

CAUSE NO. 2024-22320

STATE OF TEXAS,

Plaintiff,

v.

HARRIS COUNTY, TEXAS, HARRIS
COUNTY COMMISSIONER COURT,
LINA HIDALGO, in her official capacity
as Harris County Judge, RODNEY ELLIS,
in his official capacity as Commissioner of
Harris County Precinct 1, ADRIAN
GARCIA, in his official capacity as
Commissioner of Harris County Precinct 2,
TOM RAMSEY, in his official capacity as
Commissioner of Harris County Precinct 3,
and LESLEY BRIONES, in her official
Capacity as Commissioner of Harris County
Precinct 4, HARRIS COUNTY PUBLIC
HEALTH, BARBIE ROBINSON, in her
official capacity as Executive Director of
Harris County Public Health,

Defendants

IN THE DISTRICT COURT

165th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

**HARRIS COUNTY'S RESPONSE TO STATE OF TEXAS' APPLICATION FOR
RESTRAINING ORDER AND INJUNCTIVE RELIEF AND HARRIS COUNTY'S PLEA
TO THE JURISDICTION**

HARRIS COUNTY, TEXAS, HARRIS COUNTY COMMISSIONER COURT, LINA
HIDALGO, in her official capacity as Harris County Judge, RODNEY ELLIS, in his official
capacity as Commissioner of Harris County Precinct 1, ADRIAN GARCIA, in his official
capacity as Commissioner of Harris County Precinct 2, TOM RAMSEY, in his official capacity
as Commissioner of Harris County Precinct 3, and LESLEY BRIONES, in her official capacity as
Commissioner of Harris County Precinct 4, HARRIS COUNTY PUBLIC HEALTH, BARBIE
ROBINSON, in her official capacity as Executive Director of Harris County Public Health
("Harris County or Harris County Defendants") file this Response to the State's Application for

Restraining Order and Injunctive Relief. Harris County also files its Plea to the Jurisdiction. In support of this Response and Plea to the Jurisdiction, Harris County shows the Court the following:

INTRODUCTION

What happens when you mix: one excitable state senator with a strange obsession with Harris County's leadership, a man more concerned with scoring cheap political points than actually helping Harris County residents; and one attorney general who uses his office to wage war on cities and counties to advance his cause du jour? You get this cruel and baseless lawsuit—a suit that has already caused turmoil in some of the poorest zip codes in Harris County by pulling the rug from under residents' feet. It is a blatantly political stunt aimed at stopping Harris County's "Uplift Harris" guaranteed basic program because it has the audacity to help poor residents of the County. And if Uplift Harris—which gives Harris County's most vulnerable resident \$500 a month for 18 months—is enjoined, it is Harris County and its residents who will suffer.

Having failed to come up with a viable legal theory for its claims, the State instead focuses on cheap rhetoric like calling Uplift Harris the "Harris Handout" and a "socialist experiment by Lina Hidalgo and the progressive democrats responsible for the Harris County disaster", whatever that means.¹ Indeed, the first few pages of the Petition could have been taken directly from the mouth of that state senator.² The State fails to accurately describe the goals of the program and broadly talks of Uplift Harris as a gift of public funds, ignoring that both in form and substance it fulfills traditional governmental functions: addressing poverty, crime, public health, and economic development.

¹ See State of Texas' Original Petition and Application for Temporary Restraining Order and Injunctive Relief ("Pet") at 1.

² See "State Senator Paul Bettencourt challenges legality of Harris County's guaranteed income pilot program", Houston Public Media, January 18, 2024 <https://www.houstonpublicmedia.org/articles/news/harris-county/2024/01/18/474833/paul-bettencourt-challenges-guaranteed-income-harris-county-pilot-program-legality/>

This Court should reject these baseless arguments and deny the State's request for injunctive relief. First, Uplift Harris does not constitute a gift of public funds in violation of Article III, Section 52(a) of the Texas Constitution. As the Texas Supreme Court has made clear, a government expenditure that confers a private benefit is not an unconstitutional gift if it serves a public purpose. Uplift Harris more than meets that standard by providing wide-ranging social and economic benefits to participating families and the broader community and economy. Further, other provisions of the Texas constitution confirm that these goals serve a public purpose by promoting economic development and addressing a public calamity, among other things.

Second, the Court should reject the State's risible equal protection claim. That argument applies the wrong standard and is without merit. Uplift Harris simply does not violate Article I, Section 3 of the Texas Constitution because the program passes the rational basis test.

Finally—and perhaps most importantly—even if the State could plead a viable constitutional claim (it can't), basic principles of equity counsel against granting injunctive relief. Specifically, because the State has sat on its hands over 10 months despite much public discussion and even a request for an Attorney General opinion from Senator Paul Bettencourt, it cannot come into court on the eve of the program's start and seek emergency relief.

FACTS

The Coronavirus Pandemic left almost 1.2 million Americans dead and resulted in almost seven million hospitalizations.³ Businesses shut down, social distancing was strongly encouraged, education moved online, and travel ground to a halt. In April 2020, the national unemployment rate reached its highest level since 1948, it was also the most severe month-over-month decline in

³ Centers for Disease Control and Prevention, *COVID-19 Update for the United States*, CDC.GOV (Apr. 8, 2024, 3:21 PM ET) <https://covid.cdc.gov/covid-data-tracker/#datatracker-home>.

employment on record.⁴ The pandemic caused weakness in supply chains which has resulted in persistent high inflation. In response, Congress passed, and the President signed, the American Rescue Plan Act (ARPA).⁵

A. The American Rescue Plan Act

Contrary to the State's claim, ARPA was not passed exclusively to respond to the direct effects of the pandemic, such as healthcare costs and loss of life. Congress provided "State, local, and Tribal governments with significant resources to respond to the COVID-19 public health emergency and its *economic impacts*."⁶ ARPA was designed for funds to be used "[t]o respond to the public health emergency or its negative impacts, including *assistance to households*, small businesses, and nonprofits, or aid to impacted industries . . ."⁷ Congress undoubtedly chose to include economic impacts because they understood that "[l]ow income communities, people of color, and Tribal communities faced higher rates of infection, hospitalization, and death, as well as higher rates of unemployment and lack of basic necessities like food and housing."⁸ ARPA made funding available for innovative strategies to combat economic insecurity, including funding various guaranteed income programs throughout the country. Whether the pandemic is "over" is therefore irrelevant.⁹

The Treasury Department has made clear that uses of the funds need not be explicitly enumerated in the SLFRF final rule to be permitted under the federal program.¹⁰ In any event, cash

⁴ U.S. Bureau of Labor Statistics, *Unemployment Rate [UNRATE]*, FRED.STLOUISFED.ORG (Apr. 5, 2024), <https://fred.stlouisfed.org/series/UNRATE>; U.S. Bureau of Labor Statistics, *Employment Level [LNU02000000]*, FRED.STLOUISFED.ORG (Apr. 5, 2024), <https://fred.stlouisfed.org/series/LNU02000000>, May 3, 2021.

⁵ American Rescue Plan Act, 42 U.S.C. § 9901; Social Security Act, 42 U.S.C. § 602.

⁶ 86 FR 26787.

⁷ *Id.*

⁸ *Id.*

⁹ Pet. at 5.

¹⁰ U.S. Dep't of Treasury, *State and Local Fiscal Recovery Funds: "Final Rule: Frequently Asked Questions"* at FAQ 2.1 (Nov. 2023) <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf>.

assistance is identified as an “eligible use” within the category of responses to the “negative economic impacts of the pandemic.”¹¹ The agency further explains:

2.4. May recipients use funds to respond to the public health emergency and its negative economic impacts by providing direct cash transfers to households? Yes. Cash transfers, like all eligible uses in the public health and negative economic impacts category, must respond to the negative economic impacts of the pandemic on a household or class of households. Recipients may presume that low- and moderate income households (as defined in the final rule), as well as households that experienced unemployment, food insecurity, or housing insecurity, experienced a negative economic impact due to the pandemic.¹²

In turn, “low- and moderate income” means up to 300% of the household’s federal poverty level. 31 C.F.R. § 35.3 (definitions). Because Uplift Harris does not provide cash assistance to any household with income in excess of 200% of the federal poverty line, it is authorized under APRA and SLFRF.

Even before the pandemic, Harris County was subject to significant disparities along racial and socio-economic lines with approximately 16.4% of Harris County residents considered to be persons living in poverty.¹³ At least one group of experts concluded that life expectancy in Houston could vary by as much as 30 years depending on what zip code you live in.¹⁴ Meanwhile, the cost of living has increased 15% over the last decade, and inflation is the highest it has been in over 40 years without commensurate increases.¹⁵ Given that Harris County has such dramatic economic disparities it should come as no surprise that some communities in Harris County were hit harder than others.

¹¹ See *id.* at FAQ 2.2.

¹² *Id.* at FAQ 2.4.

¹³ United States Census Bureau, *QuickFacts Harris County, Texas*, CENSUS.GOV, <https://www.census.gov/quickfacts/harriscountytexas> (last visited 4/12/2024).

¹⁴ Todd Ackerman, *Texans’ life expectancy varies wildly depending on zip code*, CHRON.COM (Feb. 27, 2019, 6:43 PM), <https://www.chron.com/news/houston-texas/houston/article/Texans-life-expectancy-varies-wildly-depending-13647558.php>.

¹⁵ Episcopal Health Foundation, *Texans’ Views on the COVID-19 Pandemic*, EPISCOPALHEALTH.ORG (October 2020) https://www.episcopalhealth.org/wp-content/uploads/2020/10/EHF-Texas-COVID-19-Study_FINAL-1.pdf; Data retrieved in April 2022. Consumer Price Index.

In response to the pandemic and the ensuing economic downturn, Harris County crafted an innovative solution to help its most vulnerable citizens. This plan was to use funds provided by ARPA to provide a guaranteed basic income to those most impacted by the pandemic.

B. Uplift Harris

In June 2022, Harris County Commissioner Precinct One's office (Precinct One) approached Harris County Public Health Services (Public Health) with plans to develop an implementable guaranteed income program to assist lower income households in Harris County.¹⁶ Precinct One presented data from studies in Texas and around the country that showed that similar programs have had significant positive effects on local communities. As part of the proposal, Precinct One laid out the plans for Harris County's own guaranteed income program called the Uplift Harris Guaranteed Income Pilot Program ("Uplift Harris").¹⁷ Uplift Harris is funded with \$20.5 million from ARPA, specifically the "State and Local Fiscal Recovery Funds" (SLFRF). 42 U.S.C. §§ 802–03. Uplift Harris will provide \$500 monthly cash payments to 1,928 Harris County residents for 18 months.¹⁸ assist the economic recovery of residents disproportionately impacted by the pandemic.

Two cohorts of applicants are eligible for Uplift Harris funds:

- *Geographic cohort*: Eligibility is based on income and geography. Applicant's household income must be below 200% of the federal poverty line (FPL) and reside in one of the ten identified high-poverty ZIP codes. About 70 % of applicants would be chosen from the geographic cohort.
- *ACCESS Harris cohort*: Active participants of Accessing Coordinated Care and Empowering Self Sufficiency (ACCESS) Harris are qualified to apply through their participation in ACCESS Harris and having a household income below 200% FPL.

¹⁶ See, Exhibit A, Harris County ARPA Project Summary, Uplift Harris Guarantee Income Pilot.

¹⁷ *Id.*

¹⁸ Participants can use the money however they see fit to meet their needs, except: To buy or support anything that would harm the safety and security of other participants in the Uplift Harris Guaranteed Income Pilot and/or other community members; for the promotion of and/or engagement in any criminal or illegal activities; to support any entities or individuals relating to terrorism. Such activities will lead to removal from the pilot.

These participants can reside anywhere in Harris County. About 30% of applicants would be chosen from the ACCESS cohort.

In assessing what populations would be best served by the implementation of Uplift Harris, Harris County considered median household income and percentage of the population that is considered to be living in poverty. Harris County knew as early as February 2023 that demand for benefits among eligible recipients would easily outpace the resources that had been appropriated for the program. As such, Precinct One and Public Health decided that a lottery system would be the most effective system for selecting participants from all eligible applicants. Uplift Harris received over 82,000 applications for the program, of which approximately 55,000 were eligible to receive benefits. From that pool, 1,928 were selected via lottery to take part in the program.

The expectation is that Uplift Harris will (1) reduce poverty, (2) reduce unemployment, (3) improve the incentive and ability to work, (4) provide financial security, (5) boost self-employment, and (6) improve health and educational outcomes.¹⁹ These beneficial effects would not just be felt by those receiving the direct payments from the Uplift Harris program, they would create a positive externality that would be felt throughout the entire community. Data suggests that guaranteed income programs can be effective at getting participants off of longer-term welfare programs, increase food security, increase housing security, improve employment, and will stimulate local business in the communities where households are receiving the money.

C. Uplift Harris's Implementation Strategy

On June 5, 2023, Harris County Judge Lina Hidalgo and Harris County Commissioner Rodney Ellis announced that Commissioner's Court planned on voting on Uplift Harris. That same

¹⁹ See, Exhibit B, Harris County Commissioners Court File 23-3277, Agenda 21 (June 6, 2023).

day, numerous news outlets, including NPR's Houston Public Media, reported on the announcement.²⁰

On June 6, 2023, the Harris County Commissioners Court voted to approve Uplift Harris.²¹ On September 19, 2023, Commissioners Court voted to retain data experts, Elite Research, LLC (Elite Research) to conduct a comprehensive evaluation of Uplift Harris.²² The research will assess the impact of the program on participants and develop a model for administering and managing the program to determine how to scale it if additional funding were available. Deriving useful data is thus an important goal and benefit of Uplift Harris. In addition to helping community members, the data gleaned from this project will have the added value of providing Harris County with data necessary to improve its programs going forward and will add to the growing corpus on knowledge surrounding the efficacy of guaranteed income programs. Even if Uplift Harris were unsuccessful in achieving its goals of lifting communities out of poverty, the data gleaned would be essential to informing and retooling Harris County's approach towards current and future County programs.

On October 10, 2023, Commissioners Court voted to approve Public Health's decision to grant the day-to-day administration of Uplift Harris, to a third-party, GiveDirectly, under the supervision of Public Health.²³ GiveDirectly was chosen based on its proven experience administering projects of similar scope. As a part of the contract between Harris County and GiveDirectly the parties agreed the "providing the Services through participation in the Project serves a public purpose."²⁴ In its role as administrator, GiveDirectly is in charge of community

²⁰ Patricia Ortiz, *Harris County Commissioners pass guaranteed income program for 1,500 families*, HOUSTONPUBLICMEDIA.ORG (June 7, 2023, 3:25 PM) <https://houstonpublicmedia.org/articles/news/harris-county/2023/06/05/453691/harris-county-commissioners-pass-guaranteed-income-program-for-1500-families>.

²¹ See, Exhibit B, Harris County Commissioners Court File 23-3277, Agenda 21 (June 6, 2023).

²² See, Exhibit C, Harris County Commissioners Court File 23-5217, Agenda 180 (September 19, 2023).

²³ See, Exhibit D, Harris County Commissioners Court File 23-6107, Agenda 409 (October 10, 2023).

²⁴ *Id.*

outreach, enrollment and administration, data tracking, monitoring, and reporting, as well as case management.

The contract with GiveDirectly states that GiveDirectly will never have more than \$5,000,000 in its possession at a time.²⁵ The contract also states that “[a]t the County’s election, but at least monthly, County will upon receipt of sufficient documentation (as determined by the County) . . . transfer the funds necessary to replenish the [account] in [GiveDirectly’s] possession up to \$5,000,000.00 until such time the County has transferred the full \$17,350,000.00 . . . for disbursement.”²⁶ Harris County retains the ability to cancel the contract with GiveDirectly for reasons of convenience or for cause.²⁷

On January 12, 2024, the application period began for Uplift Harris. Applicants to Uplift Harris must fill out general information for the online application on the county website. In order to be selected, applicant must submit additional paperwork to GiveDirectly, in order to verify that the applicant is qualified. Once GiveDirectly determines that an applicant is qualified, the list of qualified applicants is given over to Elite Research to randomly select participants. Selected applicants are then required to sign an agreement with the County to receive funds.²⁸ Part of this agreement asks whether the participant is willing to share information with GiveDirectly, the data gleaned from participant spending habits will go to Harris County in order to craft future programs.²⁹ In signing the agreement, participants consent that they will not use the money to buy or support anything that would harm the safety and security of other participants in the Uplift Harris Guaranteed Income Pilot and/or other community members; for the promotion of and/or

²⁵ *Id.* at 11.

²⁶ *Id.*

²⁷ *Id.* at 16-17.

²⁸ *See*, Exhibit E, UpLift Harris County Enrollment Form for selected participants.

²⁹ *Id.* at 12.

engagement in any criminal or illegal activities; and/or to support any entities or individuals relating to terrorism.³⁰ Such prohibited use of funds would lead to removal from the pilot.³¹

Harris County has already disbursed \$5,000,000.00 (five million) dollars to GiveDirectly for payment to eligible recipients.

D. Other Programs

Precinct One and Public Health looked to various guaranteed income programs from Texas and around the country in crafting Uplift Harris. In December 2020, San Antonio launched its own version of a guaranteed basic income program. The City of San Antonio gave about 1,000 low-income families an initial cash investment of \$1,908 and an additional \$400 every quarter through January 2023.³² Applicants for San Antonio's program were required to be under 150% of the federal poverty line. The city paid for this program utilizing \$2 million of its federal pandemic relief funds as well as donations from private donors and organizations.³³ In May 2021, the City of Houston piloted a similar program that provided 110 households with \$375 per month.³⁴ Participants household income had to be at or below the poverty line. In September 2022, The City of Austin also crafted a guaranteed basic income program. The Austin Guaranteed Income Pilot enrolled 135 households to receive \$1,000 per month for one year. The City of Austin used survey data to measure whether the program was having measurable success. Findings from this survey

³⁰ *Id.* at 4.

³¹ *Id.*

³² Iris Dimmick, *Cash without conditions: San Antonio's experiment with guaranteed income*, SANANTONIOREPORT.ORG (Jul. 19, 2022) <https://sanantonioreport.org/cash-without-conditions-san-antonio-experiment-guaranteed-income>.

³³ Allie Kelly and Noah Sheidlower, *San Antonio experimented with giving people \$5,108, no strings attached. They spent it on housing and school supplies for their kids*, BUSINESSINSIDER.COM (Mar. 14, 2024), <https://www.businessinsider.com/san-antonio-ubi-guaranteed-basic-income-housing-finances-austin-rent-2024-3>.

³⁴ Emma Whalen, *New Houston Fund for Social Justice and Economic Equity formed in George Floyd's memory*, COMMUNITYIMPACT.COM (May 20, 2021, 5:02 PM CDT) <https://communityimpact.com/houston/heights-river-oaks-montrose/2021/05/20/new-houston-fund-for-social-justice-and-economic-equity-formed-in-george-floyds-memory>.

data indicate that “many pilot program participants caught up on rent and were less likely to be concerned about eviction” and that participants “experience substantial improvements in food security” after six months.³⁵ The State has not sued to enjoin any of those programs.

Outside of Texas, various studies of guaranteed income programs have also shown positive impacts on health and employment. For example, the Saint Paul Prosperity Pilot showed that of the people enrolled in the pilot, employment increased from 49% to 63% by the end of the program. These participants also exhibited better long-term financial stability, with 7% transitioning to better quality homes.³⁶ In terms of health, participants showed fewer symptoms of anxiety and depression. Increases in quality of life were reported in many other studies as well, including pilot programs in California, Washington, Virginia, Kentucky, Alabama, and Louisiana. In addition to benefitting the individuals involved in the programs, there is proof that these programs can provide benefits to the community because short-term infusions of cash can reduce reliance on longer-term welfare programs. Additionally, reducing poverty has been shown to have a host of other public benefits, such as increasing development in economically downtrodden areas, improving educational outcomes, and reducing crime.

E. The State of Texas had ample time to address legal questions but opted to wait until two weeks before implementation to act.

On June 5, 2023, Harris County publicly stated that it was moving forward with Uplift Harris.³⁷ It has been 317 days since that announcement.³⁸ On January 24, 2024, State Senator Paul

³⁵ Urban Institute, *Austin Guaranteed Income Pilot: Participant Outcomes at Six Months*, URBAN.ORG, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.urban.org/sites/default/files/2023-08/Austin%20Guaranteed%20Income%20Pilot%20Participant%20Outcomes%20at%20Six%20Months.pdf (last visited 4/12/2023).

³⁶ Saint Paul, Minnesota, *Results of Saint Paul Guaranteed Income Pilot Show Increased Employment, Improved Outlook*, STPAUL.GOV (Dec. 18, 2023) <https://www.stpaul.gov/news/results-saint-paul-guaranteed-income-pilot-show-increased-employment-improved-outlook#:~:text=Mayor%20Melvin%20Carter%20and%20the,state%20and%20private%20philanthropic%20dollars>.

³⁷ See supra n. 20.

³⁸ As of April 17, 2024.

Bettencourt asked Attorney General Ken Paxton to provide an Attorney General Opinion as to whether Article III, Section 52(a) allowed for Texas local governments to provide a guaranteed basic income.³⁹ The current lawsuit followed almost three months later. It's clear that the State has had ample time to file this lawsuit to enjoin Harris County's actions. Unfortunately, it waited until two weeks before the program was to be implemented, and after \$5,000,000 had already been expended.

STANDARD OF REVIEW

To be granted injunctive relief, a plaintiff must prove three elements: (1) a valid "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." *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

ARGUMENT

I. THIS COURT MUST DENY THE STATE'S REQUEST FOR INJUNCTIVE RELIEF BECAUSE THE STATE CANNOT SUCCEED ON THE MERITS OF ITS CLAIMS.

A. Uplift Harris Does Not Violate the Texas Constitution's Gift Clauses Because It Has a Clear Public Purpose.

i. *Uplift Harris meets the Texas Municipal League test*

Uplift Harris's guaranteed basic income program does not violate the Gift Clauses because it plainly serves a public purpose. As the Texas Supreme Court reaffirmed in *Texas Municipal League*, merely conferring a benefit on a private person does not make a grant of public funds unconstitutional. Indeed, much of government spending has benefits private parties, but that does not make it *per se* unconstitutional. While the State makes much of the allegedly "random"

³⁹ Kenneth Niemeyer, *Texas senator says the plan to give poor residents a \$500 guaranteed basic income is unconstitutional*, BUSINESSINSIDER.COM (Jan. 20, 2024, 1:14 PM CST), <https://www.businessinsider.com/texas-paul-bettencourt-guaranteed-basic-income-ubi-uplift-harris-houston-2024-1>; Joshua Q. Nelson, *Texas lawmaker challenges 'lottery socialism,' urges state AG to rule on the universal income program*, FOXNEWS.COM (February 2, 2024, 5:00 AM EST) <https://www.foxnews.com/media/texas-lawmaker-challenges-lottery-socialism-urges-state-ag-rule-universal-income-program>.

process for selecting recipients, Uplift Harris is tailored to achieve its public purpose: lifting some of Harris County's most vulnerable residents out of poverty while providing them the dignity to choose how to best spend their income. This program provides a return to the County by improving economic conditions, reducing poverty and crime, and improving public health. Accordingly, Uplift Harris is constitutionally sound.

The State claims that because Uplift Harris involves a "no strings attached" grant of federal stimulus dollars certain Harris County residents living in poverty, the program constitutes a gift of private funds in violation of the Texas Constitution's Gift Clauses. The Gift Clauses read:

Art. III, § 51:

The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual . . . ; provided that the provisions of this Section shall not be construed so as to prevent the grant of aid in cases of public calamity.

Art. III, § 52(a):

[T]he Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of[] or to any individual. . . .⁴⁰

They are "intended 'to prevent the application of public funds to private purposes; in other words, to prevent the gratuitous grant of such funds to any individual, corporation, or purpose whatsoever.'" *Edgewood ISD v. Meno*, 917 S.W.2d 717, 740 (Tex. 1995) (quoting *Byrd v. City of Dallas*, 6 S.W.2d 738, 740 (Tex. 1928)).

In *Texas Municipal League Intergovernmental Risk Pool v. Texas Workers' Compensation Commission*, 74 S.W.3d 377 (Tex. 2002), the Texas Supreme court covered the current limitations on public spending imposed by the Gift Clauses. The Supreme Court held that § 52 "means that the Legislature cannot require *gratuitous* payments to individuals, associations, or corporations." *Tex. Mun. League*, 74 S.W.3d at 383. But the Court also made clear that payments are not

⁴⁰ See also Tex. Const. art. III, §§ 50, 55; *id.* art. XI, § 3; *id.* art. XVI, § 6(a).

gratuitous if “such payments: (1) serve[] a legitimate public purpose; and (2) afford[] a clear public benefit received in return.” *Id.* The Court then confirmed the three-part test to “determin[e]” if a law “accomplishes a legitimate public purpose”: (a) the law’s “predominant purpose is to accomplish a public purpose, not to benefit private parties”; (b) the law “retain[s] public control over the funds to ensure that the public purpose is accomplished and to protect the public’s investment”; and (c) the law “ensure[s] that the political subdivision receives a return benefit.” *Id.* at 384-85. Only “sufficient—not equal—return consideration” is required. *Id.* at 384. Uplift Harris meets this test, in spades.

As to the first prong of the test, Uplift Harris plainly serves several public purposes, which predominate over the benefits to individual recipients. Harris County Commissioners Court developed the program with clearly described goals to alleviate poverty exacerbated by the pandemic, and considered all the positive effects of guaranteed basic income programs across the country. Uplift Harris’s public purposes are thus clear: addressing poverty; promoting economic development; and allowing Harris County to study whether a guaranteed basic income program may be a viable and preferable method of assisting Harris County’s poorest residents. That county residents will also benefit privately from the receipt of Uplift Harris payments does not diminish its principal goals. And the State makes no attempt to address these myriad public purposes, stating in conclusory fashion that Uplift Harris “does not accomplish a public purpose.”⁴¹ The State’s claim that Uplift Harris “directly benefits randomly selected individual residents of Harris County” is a half-truth at best because beneficiaries are selected based on their income levels and either zip code (selected based on levels of poverty) or participation in a Harris County integrated care-coordination model aimed at certain vulnerable populations. While the final selection of

⁴¹ Pet. at 7; *see also* p. 12.

participants is based on a lottery, the pool potential beneficiaries is anything but random and designed to achieve a clear public purpose.

Likewise, Uplift meets the second prong of the *Texas Municipal League* test because it has sufficient controls in the form of eligibility requirements that track its purposes and an exhaustive review process for applications to the program. *See, e.g.,* Tex. Att’y Gen. Op. 10-0244 (2000) (requiring proof of residency and financial need were sufficient controls for scholarships for architectural examination applicants). The participants in Uplift Harris agree not to spend the money on illegal uses, and to complete monthly surveys confirming their continued eligibility. In addition, Harris County retains sufficient controls over GiveDirectly to ensure proper administration of the program like the ability to control the transfer of funds and terminate the contract if necessary. Finally, ARPA itself creates an additional safeguard against the misuse of funds. Under ARPA, “[a]ny . . . county receiving [ARPA] funds . . . shall provide to the Secretary periodic reports providing a detailed accounting of the uses of such funds by such . . . county and including such other information as the Secretary may require.” 42 U.S.C. § 803(d).

Finally, Uplift provides the County with several return benefits. As discussed in connection with the first prong of the *Texas Municipal League* test, Harris County will enjoy a boost to its economic development by having fewer poor residents, residents who will presumably spend money in the local economy. It also benefits from the expected reductions in crime and improvements in public health. Finally, Harris County receives an added benefit from being able to study guaranteed income programs in the County in order to further refine the manner in which the County will spend money on economic development and poverty alleviation.

- ii. *Other provisions of the Texas Constitution confirm that Uplift Harris serves a public purpose*

Aside from the generally applicable test described by *Texas Municipal League*, the Constitution expressly carves out certain activities as legitimate public purposes. Most relevant here is Article III, § 52a, which states:

Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of . . . grant of public money . . . for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, . . . or the development or expansion of . . . commerce in the state. . . .

Section 52-a makes clear that expenditures aimed at economic development serve a public purpose. As then-Attorney General Abbott explained in 2003, “[i]n essence, section 52-a establishes that economic development is a legitimate public purpose for public spending.” Tex. Att’y Gen. Op. GA-0071 (2003) (citing *Tex. Municipal League*, 74 S.W.3d at 383). Indeed, the opening of § 52-a shows that the Gift Clauses (and thus the *Texas Municipal League* test) do not even apply: “**Notwithstanding any other provision of this constitution.**” Thus, § 52-a’s text shows it relieves the need to independently show that economic development programs are not gratuitous.⁴²

Uplift Harris serves an economic development purpose—particularly “to increase employment among participants.”⁴³ Cash assistance under ARPA helps recipients return to economic life. And studies show that those with low to moderate income are the most likely to turn cash assistance immediately into commerce, for example by paying expenses for basic needs.

⁴² See also House Cmte. On Science and Technology, Bill Analysis: CSHJR 5 (Mar. 25, 1987) (specifically mentioning the provisions of article III, §§ 51 and 52 as constitutional impediments that section 52–a was intended to overcome); *Ex parte City of Irving*, 343 S.W.3d 850, 855 (Tex. App.—Dallas 2011, judgment vacated w.r.m.) (rejecting Attorney General’s argument that § 52-a did not create an exception to other constitutional requirements).

⁴³ See, Exhibit F, 2023 Report at 99.

See Bureau of Labor Statistics, *supra* n.1. Economic development also offers an obvious benefit to the public.

Article III, § 51 (the Gift Clause applying to the legislature) also carves out spending to address disasters like the coronavirus pandemic from the prohibition on gifts: “[T]he provisions of this Section shall not be construed so as to prevent the grant of aid in cases of *public calamity*.” That proviso makes clear responding to “a state-wide calamity” is “a proper function of state government.” *City of Aransas Pass v. Keeling*, 247 S.W. 818, 820 (Tex. 1923); accord Tex. Att’y Gen. Op. No. WW-1248 (1962) (endorsing constitutionality of expenditures in response to natural disasters); Tex. Gov’t Code ch. 418 (authorizing numerous programs to respond to disasters).

It follows that “[t]he use of . . . counties as agents of the state in the discharge of the state’s duty is in no wise inhibited by the Constitution.” *City of Aransas Pass*, 247 S.W. at 820. A county program granting aid in response to a public calamity, therefore, serves a public purpose. The pandemic surely qualifies as a public calamity—Governor Abbott issued a disaster proclamation on March 13, 2020, certifying that COVID-19 poses an imminent threat of disaster for all counties in the State of Texas, and renewed that declaration monthly through June 2023. See Governor of the State of Tex., COVID-19 Disaster Declaration May 2023, 48 Tex. Reg. 2639, 2645-46 (2023). “Disaster” is synonymous with “public calamity.” Tex. Gov’t Code § 418.004(1). Governor Abbott has also expressly connected the “economic recovery from COVID-19” to the state of disaster. 48 Tex. Reg. at 2646.

The expenditure of public funds on alleviating poverty is also a recognized public purpose. Counties “are the means whereby the powers of the State are exerted through a form and agency of local government for the performance of those obligations which the State owes the people at large.” *Bexar Cnty. v. Linden*, 220 S.W. 761, 763 (Tex. 1920). Among those obligations, the State

uses counties “for the collection of taxes, for the diffusion of education, for the construction and maintenance of public highways, *and for the care of the poor.*” *Id.* (emphasis added); *accord Cummings v. Kendall Cnty.*, 26 S.W. 439, 440 (Tex. Civ. App. 1894). Indeed, the legislature has explicitly codified local governments’ ability to provide for the poor. *See* Tex. Local Gov’t Code § 81.027 (permitting a county to “provide for the support of paupers, residents of their county, who are unable to support themselves”).

Citing Article IX, § 14⁴⁴ of the Texas Constitution, the attorney general has concluded that a drought relief bill authorizing counties to loan to farmers money for the purchase of seed and feed was constitutional: “The care of poor and indigent inhabitants is recognized by the Constitution of this State as a proper subject for the expenditure of public funds”; and, “By the express wording of the Constitution, it is entirely clear that the fundamental law regards the relief of the poor as a public purpose, for which public money may be expended.” Tex. Att’y Gen. Op. (To Hon. E. A. Decherd, Jr., Mar. 4, 1918), 1916-1918 Tex. Att’y Gen. Biennial Rep. 851, 852. *See also* Tex. Att’y Gen. Op. No. GM-2474 (1940) (endorsing constitutionality of county program making monthly cash payments to persons employed in Works Progress Administration sewing rooms); Tex. Att’y Gen. Op. No. CM-0782 (1971) (endorsing expenditure of federal grant funds to assist needy population).

These conclusions find further support in the Supreme Court’s eminent domain jurisprudence: “The words ‘public purposes’ are no narrower than the words ‘public use’” in the eminent domain context. *Davis*, 326 S.W.2d at 709. The Supreme Court has held in the eminent domain context that “construction and operation of a low rent housing project” serves a public

⁴⁴ This provision reads: “Each county in the State may provide, in such manner as may be prescribed by law, a Manual Labor Poor House and Farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants.”

purpose, which “is to eliminate slums, from which the entire community derives a benefit through the elimination of conditions giving rise to crime and disease.” *Hous. Auth. of City of Dallas v. Higginbotham*, 143 S.W.2d 79, 81, 85 (Tex. 1940).

B. Uplift Harris Does Not Violate the Equal Protection Clause of the Texas Constitution Because there is a Rational Basis to Using Random Selection to Finalize the Initial Cohort of Beneficiaries.

Having failed to wrestle with the clear public purpose of Uplift Harris, the State fares no better with its half-baked equal protection claim. The State claims that while using selection criteria based on income and other indicators of poverty “might be considered valid classifications, Defendants cross the line from rational to arbitrary by selecting participants by random lottery.”⁴⁵ But the State’s challenge to the use of random selection to cull the number of eligible participants is subject to a rational basis review, and there are obviously rational reasons to use a lottery to provide a benefit when faced with limited resources.

Texas jurisprudence on Article I, Section 3 of the Texas Constitution (equal protection clause) is highly deferential to the government in most circumstances. “When the classification created by a [governmental] scheme neither infringes upon fundamental rights or interests nor burdens an inherently suspect class, equal protection analysis requires that the classification be rationally related to a legitimate state interest.” *Sullivan v. University Interscholastic League*, 616 S.W.2d 170, 172 (Tex. 1981). A classification by a governmental entity must under those circumstances must be sustained if the classification itself is “rationally related to a legitimate governmental purpose.” *Matter of H.Y.*, 512 S.W.3d 467 (Tex. App.—Houston [1st Dist.] 2016, pet. denied).

⁴⁵ Pet. at 8.

As the State appears to concede, Uplift Harris does not infringe upon a fundamental right, nor does it burden an inherently suspect class. *See Bell v. Low Income Women of Tex.*, 95 S.W.3d 253, 262 (Tex. 2002) (citing *Harris v. McRae*, 448 U.S. 297, 323 (1980)) (“Poverty, standing alone is not a suspect classification.”). Therefore, any challenge to Uplift Harris under Article I, Section 3 of the Texas Constitution must fail if there are “any reasonably conceivable” facts that provide a rational basis for classification, *Matter of H.Y.*, 512 S.W.3d at 475, or any plausible reasons for its program participant selection process, *Martinez v. State*, 507 S.W.3d 914 (Tex. App.—Waco 2016, no pet.) (citing *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 314 (1993)).

“The party challenging the rationality of the legislative classification has the burden of negating every conceivable basis that might support it.” *Gardner v. Children’s Med. Ctr. Of Dallas*, 402 S.W.3d 888, 892 (Tex. App.—Dallas 2013, no pet.) (citing *Heller v. Doe by Doe*, 509 U.S. 312, 320 (1993)). “It is not [the court’s] place to question the [government’s] policy decisions when conducting a rational basis review” of a program challenged on equal protection grounds. *Hebert v. Hopkins*, 395 S.W.3d 884 (Tex. App.—Austin 2013, no pet.). And “determinations are ‘not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.’” *Klumb v. Houston Mun. Emps. Pension Sys.*, 458 S.W.3d 1, 13, (Tex. 2015) (quoting *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 315 (1993)).

In a world of limited resources, it is entirely reasonable to use a mechanism to limit the number of persons who may participate in the program. Governments frequently have to limit the availability of certain benefits. For example, due to limited supply of housing, persons seeking public housing must often be on a waitlist, and their ability to obtain housing will be different than other persons seeking public housing.⁴⁶ Random selection is simply another mechanism for

⁴⁶ *See, e.g.*, Houston Housing Authority Public Housing Waitlist Administration, <https://housingforhouston.com/residents/public-housing/public-housing-waiting-list-administration-old/>.

distributing benefits in conditions of scarcity. Indeed, state agencies have used random selection in programs such as the Housing Choice Voucher Program, which is administered by the Texas Department of Housing and Community Affairs. In this program, “TDHCA [used] a lottery system to randomly select 500 applicants for placement on the wait list.”⁴⁷ Similarly, certain school districts with school choice programs, like the Houston Independent School District, use a lottery to allocate scarce spots at the district’s top schools, and many students are not able to access the school of their choice.⁴⁸ There is nothing irrational about using a lottery—especially once criteria targeting vulnerable populations have been applied to the applicant pool.

The selection process for Uplift participants cannot reasonably be described as “arbitrary.” Uplift Harris is designed to reduce poverty and unemployment, and to boost self-employment and improve health and educational outcomes in Harris County.⁴⁹ At this stage, Uplift Harris is a pilot program because pilot programs are commonly used – by counties, municipalities, and the Texas legislature⁵⁰ — as a small-scale, controlled way to test the efficacy and feasibility of a new initiative with a small sample of real-world users prior to full implementation.⁵¹ Uplift Harris received over 82,000 applications. The State concedes that Harris County actively “reviewed individual applications” for eligibility.⁵² Approximately 55,000 applicants were determined

⁴⁷ Texas Department of Housing and Community Affairs, TDHCA announces Housing Choice Voucher Program pre-application for wait-list to open May 2 (April 28, 2022). [TDHCA announces Housing Choice Voucher Program pre-applications for wait-list to open May 2 | Texas Department of Housing and Community Affairs](https://www.tdhca.state.tx.us/newsroom/press-releases/2022/04/28/tdhca-announces-housing-choice-voucher-program-pre-applications-for-wait-list-to-open-may-2)

⁴⁸ Houston Independent School District, HISD School Choice Lottery. <https://www.houstonisd.org/schoolchoice>

⁴⁹ See, Exhibit B, Harris County Commissioners Court File 23-3277, Agenda 21 (June 6, 2023).

⁵⁰ See e.g., Apprenticeship Tax Refund Pilot Program, Texas Workforce Commission

<https://www.twc.texas.gov/programs/apprenticeship/tax-refund-pilot>; Fort Worth High Impact Pilot Program to Combat Homelessness <https://fortworthgov.legistar.com/LegislationDetail.aspx?ID=6572316&GUID=1577B60A-CB6E-43A4-A34F-52C8393CD675> Austin Guaranteed Income Pilot Program

<https://services.austintexas.gov/edims/pio/document.cfm?id=423280>; Travis County Diversion Center Pilot Program <https://traviscotx.portal.civicclerk.com/event/3083/media>.

⁵¹ Malmqvist, J., Hellberg, K., Möllås, G., Rose, R., & Shevlin, M. (2019). Conducting the Pilot Study: A Neglected Part of the Research Process? Methodological Findings Supporting the Importance of Piloting in Qualitative Research Studies. *International Journal of Qualitative Methods*, 18. <https://doi.org/10.1177/1609406919878341>

⁵² Pet. at pg. 6, para. 22; Pet. at pg. 9, para. 31.

eligible for the program, but that number had to be reduced to account for limited funding.⁵³ The process was fair and equitable because each eligible applicant had the same likelihood of selection to participate in Uplift Harris. Given all this, there is more than “any conceivable set of facts” to support Uplift Harris’s selection process. *Matter of H.Y.*, 512 S.W.3d at 475. Accordingly, the program’s classification and selection of eligible residents is supported by a rational basis.

The State relies on case law that applies a different “reasonable basis” standard, but seemingly ignores that those cases do not interpret Article I, Section 3.⁵⁴ In *Producers Ass’n of San Antonio v. City of San Antonio*, the court applied analyzed whether a classification was “reasonable and applie[d] equally to all persons who fall within the class” to see whether certain fees the city charged milk producers conflicted with specific state statutes on milk standards. 326 S.W.2d 222, 226 (Tex. App.—San Antonio 1959, writ ref’d n.r.e.). The case does not mention the equal protection clause. *See also Prudential Health Care Plan, Inc. v. Comm’r of Ins.*, 626 SW.2d 822, 83 (Tex. App.—Austin 1981, writ ref’d n.r.e.) (applying reasonable/equal treatment standard in the context of Article VIII, Section 1). And when the State does cite equal protection cases, those cases confirm that the rational basis standard applies. *See Crawford Chevrolet v. McLarty*, 519 S.W.2d 656, 661 (Tex. App.—Amarillo 1975, no writ) (“The test to be applied is whether there is any basis for the classification which could seem reasonable to the legislature.” (internal citations omitted)); *Inman v. R.R. Comm’n*, 478 S.W.2d 124, 127 (Tex.App.—Austin 1972). As explained above, the Uplift Harris selection criteria are not “arbitrary” and easily meet the rational basis standard. Accordingly, the State’s equal protection claim also fails.

⁵³ Sarah Grunau, *Harris County’s guaranteed income program received more than 82,000 applications*, HOUSTON PUBLIC MEDIA. <https://www.houstonpublicmedia.org/articles/news/harris-county/2024/02/16/477797/harris-countys-guaranteed-income-program-received-more-than-82000-applications-2-percent-of-those-will-receive-payments/>; Uplift Harris FAQs, Selection, Enrollment, And Payment. <https://uplift.harriscountytexas.gov/FAQs>.

⁵⁴ Pet. at 8.

II. THE COURT MUST DENY THE STATE’S REQUEST FOR INJUNCTIVE RELIEF BECAUSE THE STATE’S ALLEGED INJURY IS NOT PROBABLE OR IRREPARABLE.

The State cannot succeed on its request for injunctive relief because its alleged injury is not “probable, imminent, and irreparable.” *Butnaru*, 84 S.W.3d at 204. Uplift Harris is authorized by several statutes, satisfies the three-part gift clause exception to Article III, § 52, as defined in *Texas Municipal League*, and does not violate Article I, § 3 because Commissioners Court had a rational basis for the program. *See supra* at I. A-B. Accordingly, because there is no violation of law, the State cannot prove it has suffered an alleged injury—probable or otherwise.

III. THE COURT MUST DENY THE STATE’S REQUEST FOR INJUNCTIVE RELIEF TO PRESERVE THE STATUS QUO

Although the State asks this Court to enjoin the implementation of Uplift Harris, the program has already been implemented and is currently in place. The County designed the program and completed processes and procedures for the program. Selection criteria were created and implemented. The program goals and requirements were communicated to Harris County residents. Harris County created and implemented an application process. The application process has concluded. Harris County thoroughly reviewed thousands of applications. Harris County selected eligible applicants. The eligible applicants were notified. The eligible applicants completed enrollments documents. A third-party administrator was engaged long ago, and that third-party administrator has already received \$5,000,000.00 in funds that will go to individual program recipients. Harris County also created two positions to implement Uplift Harris on June 27, 2023.⁵⁵ These two positions cost Harris County \$64,333 in 2023.⁵⁶ Because the County has

⁵⁵ *See*, Exhibit G, Harris County Commissioners Court File 23-3277, Agenda 10 (June 27, 2023).

⁵⁶ *Id.*

already stood up this program, the status quo is this Court should deny the State’s application for a temporary injunction.

IV. THE STATE’S REQUEST SHOULD BE DENIED BECAUSE IT UNREASONABLE DELAYED SEEKING INJUNCTIVE RELIEF AND STOPPING PAYMENTS ALREADY IN ROUTE TO NEEDY RESIDENTS IS NOT IN THE BEST INTEREST OF THE PUBLIC

Issuance of injunctive relief “is largely controlled by equitable principles,” and equity “aids the diligent and not those who slumber on their rights.” *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993) (quoting *Callahan v. Giles*, 155 S.W.2d 793, 795 (Tex. 1941)). The Court, therefore, must balance the equities when determining whether to grant or deny a temporary injunction. When balancing the equities, a trial court is “bound to take into account other considerations evident on the face of the pleadings and in the evidence adduced at the temporary injunction hearing - for example, the issue of comparative injury or a balancing of the ‘equities’ and hardships, including a consideration of the important factor of the public interest.” *Methodist Hosps. of Dall. v. Tex. Indus. Accident Bd.*, 798 S.W.2d 651, 660 (Tex. App.—Austin 1990, writ dism’d w.o.j.) (superseded by statute on other grounds) (citing *Mitchell v. City of Temple*, 152 S.W.2d 1116, 1117 44 (Tex. Civ. App.—Austin 1941, writ ref’d w.o.m.).

This balancing clearly favors Harris County, as the evidence shows that Uplift Harris was implemented to positively impact Harris County residents with the intended goal of reducing poverty and its ill effects. The program is in full swing with County staff hired, recipients identified, and payments for the needy residents ready for disbursement. And now, at the eleventh hour, the State seeks to stop payments. In this case, the State unreasonably delayed in pursuing injunctive relief due to the ten-month gap between the creation of the program and the State’s actions. On June 6, 2023, the Harris County Commissioners Court created the Uplift Harris

Guaranteed Income Pilot Program and allocated \$20,500,000 in ARPA funds.⁵⁷ On June 27, 2023, Commissioners Court created new positions within Harris County Public Health to manage the program and allocated a portion of the program's budget for their compensation.⁵⁸ Although news of the program's creation was public, the State did not challenge its creation in June of 2023.

In July of 2023, Commissioners Court undertook a large-scale advertising campaign for Uplift Harris.⁵⁹ On September 19, 2023, Commissioner's Court retained experts to conduct a comprehensive evaluation of Uplift Harris and allocated a portion of the programs budget for evaluation expenses.⁶⁰ The total budget for evaluations is \$1,237,870.⁶¹ On October 10, 2023, Commissioners Court contracted with GiveDirectly, Inc. to help manage the program.⁶² Despite the fact that news of this program was public, a large-scale advertising campaign was underway, and a portion of the budget already spent to implement Uplift Harris, the State failed to challenge Uplift Harris in July, August, September, or October of 2023. On January 12, 2024, during the application period, Senator Bettencourt requested a legal opinion from the Attorney General on the legality of Uplift Harris, providing direct notice to the State.⁶³

Despite the fact the State keeps a close eye on Harris County's actions, as the most populous county in the state, it failed to seek injunctive relief or challenge Uplift Harris until April 9, 2024 – more than 10 months after the program was created and only two weeks before payments were scheduled to start. This is an unreasonable delay, and it is not equitable for the State to seek

⁵⁷ See, Exhibit B, Exhibit Harris County Commissioners Court File 23-3277, Agenda 21 (June 6, 2023).

⁵⁸ See, Exhibit G, Exhibit, Harris County Commissioners Court File 23-3777, Agenda 10 (June 27, 2023).

⁵⁹ See, Exhibit H, Harris County Commissioners Court File 23-3865, Agenda 15 (July 18, 2023).

⁶⁰ See, Exhibit C, Harris County Commissioners Court File 23-5217, Agenda 180 (Sept. 19, 2023)

⁶¹ See, Exhibit I, Harris County Commissioners Court File 24-0445, Agenda 164 (Jan. 30, 2024).

⁶² See, Exhibit D, Harris County Commissioners Court File 23-6107, Agenda 409 (Oct. 10, 2023).

⁶³ Sen. Paul Bettencourt, Re: Request for a legal opinion regarding guaranteed income programs (Jan. 12, 2024).
<https://www.texasattorneygeneral.gov/sites/default/files/request-files/request/2024/RQ0529KP.pdf>

injunctive relief now, after Harris County has expended a significant number of hours and hundreds of thousands of taxpayer dollars.⁶⁴

PLEA TO THE JURISDICTION

This Court lacks jurisdiction and should dismiss with prejudice Harris County Defendants and all of the State's claims and causes of action based on governmental immunity because (a) the State's declaratory judgment and *ultra vires* claims fail as a matter of law and (b) the State lacks standing. *See* Response Brief *supra* Sections I. A-B.

"A plea to the jurisdiction challenges the court's authority to decide a case." *Heckman v. Williamson County*, 369 S.W.3d 137, 149 (Tex. 2012) (citation omitted). "The burden is on the plaintiff to affirmatively demonstrate the trial court's jurisdiction." *Id.* at 150 (citation omitted). "The trial court must determine at its earliest opportunity whether it has the constitutional or statutory authority to decide the case before allowing the litigation to proceed." *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004) (citation omitted).

I. DEFENDANTS ARE IMMUNE FROM SUIT BECAUSE THE STATE'S DECLARATORY JUDGMENT AND *ULTRA VIRES* CLAIMS FAIL AS A MATTER OF LAW

Harris County Defendants incorporate all arguments in the Response sections above and reassert those same arguments here. As argued above, the State's constitutional claims have no basis in law. *See supra* Section I. A-B. Although government entities are not immune from constitutional claims, that governmental immunity is waived only to the extent a plaintiff pleads a viable claim. *See Klumb* at 1, 8, 13, 14 (Tex. 2015); *Houston Firefighters' Relief & Ret. Fund v. City of Houston*, 579 S.W.3d 792, 800-01 (Tex. App.—Houston [14th Dist.] 2019, pet. denied). Accordingly, Defendants are immune from suit.

⁶⁴ *See e.g.*, Exhibit B, C, D, H.

Moreover, the State makes no effort to brief or prove a viable *ultra vires* claim. *See State v. Hollins*, 620 S.W.3d 400, 405 n. 20 (Tex. 2020) (for an *ultra vires* claim, “the plaintiff must plead and prove “that the officer acted without legal authority or failed to perform a purely ministerial act”) (quoting *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 (Tex. 2009)). The State cannot assert an *ultra vires* claim against Harris County, Texas or Commissioners Court. The State’s brief is also devoid of legal and factual argument about individual officials’ actions to perform a ministerial act. The State’s further fails to identify what alleged prospective acts, if any, of each named Commissioner it seeks to enjoin. For these reasons, the State’s *ultra vires* claim fails.

II. DEFENDANTS ARE IMMUNE FROM SUIT BECAUSE THE STATE LACKS STANDING

Harris County Defendants incorporate their argument in the Response sections above and reassert those same arguments here. As the Texas Supreme Court has explained, “[s]tanding is a constitutional prerequisite to suit.” *Heckman*, 369 S.W.3d at 150 (citation omitted). “A court has no jurisdiction over a claim made by a plaintiff who lacks standing to assert it” and a court “must dismiss” all claims for which a plaintiff lacks standing. *Id.* (citation omitted) (emphasis added). To establish standing a plaintiff must plead facts that demonstrate an alleged injury is “concrete and particularized, actual or imminent, not hypothetical.” *Id.* at 155 (internal quotations and citations omitted).

Under Texas law, the State must show (1) an injury-in-fact that is (2) fairly traceable to Harris County’s conduct, and (3) that the State’s injury will be redressed by a decision in its favor. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992); *see also In re Abbott*, 601 S.W.3d 802, 808 (Tex. 2020) (noting that Texas has adopted the *Lujan* factors). Defendants understand that the Texas Supreme Court has held that the State has standing to bring suit to enforce its own laws.

State v. Naylor, 466 S.W.3d 783, 803 (Tex. 2015). Defendants contend that this standing doctrine should be reexamined and preserves this argument for appeal.

Absent that theory of standing, the State has suffered no injury. First, the State challenges a Harris County program supported by *federal*—not State—funds. Second, the State’s requested relief—to dismantle the program and stop payments to Uplift Harris participants—will not redress a harm to the State. Accordingly, the State does not have standing and Defendants’ plea must be granted.

PRAYER

Harris County Defendants pray that the Court grant its Plea to the Jurisdiction and deny the State’s request for injunctive relief. Harris County Defendants further request such other and further relief, general and special, legal and equitable, to which they may show themselves justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 17th day of April, 2024 a true and correct copy of the foregoing document was served via the Court's electronic filing system to all counsel of record.

/s/ Christopher Garza

CHRISTOPHER GARZA

Senior Assistant County Attorney

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Application for Restraining Order and Injunctive Relief and Harris County's Plea to the Jurisdiction

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