Precinct 5 Determination. Ex. E. He said he “was notified by the Office of the Governor that officials from Harris County have sought an opportunity to resolve complaints filed under Local Government Chapter 120.”⁴ He stated he was abating his Precinct 5 Determination “pending the outcome of this effort.” As a result, his abatement appears tied to the March 10 deadline provided by Director Snoddy.

C. A Threat of Imminent, Unlawful Action by the Defendants Exists.

51. There presently exists a threat of imminent, unlawful action by Defendants.

³ The law requires the Division to provide the County “written notice of a potentially valid complaint” and “an opportunity to correct the action that is the subject of the complaint before referring the complaint to the comptroller.” Tex. Loc. Gov’t Code § 120.006(c). No such notice and opportunity was given to Harris County prior to the initial referral to the Comptroller. Director Snoddy’s suggesting that her office complied with the statute, when it clearly did not, shows a likelihood of further unlawful referrals.

⁴ That same day, the County made clear in a public statement that its position had not changed that the Comptroller violated the law and erroneously applied Chapter 120’s mandatory analysis for defunding complaints.

52. Most obviously, the Comptroller is likely to reinstate or unabate his unlawful Precinct 5 Determination. When he abated his Precinct 5 Determination, the Comptroller issued a press release indicating that he will not reconsider his analysis, but will only reverse his determination if Harris County pays millions of additional dollars to Precinct 5:

I am encouraged that Judge Lina Hidalgo and county officials have stopped attempting to litigate the math and instead will focus their efforts on finding a local resolution with the Harris County constables whose budgets were cut. The dollar amounts analyzed have not changed, but Judge Hidalgo and the county commissioners now are seeking an opportunity to address those numbers, alter course and fully fund law enforcement.

This is the responsible course of action, and I will take steps to support the county's effort to find a resolution. Since the underlying facts and budget numbers have not changed, I am not rescinding my determination; however, I have asked my staff to hold my determination in abatement to give Judge Hidalgo and the county the opportunity to rectify their actions.

Ex. F (emphasis added). Absent a payment of \$2,367,444.86 to Precinct 5, the Comptroller is likely to reinstate his *ultra vires* Precinct 5 Determination as soon as March 10. He has held steadfast to his unlawful analysis, reconfirmed it several times, and given no reason to think that he will change his *ultra vires* course of action absent payment by Harris County.

53. There also exists a threat of imminent unlawful determinations by the Comptroller regarding additional Harris County police agencies (the “threatened imminent determinations”).

54. The Comptroller's press release announcing his Precinct 5 Determination said his “office remains vigilant and continues to review complaints against entities that may be either deliberately or inadvertently defunding police.”

55. The Comptroller has left no doubt that he will apply the same unlawful analysis to other Harris County police agencies. The Comptroller's February 10 letter attached an Appendix. In the Appendix, the Comptroller revealed that he is performing the same unlawful analysis for all eight constable precincts in Harris County and intends to reach the same unlawful conclusion that Harris County implemented a funding reduction under SB23 for all constable precincts:

Appendix
Comparison of Harris County Adopted Budget for Short Fiscal Year 2022 and Adopted Budget for Fiscal Year 2023

	Short Fiscal Year 2022 Adopted Budget ¹		Fiscal Year 2023 Adopted Budget ²			
Department	Total SFY22 Budget	SFY22 Budget, per month	Total FY23 Budget	FY23 Budget, per month	Difference between SFY22 and FY23, per month	Difference Per Year
301-Constable, Pct 1	\$27,687,202	\$3,955,314.57	\$45,364,315	\$3,780,359.58	\$ (174,954.99)	\$ (2,099,459.86)
302-Constable, Pct 2	\$7,203,497	\$1,029,071.00	\$11,757,948	\$979,829.00	\$ (49,242.00)	\$ (590,904.00)
303-Constable, Pct 3	\$12,215,262	\$1,745,037.43	\$19,919,058	\$1,659,921.50	\$ (85,115.93)	\$ (1,021,391.14)
304-Constable, Pct 4	\$38,725,117	\$5,532,159.57	\$63,147,400	\$5,262,283.33	\$ (269,876.24)	\$ (3,238,514.86)
305-Constable, Pct 5	\$28,554,047	\$4,079,149.57	\$46,582,350	\$3,881,862.50	\$ (197,287.07)	\$ (2,367,444.86)
306-Constable, Pct 6	\$6,998,207	\$999,743.86	\$11,414,038	\$951,169.83	\$ (48,574.02)	\$ (582,888.29)
307-Constable, Pct 7	\$9,582,988	\$1,368,998.29	\$15,647,290	\$1,303,940.83	\$ (65,057.45)	\$ (780,689.43)
308-Constable, Pct 8	\$6,157,362	\$879,623.14	\$10,039,046	\$836,587.17	\$ (43,035.98)	\$ (516,431.71)

56. On February 16, the Comptroller tweeted this table for all eight constable precincts and said it “shows [Harris County] defunded the police.” Two days later, he again tweeted this table and accused County Judge Hidalgo of “defunding police”:



Glenn Hegar ✓
@Glenn_Hegar · Follow



Judge @LinaHidalgoTX is apparently taking the same approach with defunding the police as she did with her staffers' crooked covid contracts. Ignore facts and claim no responsibility for her own politically driven motivations. The math is simple and it shows they defunded police.

Appendix
Comparison of Harris County Adopted Budget for Short Fiscal Year 2022 and Adopted Budget for Fiscal Year 2023

Department	Short Fiscal Year 2022 Adopted Budget ¹		Fiscal Year 2023 Adopted Budget ²			
	Total SFY22 Budget	SFY22 Budget, per month	Total FY23 Budget	FY23 Budget, per month	Difference between SFY22 and FY23, per month	Difference Per Year
301-Constable, Pct 1	\$27,687,202	\$3,955,314.57	\$45,364,315	\$3,780,359.58	\$ (174,954.99)	\$ (2,099,459.86)
302-Constable, Pct 2	\$7,203,497	\$1,029,071.00	\$11,757,948	\$979,829.00	\$ (49,242.00)	\$ (590,904.00)
303-Constable, Pct 3	\$12,215,262	\$1,745,037.43	\$19,919,058	\$1,659,921.50	\$ (85,115.93)	\$ (1,021,391.14)
304-Constable, Pct 4	\$38,725,117	\$5,532,159.57	\$63,147,400	\$5,262,283.33	\$ (269,876.24)	\$ (3,238,514.86)
305-Constable, Pct 5	\$28,554,047	\$4,079,149.57	\$46,582,150	\$3,881,862.50	\$ (197,287.07)	\$ (2,367,444.86)
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308-Constable, Pct 8	\$6,157,362	\$879,623.14	\$10,039,046	\$836,587.17	\$ (43,035.98)	\$ (516,431.71)

Sources:

1. Harris County Short Fiscal Year 2022 Approved/Adopted Budget (Excel)
2. Harris County Fiscal Year 2023 Adopted Budget (Excel)

2:28 PM · Feb 16, 2023



171



See the latest COVID-19 information on Twitter

57. The Comptroller has gone on both a podcast and a radio interview to announce his predetermination regarding defunding the other constable precincts.

58. In one interview, the Comptroller referenced the analysis above and said: “the math is pretty simple that, if you want to correct the whole issue for every constable, you’re talking about just a little over \$11 million, and it’s solved for everybody. And I have no doubt at some point I’m probably going to get a complaint for the other constables’ offices and will make that official ruling.”

59. Indeed, the Comptroller has “confirmed there are additional complaints that Harris County is violating the police defunding ban.” Ex. C at 5.

60. Certainly, a substantial threat of additional complaints regarding other Harris County police agencies presently exists. In 2022, the first year of SB23’s effectiveness, numerous complaints were made about Harris County. At least five complaints about Harris County were referred to the Comptroller, including one from Constable Mark Herman regarding his precinct and another from former Harris County Commissioner Steve Radack regarding all other constable precincts, the Sheriff’s Office, and various other offices. Combined with the Comptroller’s inviting more complaints by broadcasting his foregone conclusion regarding other constable precincts, these numerous prior complaints show that a substantial risk exists that further complaints regarding additional Harris County police agencies will be made and referred to the Comptroller for his unlawful determinations.

61. These facts leave no doubt that (1) “there are additional complaints that Harris County is violating” SB23; (2) a substantial risk of further SB23 complaints presently exists; and (3) the Comptroller will certainly perform the same unlawful analysis to make further unlawful determinations under the statute for other Harris County police agencies.

62. Should the Comptroller follow through on his threatened additional determinations, Harris County’s authority to set its ad valorem tax rate would be subject to \$8.8 million more in unlawful obligations just for the constable precincts.

63. Additionally, there exists a substantial threat of additional imminent referrals by Director Snoddy in violation of SB23. Director Snoddy has demonstrated her willingness to refer complaints to the Comptroller regardless of merit. For example, on November 1, 2022, after Harris County had adopted the FY23 Budget, the Director referred a complaint about a *different*,

unadopted proposed FY23 budget to the Comptroller. Under any conceivable reading of the statute, a complaint about a budget that the county did not adopt is frivolous. But Director Snoddy made the referral to the Comptroller anyway. This demonstrates a threat of additional meritless complaints being referred to the Comptroller.

64. Additionally, Director Snoddy violated the law when her office referred the complaint regarding Constable Precinct 5 to the Comptroller without providing Harris County the notice and opportunity required by § 120.006(c). Her actions deprived Harris County of an opportunity to address the defunding complaint before the Comptroller made his determination. This prior violation demonstrates a threat of future referrals of meritless complaints without providing the statutorily required notice and opportunity to Harris County.

65. There exists a threat of additional, imminent, unlawful referrals of complaints to the Comptroller by the Director. Having already violated § 120.006(c) when it referred a complaint to the Comptroller without providing Harris County notice or opportunity to cure, the Division has now refused Harris County's request that the Division confirm that it will comply with the law by providing the required notice and opportunity going forward.

66. Between the Director's referring meritless complaints without the required notice and opportunity to address, the Comptroller's assertion that "there are additional complaints that Harris County is violating the police defunding ban," and the Comptroller's concluding that Harris County has defunded the other seven constable precincts using the same unlawful analysis, a threat of imminent unlawful action by the Defendants exists. Absent injunctive relief from the Court, the Comptroller and Director will continue their *ultra vires* actions.

D. The Defendants' Imminent Unlawful Actions Will Cause Irreparable Harm

67. Probable, immediate, and irreparable harm will result to Harris County due to the Defendants' imminent unlawful actions. Such injuries will be compounded should they not be

immediately restrained from threatened, imminent, *ultra vires* determinations and referrals prior to a temporary injunction hearing and then, prior to a trial on the merits.

68. Probable, immediate, and irreparable harm will result from the Comptroller's reinstating or unabating the Precinct 5 Determination, which will unlawfully interfere with Harris County's adoption of a budget and an ad valorem tax rate. It will create uncertainty and insecurity as to Harris County's adoption of certain tax rates and the accompanying spending in the public interest. It will call into doubt and potentially restrict Harris County's ability to adopt an ad valorem tax rate above the no-new-revenue rate, which will significantly impact the finances of Harris County and the financial decisions of its Commissioners Court.

69. Probable, immediate, and irreparable harm will result to Harris County due to the Comptroller's threatened *ultra vires* determinations that Harris County has implemented reductions in funding as described in Local Government Code § 120.002(a) for other police agencies. That harm includes unlawfully increasing the obstacles and cost to Harris County's adoption of certain tax rates and accompanying spending in the public interest.

70. With each new determination, the ransom may rise millions of dollars more and still more irreparable harm will result. Those determinations are imminent.

71. Still more, the imminent prospect of further determinations and still more millions of dollars in ransom necessary to regain the authority delegated to Harris County by the Texas Constitution threatens substantial disruption to Harris County's ongoing budgeting process.

The annual budget

72. By the end of September 2023, Harris County must adopt a budget for Fiscal Year 2023-2024 ("FY24"), which lasts from October 1, 2023, to September 30, 2024. At approximately the same time, Harris County must also adopt an ad valorem tax rate (the "tax rate").

73. To do adopt the budget by the end of September, Harris County must propose a budget for adoption at least 30 days before the beginning of the next fiscal year—here, September 1. Tex. Loc. Gov’t Code § 111.033(a). Without a budget, Harris County “may not make payments during that fiscal year except for emergencies and for obligations legally incurred before the first day of the fiscal year for salaries, utilities, materials, and supplies.” *Id.* § 111.035.

74. As one might expect for a multi-billion-dollar annual budget, preparing each year’s budget begins months in advance as information and requests are gathered and evaluated. *See id.* § 111.036. There is thus a lengthy process that must be followed for adopting a budget and a tax rate. These steps require the participation of Harris County Commissioners and members of the public, many of whom have been led to believe the Comptroller has ruled that Harris County cannot adopt an ad valorem tax rate higher than the no-new-revenue rate.⁵

75. Harris County’s planning involves 5-year revenue projections. So even now, Harris County’s ability to plan its budget is constrained by the uncertainty over its tax rate caused and worsened by the Comptroller’s imminent unlawful determinations.

76. In addition, Harris County will begin evaluating budget requests in six weeks, long before this case, with its likely interlocutory appeals, will be complete.

77. Should the Comptroller’s threatened unlawful actions derail the budget- and tax-rate-adoption processes, Harris County will likely be forced to use tax rates and accompanying spending levels that do not provide the level of services that the Commissioners Court believes is

⁵ In obtaining equitable relief from adverse results in voting-rights cases, the Texas Attorney General repeatedly argues that interruption of the process leading to an event (an election or adoption of a budget) can be just as damaging as an interruption of the event itself. *See, e.g.,* Appellants’ Emergency Mot. to Stay Pending Appeal District Court’s Order Granting Permanent Injunction at 3-4, *Veasey v. Abbott*, No. 17-40884 (5th Cir. Aug. 25, 2017) (referring to “internal deadline[s]” necessary to meet “statutory deadline[s],” arguing that “[t]he State is irreparably injured if its election procedures and deadlines are undone by a district-court injunction without adequate time for appellate review”); *see also Veasey v. Abbott*, 870 F.3d 387 (5th Cir. 2017) (granting motion).

best for the residents of Harris County. The cap would significantly limit the revenue that the County could raise—likely over \$90 million. The uncertainty caused by the Comptroller’s unlawful determination presently hinders the County’s financial decision-making severely.

Supplemental appropriation requests

78. Even before the massive undertaking that is the annual budget, Harris County must evaluate continual requests for supplemental funding.

79. For example, recently the Commissioners Court considered a request from the Harris County District Courts for a supplemental appropriation to address critical court needs, including docket management and case backlogs, long-term facility needs, personnel required to improve the public’s trust and confidence in the judiciary and technology deficits.

80. But the uncertainty caused by the Comptroller’s past and imminent unlawful determinations have left the Commissioners Court uncertain, seriously undermining its ability to appropriately evaluate such funding requests and to meet such ongoing funding needs.

Debt finance

81. Like most local governments, Harris County funds long-term public-works projects with bonds “issued against future revenues.” Tex. Loc. Gov’t Code § 111.042.

82. The uncertainty over access to future revenues caused by the Comptroller’s past and imminent unlawful determinations will make borrowing more expensive. Less secure revenue means uncertain fund balances and uncertain reserves, which will increase Harris County’s default risk in the eyes of borrowers. Increased risk results in more expensive borrowing. Harris County has no way to recoup those losses once incurred.

83. Even for debt already issued, the Commissioner’s past and imminent unlawful determinations are causing irreparable harm. This past November, voters in Harris County

approved bond propositions totaling \$1.2 billion to fund public safety facilities, roads, drainage, transportation programs, parks, and trails. But those debts were authorized by Commissioners Court and the public under the reasonable belief that Harris County would maintain its authority to set its ad valorem tax rate. The “no-new-revenue” rate which the Comptroller seeks to illegally impose would prevent Harris County from adjusting its overall tax rate to service newly issued bonds. The new uncertainty surrounding Harris County’s revenues caused by the Comptroller’s past and imminent unlawful acts is constraining Harris County’s ability to fulfill on the promise of debt-funded projects such as road drainage, sidewalks, public safety facilities and parks.

FIRST CAUSE OF ACTION

Declaratory Judgment: Comptroller Hegar’s future making or reinstating determinations that Harris County has implemented a proposed reduction described by Local Government Code § 120.002(a) in Fiscal Year 2022-2023 is *ultra vires*

84. Plaintiff incorporates by reference and re-alleges the facts and allegations contained in the foregoing paragraphs 1 through 83, as if set forth verbatim herein.

85. Under the Uniform Declaratory Judgments Act (“UDJA”), a person “whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the [] statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.” Tex. Civ. Prac. & Rem. Code § 37.004(a). The UDJA is properly used to “settle and afford relief from uncertainty and insecurity with respect to rights, and [is] to be liberally construed.” *City of Waco v. Tex. Nat. Res. Conservation Comm’n*, 83 S.W.3d 169, 177 (Tex. App.—Austin 2002, pet. denied).

86. Although the UDJA is not itself a waiver of sovereign immunity except as to challenges to the validity of a statute, it is a proper vehicle for raising ultra vires challenges, which are outside the State’s sovereign immunity. Thus, a declaratory judgment action may be brought to seek “declaratory relief against official state actors who allegedly act without legal or statutory

authority in attempt to compel the state officials to act within their official capacity.” *Hawkins v. El Paso First Health Plans, Inc.*, 214 S.W.3d 709, 718 (Tex. App.—Austin 2007, pet. denied) (citing *Tex. Nat. Res. Conservation Comm’n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002)).

87. Harris County is seeking this relief prospectively with respect to the Comptroller’s future determinations and with respect to the Comptroller’s future reinstatement or unabatement of his Precinct 5 Determination.

88. Harris County’s FY23 Budget does not, “reduce[] for” any “law enforcement agency” either “the appropriation to the agency” or “the appropriation to the agency as a percentage of the total budget” “compared to the budget adopted by the county for the preceding fiscal year.” Tex. Loc. Gov’t Code § 120.002(a)(1).

89. As a result, Harris County has not implemented a reduction described by § 120.002 or violated section 120.002(a)’s election requirement.

90. Section 120.002(a) leaves no room for discretion in its application: Only two sets of values may be compared under the statute, objective measures establish those values as historic facts, and the required comparisons ask only if those values have decreased or not. When correcting similar mistakes by the Comptroller, the Supreme Court made clear: “officials have no discretion or authority to misinterpret the law or the rules of arithmetic.” *In re Brown*, 614 S.W.3d 712, 720 (Tex. 2020) (cleaned up).

91. Because the only valid application of the statute to historic facts precludes a determination that Harris County implemented a reduction or violated § 120.002(a), any such determination would be *ultra vires*.

92. The Comptroller's Appendix to his Precinct 5 Determination unequivocally demonstrated his intent not to comply with the statute by continuing to make determinations using his unlawful analysis for all Harris County constable precincts.

93. As the Comptroller is actively in the process of making or reinstating those *ultra vires* determinations, Harris County is entitled to declaratory relief to compel the Comptroller to act within his statutory authority prospectively. *See Sw. Bell Tel., L.P. v. Emmett*, 459 S.W.3d 578, 588-89 (Tex. 2015) (holding that, considering officials' "actions unequivocally demonstrated their intent not to comply with the statute" and their "anticipatory refusal to comply with the statute," plaintiff was entitled to declaratory relief regarding officials' *ultra vires* acts).

94. Accordingly, pursuant to the UDJA, Harris County seeks the following prospective declaratory judgment from the Court: It is *ultra vires* for Comptroller Hegar to make (or reinstate in any way) determinations under Local Government Code § 120.007 that Harris County has implemented a proposed reduction described by Local Government Code § 120.002(a) in Fiscal Year 2022-2023 for any Constable Precinct or the Sheriff's Office.

SECOND CAUSE OF ACTION
Declaratory Judgment: Comptroller Hegar's continuing use of
an annualization method is *ultra vires*

95. Plaintiff incorporates by reference and re-alleges the facts and allegations contained in the foregoing paragraphs 1 through 94, as if set forth verbatim herein.

96. Comptroller Hegar has used and continues to use an annualization method to conjure reductions in police-agency funding in Harris County's FY23 budget so as to make determinations that Harris County violated Texas Local Government Code Section 120.002(a) and thereby usurp Harris County's authority to set its ad valorem tax rate.

97. The language chosen by the Legislature in § 120.002(a) precludes the Comptroller's use of an annualization method to make any of the comparisons required by the statute.

98. As a result, the Commissioner's continuing of use of an annualization method to evaluate Harris County's funding under § 120.002(a) is without legal authority.

99. Harris County is seeking declaratory relief prospectively with respect to the Comptroller's future making or reinstating of determinations.

100. Accordingly, pursuant to the UDJA, Harris County seeks the following prospective declaratory judgment from the Court: It is *ultra vires* for Comptroller Hegar to continue to use an annualization method to determine under Local Government Code § 120.007 whether Harris County has implemented a proposed reduction or reallocation described by Local Government Code § 120.002(a).

THIRD CAUSE OF ACTION

Declaratory Judgment: Comptroller Hegar's continuing failure to first compare overall budget amounts is *ultra vires*

101. Plaintiff incorporates by reference and re-alleges the facts and allegations contained in the foregoing paragraphs 1 through 100, as if set forth verbatim herein.

102. Even if Texas Local Government Code Section 120.002(a) allows use of annualization, it does not permit the Comptroller to skip the first comparison required by § 120.002(a)—overall budget amounts across years.

103. Comptroller Hegar has and continues to skip over that step to conjure violations by Harris County of section 120.002(a)'s election requirement and thereby usurp Harris County's authority to set its ad valorem tax rate.

104. Harris County is seeking declaratory relief prospectively with respect to the Comptroller's future making and reinstating determinations.

105. Accordingly, pursuant to the UDJA, Harris County seeks the following prospective declaratory judgment from the Court: the Comptroller's failure to properly compare overall budget amounts across years before comparing individual agency budget across years to evaluate Harris County's compliance with Local Government Code § 120.002(a) is *ultra vires*.

FOURTH CAUSE OF ACTION
Declaratory Judgment: Director Snoddy

106. Plaintiff incorporates by reference and re-alleges the facts and allegations contained in the foregoing paragraphs 1 through 105, as if set forth verbatim herein.

107. Local Government Code sections 120.006 and 120.007 establish the required procedure for addressing possible violations of § 120.002's election requirement.

108. As part of the required procedure, the Division, led by Director Snoddy, must provide the subject of a potentially valid complaint notice and an opportunity to address the complaint "*before* referring the complaint to the comptroller." Tex. Loc. Gov't Code § 120.006(c) (emphasis added).

109. The Division has an ongoing practice of not providing Harris County with notice and an opportunity to address complaints under § 120.006 before referring those complaints to the Comptroller for a determination.

110. The Division's practice of violating the statute unlawfully places Harris County in jeopardy of negative determinations under § 120.002(a).

111. Harris County is seeking declaratory relief prospectively with respect to the Director's future referrals.

112. Accordingly, pursuant to the UDJA, Harris County seeks the following prospective declaratory judgment from the Court: The Director's continuing practice of not providing Harris

County with notice and an opportunity to address complaints under § 120.006 before referring those complaints to the Comptroller for a determination is *ultra vires*.

ATTORNEY'S FEES

113. Plaintiff incorporates by reference and re-alleges the facts and allegations contained in the foregoing paragraphs 1 through 112, as if set forth verbatim herein.

114. Under the UDJA, “the court may award costs and reasonable and necessary attorney’s fees as are equitable and just.” Tex. Civ. Prac. & Rem. Code § 37.009.

115. It was necessary for Plaintiff to secure the services of the undersigned counsel to prepare and prosecute this suit. Judgment for costs and attorney’s fees through final judgment after appeal should be granted against Defendants Comptroller Hegar and Director Snoddy and in favor of Plaintiff for the use and benefit of Plaintiff’s counsel.

**VERIFIED APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION**

116. Harris County requests that the Court issue a temporary restraining order (“TRO”) and a temporary injunction against Comptroller Hegar and Director Snoddy to prevent probable imminent and irreparable harm to the County. Harris County further requests that upon final hearing, the Court award a permanent injunction against Comptroller Hegar and Director Snoddy. In support of this verified application for TRO, temporary injunction, and permanent injunction (collectively, “injunctive relief”), Harris County respectfully shows the Court as follows:

117. Plaintiff incorporates by reference and re-alleges the facts and allegations contained in the foregoing paragraphs 1 through 116, as if set forth verbatim herein.

118. Attached as Exhibit A is a true and correct copy of Appendix A from the Harris County Adopted Budget for Fiscal Year 2023. At the end of Exhibit A, it lists the overall amount of the FY23 Budget and the SFY22 Budget under “Total Budget.” For each Constable Precinct and the Sheriff’s Office (consisting of Harris County Departments 301-308 and 540-542), Exhibit A lists the amount of the agency appropriation for the FY23 Budget and the SFY22 Budget.

119. Attached as Exhibit B is a true and correct copy of a letter from the Comptroller to various officials, including Harris County Judge Lina Hidalgo and the Harris County Commissioners Court, dated February 10, 2023.

120. Attached as Exhibit C is a true and correct copy of a tweet from the Comptroller on February 13, 2023, linking to a news article and stating “Reporter @Hollyshansen from @TheTexanNews has followed this story from the beginning. Worth checking out her coverage of this.” Exhibit C then includes a true and correct copy of the article endorsed by the Comptroller in his tweet.

121. Attached as Exhibit D is a true and correct copy of an email exchange between David Berry, County Administrator for Harris County, and Kevin Masters in the Office of the Governor. Mr. Masters does work for the Criminal Justice Division in connection with SB23 complaints.

122. Attached as Exhibit E is a true and correct copy of a letter from the Comptroller to Harris County Judge Lina Hidalgo and the Harris County Commissioners Court, dated February 28, 2023.

123. Attached as Exhibit F is a true and correct copy of a press release issued by the Comptroller on February 28, 2023, available on the Comptroller's website.

GROUND FOR INJUNCTIVE RELIEF

124. Temporary injunctive relief is necessary here to preserve the status quo prior to a hearing on a temporary injunction. The “purpose of a TRO is to preserve the status quo.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (footnote omitted). The status quo is the “last, actual, peaceable, non-contested status which preceded the pending controversy.” *Id.* (quoting *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589 (Tex. 1962)).

125. The status quo—the last, actual, peaceable, non-contested status preceding the pending controversy—is Harris County's ability to propose, adopt, and implement a fiscal year budget and adopt an ad valorem tax rate above the no-new-revenue rate without unlawful interference from Defendants. *See* Tex. Loc. Gov't Code Ch. 111; Tex. Const. art. VIII, §§ 1-a, 9.

Overview

126. The Comptroller's Precinct 5 Determination created uncertainty and insecurity with respect to Harris County's power to set its ad valorem tax rate and its budget. *See* Tex. Loc. Gov't Code Ch. 111; Tex. Const. art. VIII, §§ 1-a, 9.

127. As noted above, that uncertainty and insecurity stems from the Comptroller's determination that a *single* Harris County Constable Precinct experienced a reduction in its appropriation. As recognized by the Comptroller's letter, one option for Harris County to relieve itself from this uncertainty and insecurity would be to increase the funding to Constable Precinct 5 by \$2,367,444.86. Ex. B at 2 (acknowledging county may "adopt an ad valorem tax rate that exceeds the county's No-New-Revenue tax rate" when Comptroller's "office issues a written determination the county has reversed the funding reduction that is the subject of this determination"). However, additional determinations by the Comptroller regarding additional Harris County police agencies will increase the cost to Harris County of using this option to relieve itself from this unlawful interference with its tax rate and budget.

128. The Comptroller's Precinct 5 Determination attached an Appendix performing the same unlawful analysis to the other Harris County Constable precincts. That Appendix shows an imminent threat of additional *ultra vires* determinations by the Comptroller.

129. Temporarily enjoining the Comptroller from reinstating or unabating his Precinct 5 Determination and from making determinations regarding other police agencies will ensure that Harris County can consider and adopt its budget and ad valorem tax rate free from unlawful interference by the Comptroller. This Court should issue a TRO and a temporary injunction to prevent the Comptroller's threatened imminent *ultra vires* actions.

130. Similarly, Director Snoddy's unlawful referral of the complaint regarding Constable Precinct 5 to the Comptroller without providing the required notice or opportunity to cure has already caused Harris County to suffer the uncertainty and insecurity described above. The threat of her imminent referral of additional meritless complaints without notice to the county will deprive Harris County of an opportunity to address the complaint before the Comptroller

makes additional determinations increasing the cost of resolving this issue. This Court should issue a TRO and a temporary injunction to prevent the Director's threatened imminent *ultra vires* action.

Temporary Injunctive Relief Is Warranted

131. The decision to grant temporary injunctive relief falls within the trial court's sound discretion. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). To be entitled to a temporary injunction in Texas, a party must show: "(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.* at 204. In evaluating these elements, courts also balance the equities and consider the public interest. *Reliant Hosp. Partners, LLC v. Cornerstone Healthcare Grp. Holdings, Inc.*, 374 S.W.3d 488, 503 (Tex. App.—Dallas 2012, pet. denied). For the reasons set forth below, Harris County establishes all of these elements, and the Court should enter a TRO followed by a temporary injunction.

Harris County Has Alleged a Valid Cause of Action

132. First, Harris County has properly pleaded a cause of action against Defendants, subject to Texas's liberal notice-pleading standard. *See Butnaru*, 84 S.W.3d at 204. As shown above, Harris County asserts causes of action for declaratory judgment. These causes of action are well pleaded and sufficient because they give "fair and adequate notice of the facts upon which the pleader bases [its] claims." *Stokes v. Ferris*, 2004 WL 1065756, at *6 (Tex. App.—Austin May 13, 2004, pet. denied) (quoting *Troutman v. Traeco Bldg. Sys., Inc.*, 724 S.W.2d 385, 387 (Tex. 1987)). A "claimant who successfully proves an ultra vires claim is entitled to prospective injunctive relief, as measured from the date of injunction." *City of El Paso v. Heinrich*, 284 S.W.3d 366, 376 (Tex. 2009). Harris County appropriately seeks prospective relief

from ongoing threatened, imminent, *ultra vires* actions by Defendants, measured from the date of the injunctive relief requested by this application.

Harris County Has Shown a Probable Right to Relief

133. Second, Harris County has a probable right to relief and recovery against Defendants. To satisfy this element, Harris County “need not prove that [it] will ultimately prevail in the litigation; rather, the applicant must show [it] has a cause of action for which relief may be granted.” *Topheavy Studios, Inc. v. Doe*, 2005 WL 1940159, at *3 (Tex. App.—Austin 2005, no pet.). Harris County has furnished evidence that shows a probable right to relief for declaratory judgment relief and injunctive relief because the Defendants’ threatened imminent actions do not comply with Texas Local Government Code Chapter 120 and exceed their lawful authority. Harris County has shown that it is likely that the Comptroller’s and Director’s threatened imminent actions are “without state authority” and “without legal authority” because they exceed “the bounds of [their] granted authority” and “conflict with the law itself.” *Chambers-Liberty Ctys. Navigation Dist. v. State*, 575 S.W.3d 339, 349, 354 (Tex. 2019) (quotation marks omitted).

134. The Comptroller’s threatened reinstatement of his Precinct 5 Determination and his threatened imminent determinations—that Harris County’s FY23 adopted budget implements reductions described by Local Government Code § 120.002 for other police agencies—do not comply with Local Government Code Chapter 120 and exceed his lawful authority.

135. When comparing the current fiscal year budget to the budget for the prior fiscal year, Harris County has increased the appropriation to each Constable Precinct and the Sheriff’s Office—on both an absolute-dollar basis and as a percentage of the total budget. Therefore, Harris County has not implemented a reduction described by § 120.002, and any determination to the contrary does not comply with the statute. The Comptroller has no discretion to misapply the law.

136. Harris County has also shown a probable right to relief on its claim that the Director's threatened imminent referrals of complaints to the Comptroller—without first providing notice and an opportunity to cure to Harris County as required by § 120.006(c)—are *ultra vires*.

Harris County Has Shown Probable Imminent and Irreparable Injury in the Interim

137. Harris County showed probable imminent, and irreparable injuries absent injunctive relief prior to a temporary injunction hearing and thereafter, prior to a trial on the merits. Harris County showed that the Comptroller is likely to reinstate or unabate the unlawful Precinct 5 Determination; and that the Comptroller is likely to make additional, imminent, unlawful determinations by the Comptroller regarding additional Harris County police agencies; and that, unless the Comptroller is enjoined by this Court, he will continue such *ultra vires* actions before a temporary injunction. Having announced his conclusions regarding all Harris County Constable Precincts and made an unlawful Precinct 5 Determination, the Comptroller has shown that he intends to enforce Local Government Code Chapter 120 contrary to the plain meaning of the statute.

138. Probable, immediate, and irreparable harm will result from the Comptroller's reinstating or unabating the Precinct 5 Determination, which will unlawfully interfere with Harris County's adoption of a budget and an ad valorem tax rate. It will create uncertainty and insecurity as to Harris County's adoption of certain tax rates and the accompanying spending in the public interest. It will call into doubt and potentially restrict Harris County's ability to adopt an ad valorem tax rate above the no-new-revenue rate, which will significantly impact the finances of Harris County and the financial decisions of its Commissioners Court.

139. Probable, immediate, and irreparable harm will result to Harris County due to the Comptroller's threatened *ultra vires* determinations that Harris County has implemented reductions in funding as described in Local Government Code § 120.002(a) for other police agencies. That harm includes unlawfully increasing the obstacles and cost to Harris County's adoption of certain tax rates and accompanying spending in the public interest.

140. The Comptroller's unlawful determinations threaten immediate interference in Harris County's ongoing budgeting process and financial decisions, including:

- a. Resultant disruption of the months-long, multi-step process for adopting both the Harris County FY24 budget and the tax rate requisite to fund such budget, as well as interference in ongoing appropriation deliberations; and
- b. The Comptroller's threatened *ultra vires* determinations may force Harris County to use tax rates and accompanying spending levels that do not provide the level of services that the Commissioners Court believes is best for the residents of Harris County.
- c. Immediately constraining Harris County's ability to evaluate pending requests for supplemental appropriations.
- d. Immediately constraining Harris County's ability to execute plans for bond-financed public works.

141. Harris County showed that the Director is likely to make additional, imminent, unlawful referrals of complaints to the Comptroller and that, unless enjoined by this Court, she will continue her *ultra vires* actions before a temporary injunction hearing. Having already violated § 120.006(c) by referring a complaint to the Comptroller without providing Harris County notice or opportunity to cure and then failed to confirm that the Division will comply with the law going forward, the Director has shown she intends to enforce Chapter 120 contrary to the plain meaning of the statute.

142. Probable, immediate, and irreparable harm will result to Harris County due to the Director's unlawful referrals, including the inability to correct those complaints to prevent

unlawful determinations by the Comptroller and interference in Harris County's ability to seek prospective judicial relief prior to prevent unlawful determinations by the Comptroller.

143. The harms described above are irreparable. "An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard." *Butnaru*, 84 S.W.3d at 204. Harris County is unlikely to be able to recover any damages from the Director or the Comptroller for their unlawful actions, so Harris County's injuries are necessarily irreparable. Even if damages were recoverable, disrupting Harris County's budget process is an irreparable harm also because damages are so hard to measure.

144. Harris County will also suffer irreparable harm from the Comptroller unlawfully usurping the County's governmental authority to set tax rates in the best interests of its residents.

145. The harms described above are irreparable in part because there is no adequate remedy at law that will give Harris County complete, final, and equitable relief from the unlawful interference with its budget and tax rate processes. Once the interference occurs, it cannot be completely undone.

The Public Interest and the Balance of the Equities Favors Injunctive Relief

146. The Court should consider the relative effects of an injunction on the parties and the public at large. *See Reliant Hosp. Partners*, 374 S.W.3d at 503. The public interest and the balance of the equities between Harris County and Defendants favors issuing temporary injunctive relief because:

- a. The temporary restraining order herein would greatly benefit Harris County and its millions of residents by allowing the county budget and tax rate to be adopted and implemented without further unlawful interference by the Comptroller; and
- b. In contrast, the Comptroller will not suffer any damages or harm from the temporary injunctive relief requested herein. He has no interest or right to make his threatened imminent determinations, which are unlawful. The Director will likewise suffer no damages or harm from the relief requested. She has no interest or right to make referrals in violation of the statute.

INJUNCTIVE RELIEF REQUESTED

147. For these reasons, Harris County requests that the Court issue a TRO immediately enjoining the Comptroller and Director from the acts below to protect the County from the irreparable harm described above and to maintain the status quo in the interim before the application for temporary injunction may be heard. Harris County requests that the Court enter a TRO enjoining the following specific acts by the Texas Comptroller of Public Accounts, and all other persons or entities in active concert or participation with the Texas Comptroller of Public Accounts who receive actual notice of this Order by personal service or otherwise:

- a. Reinstating in any way or unabating the Comptroller's determination that Harris County implemented a proposed reduction described by Local Government Code § 120.002(a) for Constable Precinct 5 (the Precinct 5 Determination).
- b. Making any determination under Local Government Code § 120.007 that Harris County has implemented a proposed reduction described by Local Government Code § 120.002(a) in Fiscal Year 2023 for any Constable Precinct or the Sheriff's Office.
- c. Making any determination regarding Harris County under Local Government Code § 120.007 that does not comply with the analysis required by Local Government Code § 120.002(a), including but not limited to:
 - i. Failing to properly compare overall budget amounts when making a determination under Local Government Code § 120.007, including but not limited to: concluding that the Harris County SFY22 adopted budget amount should be multiplied by 12/7 and then failing to apply § 120.002(a)(1)(B) and its required comparison of the agency appropriation as a percentage of the total budget.
 - ii. Using an annualization method to compare Harris County's adopted budgets when making a determination under Local Government Code Section 120.007, including but not limited to: multiplying the Harris County SFY22 adopted budget amounts by 12/7 before comparing them to the Harris County FY23 budget amounts (or the mathematical equivalent of such multiplication).

148. Harris County requests that the Court enter a TRO enjoining the following specific acts by the Director of the Criminal Justice Division of the Office of the Governor, and all other persons or entities in active concert or participation with the Director of the Criminal Justice Division of the Office of the Governor who receive actual notice of this Order by personal service or otherwise:

- a. Referring complaints or making requests concerning Harris County under Local Government Code Chapter 120 to the Texas Comptroller of Public Accounts without first providing Harris County notice of, and a reasonable opportunity to address, the complaint.

149. Plaintiff further requests that, after a hearing on its request for temporary injunction, the Court temporarily enjoin Defendants from these acts until the trial of this cause and that, after final hearing, the Court permanently enjoin Defendants upon entry of final judgment.

REQUEST FOR HEARING

150. Harris County requests that the Court set its applications for TRO and temporary injunction for hearings, and after hearing the applications, issue a TRO and temporary injunction against Comptroller Hegar and Director Snoddy enjoining them from the acts described above.

151. Plaintiff further requests that the Court set this matter for trial and, upon final hearing, permanently enjoin Defendants Comptroller Hegar and Director Snoddy from the acts described above.

BOND

152. Harris County is exempt by law from the requirement to file a bond for a request for an injunction. *See* Tex. Civ. Prac. & Rem. Code § 6.001(c).

PRAYER FOR RELIEF

153. For these reasons, Plaintiff Harris County respectfully prays that Defendants Comptroller Hegar and Director Snoddy be cited to appear and answer herein, and that the Court:

- a. Immediately hear this application for a TRO and after the hearing issue a TRO enjoining the Comptroller from the date of the TRO and for 14 days thereafter from the specific acts described above;
- b. Set a hearing on this application for a temporary injunction and after the hearing issue a temporary injunction enjoining the Comptroller from the specific acts described above;
- c. Order that Plaintiff Harris County recover from the Comptroller the reasonable costs and expenses Plaintiff incurred in obtaining the TRO and temporary injunction;
- d. Set a trial date and, upon final hearing, enter a permanent injunction that enjoins Defendants, and their officers, agents, servants, and employees, from performing the acts described above, and order that Plaintiff have judgment against Defendants, for:
 - i. the declaratory relief requested more specifically above;
 - ii. reasonable and necessary attorney's fees;
 - iii. costs of court;
 - iv. post-judgment interest; and
 - v. and such other and further relief to which Plaintiff may be entitled.

Dated: March 9, 2023

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Respectfully submitted,


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Attorneys for Harris County, Texas

VERIFICATION

My name is David Berry, and I am an employee of the following governmental agency: Harris County. I am executing this declaration as part of my assigned duties and responsibilities. I am the Harris County Administrator and Budget Officer. Based on my experience, my assigned duties and responsibilities, and through my review of County records and correspondence and other records, I have personal knowledge of the facts contained in the attached Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction. I declare under penalty of perjury that the facts stated therein are true and correct.

Executed in Harris County, State of Texas, on March 8, 2023.



David Berry

Exhibit A

Harris County

Adopted Budget

Fiscal Year 2023



APPENDIX A – DEPARTMENT BUDGETS

Dept	Department Name	FY22 Adopted	FY22 Actuals	SFY22 Adopted	FY23 Adopted
35	CE Shared Services	-	71,184	-	-
91	Appraisal District	14,960,000	14,047,947	7,250,000	14,960,000
100	County Judge	9,588,628	10,214,409	5,969,292	9,771,834
101	Commissioner, Pct 1	36,591,385	35,123,548	22,455,241	37,114,926
102	Commissioner, Pct 2	36,601,404	43,877,756	22,498,268	37,114,926
103	Commissioner, Pct 3	36,593,447	38,347,137	22,453,334	37,114,926
104	Commissioner, Pct 4	36,654,069	33,281,489	22,644,218	37,114,926
112	Commissioners Court's Analyst's Office	1,373,007	1,155,004	820,635	1,343,281
200	Office of County Administration	-	1,288,433	6,627,690	10,390,419
201	Management & Budget	17,158,001	14,105,298	4,630,451	7,604,514
202	General Administrative I	54,141,702	96,153,529	41,659,177	77,031,082
202	General Administrative - Commissioner Rollover	33,100,000	-	31,200,000	-
202	General Administrative - Reserves	-	-	10,000,000	15,000,000
204	Intergovernmental & Global Affairs	1,648,599	1,570,449	1,193,425	1,820,938
205	Economic Equity & Opportunity	2,645,935	1,838,971	2,912,635	4,769,091
207	Justice Administration	4,645,319	3,843,819	3,853,473	6,202,753
208	Engineering	49,401,673	73,818,512	40,862,547	59,697,224
212	HRRM	-	-	4,809,046	7,931,425
213	Fire Marshal	10,253,323	10,151,288	7,033,358	11,528,383
270	Institute of Forensic Sciences	37,429,733	37,783,944	23,477,248	38,436,325
272	Pollution Control	8,276,596	7,445,814	5,878,883	9,449,305
275	Public Health Services	40,152,655	40,016,127	28,377,219	46,581,022
283	Veterans Services	1,040,684	981,332	844,288	1,375,374
285	Library	37,513,372	38,033,620	23,158,516	38,217,345
286	Domestic Relations	3,945,413	5,106,800	4,494,008	7,323,367
289	Community Services	21,876,698	16,322,672	12,696,716	21,155,243
292	Universal Services	69,177,541	74,527,987	45,550,574	75,240,336
293	Universal Services Repair and Replacement	12,109,043	12,109,043	12,109,043	12,109,043
296	Mental Health - THCMH	22,567,171	22,567,171	13,455,850	23,067,171
297	FPM Repairs and Replacement	25,467,328	(1,170)	-	-
298	Utilities & Leases	19,000,000	18,165,614	11,083,333	19,000,000
301	Constable, Pct 1	43,506,997	46,951,214	27,687,202	45,364,315
302	Constable, Pct 2	10,165,425	11,407,350	7,203,497	11,757,948

Dept	Department Name	FY22 Adopted	FY22 Actuals	SFY22 Adopted	FY23 Adopted
303	Constable, Pct 3	18,861,059	19,363,932	12,215,262	19,919,058
304	Constable, Pct 4	58,811,078	62,394,887	38,725,117	63,147,400
305	Constable, Pct 5	44,920,246	44,444,598	28,554,047	46,582,350
306	Constable, Pct 6	10,854,412	10,358,879	6,998,207	11,414,038
307	Constable, Pct 7	14,945,431	14,592,764	9,582,988	15,647,290
308	Constable, Pct 8	9,447,328	9,737,915	6,157,362	10,039,046
311	Justice of the Peace, 1-1	2,394,560	2,330,243	1,506,651	2,455,754
312	Justice of the Peace, 1-2	2,537,810	2,302,473	1,597,877	2,603,808
321	Justice of the Peace, 2-1	1,146,088	1,087,665	722,411	1,175,455
322	Justice of the Peace, 2-2	1,091,726	935,233	685,710	1,116,350
331	Justice of the Peace, 3-1	1,914,768	1,779,101	1,202,877	1,961,367
332	Justice of the Peace, 3-2	1,345,692	1,237,771	846,504	1,378,862
341	Justice of the Peace, 4-1	3,293,862	3,190,647	2,077,411	3,381,047
342	Justice of the Peace, 4-2	1,745,003	1,616,767	1,097,345	1,787,394
351	Justice of the Peace, 5-1	2,497,819	2,246,613	1,567,724	2,553,056
352	Justice of the Peace, 5-2	3,325,258	3,218,901	2,094,691	3,415,110
361	Justice of the Peace, 6-1	835,779	819,750	524,880	855,256
362	Justice of the Peace, 6-2	932,281	773,951	581,033	954,039
371	Justice of the Peace, 7-1	1,327,079	1,155,766	835,711	1,363,092
372	Justice of the Peace, 7-2	1,162,795	858,024	726,250	1,184,241
381	Justice of the Peace, 8-1	1,360,606	1,249,459	856,176	1,393,988
382	Justice of the Peace, 8-2	972,284	728,479	606,219	989,710
510	County Attorney	30,792,686	31,304,484	19,875,177	32,386,339
515	County Clerk	19,407,021	18,956,646	12,606,020	18,698,970
516	Elections Operations	13,360,850	11,813,655	7,793,829	13,360,850
517	County Treasurer	1,287,689	1,109,070	802,425	1,314,899
520	Elections Administration	14,679,406	12,446,413	9,452,934	15,510,684
530	Tax Assessor-Collector	30,410,866	30,641,149	19,407,398	31,679,145
540	Sheriff - Patrol & Administration	246,381,330	248,240,789	158,379,998	258,969,789
541	Sheriff - Detention	244,906,152	251,688,977	155,813,351	254,470,133
542	Sheriff - Medical	80,205,814	80,869,641	52,655,461	90,266,505
545	District Attorney	95,598,731	97,392,545	62,741,420	99,341,100
550	District Clerk	40,197,507	38,870,407	25,803,776	38,856,940
560	Public Defender	29,289,419	27,093,174	19,858,259	32,521,150
601	Community Supervision	2,564,000	3,696,591	2,018,675	3,404,755
605	Pretrial Services	17,873,782	22,252,980	15,893,297	25,439,125
610	County Auditor	25,832,959	24,240,120	16,528,300	27,671,229
615	Purchasing Agent	9,636,416	9,241,435	6,336,245	10,320,325
700	District Courts	32,742,202	30,836,147	19,850,484	32,536,078
701	District Court Appointed Atty Fees	53,500,000	55,067,080	31,208,333	53,500,000
821	Texas A&M AgriLife	851,382	878,102	606,922	990,977
840	Juvenile Probation	87,612,963	86,015,380	54,073,495	88,858,966

Dept	Department Name	FY22 Adopted	FY22 Actuals	SFY22 Adopted	FY23 Adopted
842	TRIAD Program	1,630,296	-	-	-
845	Sheriff's Civil Service	300,455	278,551	187,014	306,264
880	Harris County Resources for Children and Adults	26,602,616	27,816,185	16,983,330	27,822,385
885	Children's Assessment Center	8,882,880	9,376,996	5,587,109	9,108,585
930	1st Court of Appeals	92,000	53,668	23,927	38,881
931	14th Court of Appeals	92,000	53,118	23,927	38,881
940	County Courts	20,344,155	18,767,719	12,624,271	20,684,959
941	County Court Appointed Atty Fees	5,600,000	6,864,602	3,266,667	5,600,000
945	Office of Managed Assigned Counsel	122,528	163,325	867,010	2,229,000
991	Probate Court No. 1	1,629,205	1,601,718	1,084,197	1,768,863
992	Probate Court No. 2	1,627,373	1,529,744	1,016,284	1,657,523
993	Probate Court No. 3	5,778,447	5,386,689	3,495,091	5,840,740
994	Probate Court No. 4	1,628,831	1,607,244	1,042,028	1,702,431
Sub-Total		2,034,770,073	2,052,813,269	1,332,558,274	2,127,801,622
Working Capital		1,303,512,053	-	448,107,710	461,112,401
Total Budget		3,338,282,127	-	1,780,665,984	2,588,914,023

Exhibit B

February 10, 2023

The Honorable Greg Abbott, Governor
The Honorable Dan Patrick, Lieutenant Governor
The Honorable Dade Phelan, Speaker of the House
The Honorable Lina Hidalgo, Harris County Judge
Harris County Commissioners Court

Re: Notice of Determination under Local Government Code, Section 120.007(a)

Ladies and Gentlemen:

On December 14, 2022, my office received a request from the Criminal Justice division of the Office of the Governor to investigate a complaint from Constable Ted Heap of Harris County Constable Office Precinct 5. The complaint is summarized below:

The Harris County 2023 fiscal year adopted budget reduced the resources available to Precinct 5 by \$2,367,444 compared to the previous year's annualized budget.

Local Government Code, Section 120.007(a) requires my office, on request by the Office of the Governor, to determine whether a county has implemented a proposed reduction or reallocation described by Local Government Code, Section 120.002(a) without the required voter approval.

After careful review, we find that the complaint provides evidence of a reduction of funding for a law enforcement agency when comparing the adopted and implemented budget for the current fiscal year to the adopted budget for the preceding fiscal year.

Harris County adopted a budget for a 7-month Short Fiscal Year from March 1, 2022, to September 30, 2022 (SFY 2022). Harris County also adopted and implemented a budget for a 12-month fiscal year beginning on October 1, 2022 (FY 2023). The complaint alleges that the FY 2023 budget reduces the overall funding for Precinct 5 when compared to the SFY 2022 budget, when annualized on a month-to-month basis. We confirmed that annualized SFY 2022 adopted budget for Precinct 5 was \$48,949,795, as compared to \$46,582,350 for the FY 2023 adopted budget. The funding shortfall is \$2,367,444.86 (see Appendix).

It is not relevant whether the reduction in funding resulted from an intention by the Commissioners Court to reduce funding for law enforcement agencies or the result of a decision to adopt a short fiscal year budget. The result is the same; Harris County did not allocate the same or more financial resources to the Precinct 5 Constable Office in the FY 2023 budget when compared to the SFY 2022 budget.

The county could implement this budget reduction if the county receives voter approval for the reduction at an election held for that purpose; however, the county has not sought voter approval as of the date of this determination.



February 10, 2023

Page Two

In compliance with Local Government Code Section 120.007(c), we have determined that Harris County implemented a proposed reduction described by Section 120.002(a) without the required voter approval.

We acknowledge that Harris County has adopted the No-New-Revenue ad valorem tax rate for FY 2023. Harris County may not, however, adopt an ad valorem tax rate that exceeds the county's No-New-Revenue tax rate until the earlier of either the date my office issues a written determination the county has reversed the funding reduction that is the subject of this determination or the date when the funding reduction has been approved in an election. Tex. Loc. Gov't Code §§ 120.007(c)(1), 120.007(c)(2).

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Hegar", written over a horizontal line.

Glenn Hegar



Appendix
Comparison of Harris County Adopted Budget for Short Fiscal Year 2022 and Adopted Budget for Fiscal Year 2023

	Short Fiscal Year 2022 Adopted Budget ¹		Fiscal Year 2023 Adopted Budget ²			
Department	Total SFY22 Budget	SFY22 Budget, per month	Total FY23 Budget	FY23 Budget, per month	Difference between SFY22 and FY23, per month	Difference Per Year
301-Constable, Pct 1	\$27,687,202	\$3,955,314.57	\$45,364,315	\$3,780,359.58	\$ (174,954.99)	\$ (2,099,459.86)
302-Constable, Pct 2	\$7,203,497	\$1,029,071.00	\$11,757,948	\$979,829.00	\$ (49,242.00)	\$ (590,904.00)
303-Constable, Pct 3	\$12,215,262	\$1,745,037.43	\$19,919,058	\$1,659,921.50	\$ (85,115.93)	\$ (1,021,391.14)
304-Constable, Pct 4	\$38,725,117	\$5,532,159.57	\$63,147,400	\$5,262,283.33	\$ (269,876.24)	\$ (3,238,514.86)
305-Constable, Pct 5	\$28,554,047	\$4,079,149.57	\$46,582,350	\$3,881,862.50	\$ (197,287.07)	\$ (2,367,444.86)
306-Constable, Pct 6	\$6,998,207	\$999,743.86	\$11,414,038	\$951,169.83	\$ (48,574.02)	\$ (582,888.29)
307-Constable, Pct 7	\$9,582,988	\$1,368,998.29	\$15,647,290	\$1,303,940.83	\$ (65,057.45)	\$ (780,689.43)
308-Constable, Pct 8	\$6,157,362	\$879,623.14	\$10,039,046	\$836,587.17	\$ (43,035.98)	\$ (516,431.71)

Sources:

1. [Harris County Short Fiscal Year 2022 Approved/Adopted Budget \(Excel\)](#)
2. [Harris County Fiscal Year 2023 Adopted Budget \(Excel\)](#)

Exhibit C



Glenn Hegar ✓
@Glenn_Hegar



Reporter [@Hollyshansen](#) from [@TheTexanNews](#) has followed this story from the beginning. Worth checking out her coverage of this.



[thetexan.news](#)

Texas Comptroller: Harris County Judge Hidalgo, Commissioners Court Defun...
The comptroller's analysis found Harris County reduced at least one constable's budget by more than \$2.3 million for 2023.

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THE TEXAN[★]

Texas Comptroller: Harris County Judge Hidalgo, Commissioners Court Defunded Police

T thetexan.news/texas-comptroller-harris-county-judge-hidalgo-commissioners-court-defunded-police

The comptroller's analysis found Harris County reduced at least one constable's budget by more than \$2.3 million for 2023.

Holly Hansen | February 10, 2023



The state comptroller has determined that Harris County reduced funding for law enforcement this year and will now be subject to sanctions under a Texas ban on defunding police.

Prompted by a complaint from Harris County Precinct 5 Constable Ted Heap, last December, Gov. Greg Abbott's Criminal Justice division formally requested an investigation by Comptroller Glenn Hegar.

Hegar told *The Texan* that a team of data and budget analysts in his office concluded that Harris County had reduced Heap's annual budget by \$2,367,444.

"One of the things the county did is they had a short fiscal year and then a full fiscal year, and so that's been confusing to a lot of people," said Hegar.

In shifting to an annual budget to run from October to September each year, the Harris County Commissioners Court adopted a “short fiscal year” (SFY) for 2022 of just seven months and then adopted a full year’s budget for Fiscal Year (FY) 2023.

“If you take a seven-month budget and divide by seven, and then multiply to a 12-month budget, it’s pretty simple,” said Hegar.

According to Hegar’s analysis, Harris County officials used a “convoluted approach” that included two different multipliers and excluded two pay periods to argue that they did not reduce funds for Heap’s office.

“We confirmed that the annualized SFY 2022 adopted budget for Precinct 5 was \$48,949,795, as compared to \$46,582,350 for the Fiscal Year 2023 adopted budget.”

Last August, Hegar’s office warned that the proposed FY 2023 budget would run afoul of 2021 legislation that sanctions large counties for reducing police budgets. Counties in violation must either seek voter approval for the reductions or have tax rates frozen at the no-new-revenue rate.

Harris County responded to Hegar’s warning by filing a lawsuit, but a district court judge approved an agreement that allowed the county to proceed with setting a budget and tax rate while acknowledging that the comptroller’s office would scrutinize allocations for compliance with state law.

With Hegar’s official determination announced Friday, the commissioners court may not adopt a tax rate that exceeds the no-new-revenue rate until the county either rectifies the funding reduction or obtains voter approval for the decrease to law enforcement.

Hegar said his staff had frequent communications with county officials over the past months in hopes they would resolve the issue without state action.

“From day one, we communicated with the budgeting department and the county,” said Hegar. “We encouraged the county staff and the constables to engage in conversation, which they did for a while, until commissioners court politicized this to such a degree that it appears no further communication has really occurred to try to find a local resolution.”

Heap confirmed to *The Texan* that his office had met with County Administrator David Berry to seek a resolution, and thought they had come to a mutual agreement prior to adopting the 2023 budget.

“We met with Berry, Constable [Alan] Rosen, Constable [Mark] Herman, and myself back in May,” said Herman. “I met with Berry again on August 29 and I thought we had this all worked out.”

“It seems to be the goal of the state for us to work this out locally and I am very amicable to sitting down and figuring this out since this is not a good use of taxpayers’ money and our time on either side,” added Heap.

Heap explained that the county’s reluctance to fund law enforcement made it difficult to hire officers.

“A starting officer with Baytown Police is paid \$74,000 per year compared to \$54,000 for Harris County constables and sheriff’s office,” said Heap. “An eight-year officer at Baytown makes \$95,000, while an eight-year officer at the county makes \$61,800.”

Heap emphasized that he believed the funding issue is “fixable,” adding, “This is not about who gets to take victory lap, but let’s get to where we can all do our jobs protecting the citizens of Harris County.”

Despite Hegar’s warning last fall, Harris County Judge Lina Hidalgo sought to move forward with the budget proposed by Berry with reductions for the constables as well as a new tax increase. After Republican Commissioners Tom Ramsey (R-Pct. 3) and Jack Cagle (R-Pct. 4) boycotted meetings to prevent the necessary quorum, the county was forced to default to the no-new-revenue tax rate for FY 2023.

While acknowledging the debate in Harris County over law enforcement funding last fall, Hegar noted that the issue remained unresolved.

“Judge Lina Hidalgo and the Harris County Commissioners Court are defunding the police.”

Harris County constables and District Attorney Kim Ogg also protested last year after commissioners court took back so-called “rollover funds,” but Hegar says his analysis did not consider rollover funds, only year-over-year budgeting.

Hegar confirmed there are additional complaints that Harris County is violating the police defunding ban, but no complaints for any other jurisdiction have been referred to his office.

After the Harris County attorney’s office suggested last year that the district attorney is not a true law enforcement agency, Sen. Joan Huffman (R-Houston) filed legislation this week that would add prosecutors’ offices to the list of agencies large counties may not defund.

Neither the county administrator’s office nor the attorney’s office returned a request for comment by the time of publication.

Update: Harris County Administrator David Berry sent the following statement:

“The numbers speak for themselves. Constable Heap’s budget grew from an annualized \$46,582,350 to \$48,519,429 in the budget adopted last fall. Continuing these games will prevent millions of dollars of future investments in public safety, similar to what occurred

last year when the County was forced to scrap the proposed budget that contained almost \$100 million in additional funding for the Sheriff, Constables, District Attorney, and Criminal Courts. The no new revenue rate made it impossible to make these investments. Despite these challenges, Harris County continues to invest in law enforcement agencies, and more critical investments will be needed next year. Forcing the County to once again adopt the no new revenue rate would limit the investments that can be made. We remain committed to the residents of Harris County and are exploring all of our options at this time.”

Exhibit D

From: Kevin Masters <Kevin.Masters@gov.texas.gov>
Sent: Tuesday, February 21, 2023 4:34 PM
To: Berry, David (Office of County Administration)
Subject: RE: Follow up on SB23

Good afternoon Mr. Berry.

Thank you for your correspondence. Your request should be submitted to the PIR division. You may email a request to publicrecords@gov.texas.gov.

Respectfully,



Kevin Masters
Senior Strategy Analyst
Public Safety Office
Office of the Texas Governor
512.463.1942 | kevin.masters@gov.texas.gov
FBINAA 201st Session

From: Berry, David (Office of County Administration) <David.Berry@harriscountytexas.gov>
Sent: Monday, February 20, 2023 8:19 PM
To: Kevin Masters <Kevin.Masters@gov.texas.gov>
Subject: Follow up on SB23

[**EXTERNAL SENDER**] - Do not click on links or open attachments in unexpected messages.

Hi Kevin,

Thank you for speaking with me this morning. From our conversation, you're not aware of any complaints submitted against Harris County under Chapter 120 of the Local Government Code that are currently pending in the Criminal Justice Division. Please let me know if that is incorrect.

If there are additional complaints, we would request a chance to respond to and correct the subject action before any complaint is referred to the Comptroller, as is required under the statute. We were not provided this opportunity with respect to the Constable Precinct 5 complaint referred to the Comptroller in December 2022.

Thanks very much for your time.

Best
David Berry

Exhibit E

February 28, 2023

The Honorable Lina Hidalgo, Harris County Judge
Harris County Commissioners Court

Re: Notice of Determination under Local Government Code, Section 120.007(a)

Ladies and Gentlemen:

Today my office was notified by the Office of the Governor that officials from Harris County have sought an opportunity to resolve complaints filed under Local Government Chapter 120. I am encouraged that Harris County has decided to focus their efforts on finding a resolution.

I have asked my team to hold in abatement the determination that Harris County implemented a proposed reduction described by Section 120.002(a) without the required voter approval pending the outcome of this effort.

Sincerely,



Glenn Hegar

cc: Criminal Justice Division, Office of the Governor



Exhibit F



TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

FOR IMMEDIATE RELEASE

February 28, 2023

Texas Comptroller Glenn Hegar's Statement on Harris County Effort to Resolve Police Defunding

(AUSTIN) — Today my office was notified by the Office of the Governor that officials from Harris County have sought an opportunity to resolve a **complaint** that the county defunded law enforcement.

I am encouraged that Judge Lina Hidalgo and county officials have stopped attempting to litigate the math and instead will focus their efforts on finding a local resolution with the Harris County constables whose budgets were cut. The dollar amounts analyzed have not changed, but Judge Hidalgo and the county commissioners now are seeking an opportunity to address those numbers, alter course and fully fund law enforcement.

This is the responsible course of action, and I will take steps to support the county's effort to find a resolution. Since the underlying facts and budget numbers have not changed, I am not rescinding my determination; however, I have asked my staff to hold my determination in abatement to give Judge Hidalgo and the county the opportunity to rectify their actions.

When this issue first arose, the county and the constables very nearly found a mutually acceptable negotiated solution. It is my sincere hope that Harris County's claim — that they truly want an opportunity to resolve this at the local level — will bring all parties back to the negotiating table. I implore all involved to seize this chance to once again prioritize public safety over political ambition and legal gamesmanship.

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. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Samantha Richey on behalf of Justin Tschoepe
Bar No. 24079480
srichey@yettercoleman.com
Envelope ID: 73491747
Status as of 3/9/2023 2:22 PM CST

Associated Case Party: HARRIS COUNTY, TEXAS,

Name	BarNumber	Email	TimestampSubmitted	Status
Grant Martinez		gmartinez@yettercoleman.com	3/9/2023 9:10:18 AM	SENT
Samantha Richey		srichey@yettercoleman.com	3/9/2023 9:10:18 AM	SENT
Justin P.Tschoepe		jtschoepe@yettercoleman.com	3/9/2023 9:10:18 AM	SENT
Christian Menefee		Christian.Menefee@harriscountytexas.gov	3/9/2023 9:10:18 AM	SENT
Jonathan Fombonne		Jonathan.Fombonne@harriscountytexas.gov	3/9/2023 9:10:18 AM	SENT
Neal Sarkar		Neal.Sarkar@harriscountytexas.gov	3/9/2023 9:10:18 AM	SENT