No. _____

In the Supreme Court of Texas

In re THE STATE OF TEXAS,
Relator.

On Petition for Writ of Mandamus
to the Fourteenth Court of Appeals, Houston

RELATOR'S EMERGENCY MOTION FOR TEMPORARY RELIEF

TO THE HONORABLE SUPREME COURT OF TEXAS:

Harris County will violate our Constitution in less than two days. The County has created a novel scheme called "Uplift Harris" to give away public funds to certain Harris County residents, with payments beginning at an unknown time on Wednesday. Even Defendant Harris County Public Health (HCPH) advises recipients that the funds, which have "no strings attached," MR.8, are a "gift" for tax purposes, MR.277. The Texas Constitution, however, prohibits this kind of free-money transfer absent an express constitutional exception. *E.g.*, Tex. Const. art. III, § 52(a). No exception permits counties to give away public money as Uplift Harris does, even for a laudable cause like poverty relief.

To prevent this unlawful transfer of funds, the State of Texas sued Harris County and certain county officials and entities, MR.3, and sought a temporary injunction, MR.16. The trial court denied the State's application for a temporary injunction just last Thursday. MR.254. The State appealed to the Fourteenth Court of

Appeals. MR.340. Because Defendants will begin transferring the funds on April 24, the State sought an emergency temporary order under Texas Rule of Appellate Procedure 29.3. MR.301-21. The court of appeals denied that motion, allowing the County to begin sending illegal gifts to a lucky few of its residents. MR.412. Chief Justice Christopher would have granted the motion. MR.412.

The State lacks any appellate remedy for the court of appeals' denial of emergency relief. Without emergency relief under Rule 52.10, Defendants will begin making monthly payments of $500 to almost 2,000 Harris County residents on April 24. Further, Harris County intends to make a total of eighteen monthly payments. Eighteen months is likely insufficient time for the full appellate process to conclude, and once the payments are made, the funds will not be recoverable. **Because the first payment is scheduled to be made on Wednesday, the Attorney General requests a ruling on this motion as soon as possible, preferably by the end of the day on Tuesday, April 23, 2024**. If that is not possible, the Attorney General requests relief in time to prevent the second unlawful payment, which will presumptively occur in a month, and an administrative stay in the interim. *See, e.g.*, Order at 1, *In re the State of Texas*, No. 20-0715 (Tex. Sept. 15, 2020).

ARGUMENT

In conjunction with a petition for writ of mandamus, a relator "may file a motion to stay any underlying proceedings or for any other temporary relief pending the [C]ourt's action on the petition." Tex. R. App. P. 52.10(a). Such relief is warranted when the Court reaches "the tentative opinion that relator is entitled to the relief sought" and "the facts show that relator will be prejudiced in the absence of such

relief." *Republican Party of Tex. v. Dietz*, 924 S.W.2d 932, 932-33 (Tex. 1996) (per curiam). To start, the State "is entitled to the relief" sought, *id.* at 932, because it meets each of this Court's criteria: (1) "a clear abuse of discretion" and (2) "no adequate remedy by appeal." *In re Geomet Recycling LLC*, 578 S.W.3d 82, 91 (Tex. 2019) (orig. proceeding). And, for some of the same reasons showing that the court of appeals abused its discretion, the State will be prejudiced absent relief on the merits.

I. The State Is Entitled to the Relief It Seeks.

Because this is a petition for a writ of mandamus regarding the denial of a Rule 29.3 motion, whether the court of appeals abused its discretion is judged by the same legal standards applicable to this motion. After all, a court of appeals "has no 'discretion' in determining what the law is or applying the law to the facts." *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). And this Court has recognized that it may order relief when a court improperly grants, *Geomet*, 578 S.W.3d at 91, or denies interim relief, *e.g.*, *H & R Block, Inc. v. Haese*, 992 S.W.2d 437, 438 (Tex. 1999) (per curiam).

A. The State is likely to prevail on the merits of its appeal.

To the extent that the court of appeals' order, which was unreasoned, denied relief because the State was unlikely to prevail on the merits, that was error under either the Texas Constitution's article III, section 52(a) Gift Clause or its guarantee of equal protection in the distribution of public emoluments.

1. To start, the trial court's order allows Harris County to proceed with gratuitous payments that even Defendant HCPH calls a "gift." MR.277. This the

Constitution does not allow. As this Court has explained, grants of public funds *first* cannot be "gratuitous," and, *second*, must (1) serve "a legitimate public purpose[] and (2) afford[] a clear public benefit received in return." *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 383 (Tex. 2002) (emphasis omitted). This test is conjunctive, not disjunctive, *see id.* at 384-85 (assessing both gratuitousness and public purpose to determine constitutionality under article III, section 52(a)). This makes sense: If gratuitousness and public purpose were alternative requirements, a governmental entity could, for example, receive consideration in exchange for payments that would serve a private purpose. But that kind of practice would vitiate the Gift Clauses. *See* Tex. Const. art. XVI, § 6(a) ("No appropriation for private or individual purposes shall be made, unless authorized by this Constitution."). Nor has article III, section 52(a) eliminated the gratuitousness requirement. *Tex. Mun. League*, 74 S.W.3d at 383. Uplift Harris is gratuitous and flunks the public-purpose test.

For starters, the $500-per-person grants are gratuitous because the County "receives [no] return consideration." *Id.* To the contrary, Uplift Harris's own website calls the funds a "gift," MR.277, which by definition means they are being "voluntarily transfer[red] . . . to another without compensation." Gift, *Black's Law Dictionary* 803 (10th ed. 2014). Such transfers are unconstitutional. *See Tex. Mun. League*, 74 S.W.3d at 383. It is no answer to say that the County receives consideration by participating in a study that might inform any future County decisions about whether to guarantee income in similar ways: After all, the County receives the results of that study from a third party, not from the individuals who receive the Uplift Harris

payments. MR.134-35, 295. And recipients' participation in that study is entirely voluntary. MR.295.

Moreover, although Texas law has long recognized the importance of providing for the less fortunate, *e.g.*, Tex. Loc. Gov't Code § 81.027, a no-strings-attached payout to certain lucky individuals does not satisfy any of the three elements required to ensure that a grant "accomplishes a public purpose," *Tex. Mun. League*, 74 S.W.3d at 384. *First*, the only public purpose it even purports to serve is to "[c]reate a framework for sustainable, equitable anti-poverty programs within Harris County." MR.261. There is nothing sustainable about eighteen one-time checks that recipients can spend on whatever they want. MR.264.

Second, the County does not retain "public control over the funds" to "ensure that the public purpose is accomplished." *Tex. Mun. League*, 74 S.W.3d at 384. To the contrary, it admonishes recipients not to use the money to harm others, engage in fraud or corruption, promote criminal activity, or support terrorism. MR.283-84. But assuming that such limits are even related to Uplift Harris's purposes, Defendants have repeatedly represented that "[t]here will be no strings attached to the funding." KPRC 2, *Who Qualifies for $500 a Month in 'Uplift Harris' Program*, YouTube (Jan. 12, 2024), https://www.youtube.com/watch?v=m7zBzUkrSF8. Such abject lack of control forecloses any argument that the program passes the public-purpose test. *See Tex. Mun. League*, 74 S.W.3d at 384.

Third, for many of the reasons already discussed, Uplift Harris does not "afford[] a clear public benefit . . .in return." *Id.* at 383. For example, unlike in *Texas Municipal League*, it does not serve to fulfill any statutory obligation imposed on the

County whether by state or federal law. *Id.* at 384-85. To the contrary, Harris County cannot identify a single statutory mandate that its program fulfills. Moreover, even if the County might receive a benefit from program recipients spending the program funds, the County has no way of ensuring that recipients will spend those funds *within Harris County*. MR.151-52. And it is no answer to say that Uplift Harris is a pilot program to determine what will happen if public funds are gifted to private individuals. "Seeing what happens" is far from a "clear," *see id.* at 383, public benefit.

It is no response to liken Uplift Harris to traditional welfare. As *Bexar County v. Linden*, 220 S.W. 761, 762 (Tex. 1920), recognized, the State may provide only the welfare that the Constitution itself authorizes. Most relevant here, the Legislature has been specifically empowered to provide "for assistance grants" to certain classes of the "needy," namely "dependent children and the[ir] caretakers," those "who are totally and permanently disabled because of a mental or physical handicap," the "aged," and the "blind." Tex. Const. art. III, § 51-a(a). Harris County has not imposed any such limits on the availability of these funds. Thus, to approve Harris County's program would effectively require the Court to read a broad, all-purpose welfare exception into the Gift Clauses' text. That is not only counter to precedent and constitutional text—it would also violate the "elementary rule of construction that, when possible to do so, effect must be given to every sentence, clause, and word of a statute so that no part thereof be rendered superfluous or inoperative." *See Spence v. Fenchler*, 180 S.W. 597, 601 (Tex. 1915).

2. Uplift Harris compounds its constitutional faults by distributing the funds unequally even among the County's own self-defined class. *See* Tex. Const. art. I,

§ 3. After all, if the purpose were truly to improve "financial or health outcomes," MR.264, one would expect the classifications to focus on the poorest and the sickest. But there are no health-related criteria for the payouts. MR.265-66. And the wealth-based classifications are defined so broadly that Harris County was required to select recipients within that class by lottery. Random chance is the opposite of rational decision-making.

B. The State will be prejudiced absent temporary relief either in the court of appeals or here.

To the extent that the court of appeals denied relief because the State will not be prejudiced, it abused its discretion for at least two separate reasons.

First, although Rule 29.3 cannot be used to obtain an injunction that alters the status quo, one of its core purposes is to preserve the status quo. *See Geomet*, 578 S.W.3d at 89 (noting that Rule 29.3 "gives an appellate court great flexibility in preserving the status quo based on the unique facts and circumstances presented"); Order at 1, *In re Abbott*, No. 21-0720 (Tex. Aug. 26, 2021). For this reason, the County was wrong in the court of appeals to assert inconsistencies between the State's position in this case and other litigation where parties have tried to use Rule 29.3 to obtain a preliminary injunction that would have altered the status quo. MR.383 (citing *In re Abbott*, 645 S.W.3d 276, 282 n.6 (Tex. 2022)).[1]

[1] To the extent the Court disagrees, however, the State requests that the Court treat this motion as one for a writ of injunction or prohibition, which this Court can indisputably use to issue such an order. *In re Occidental Chem. Corp.*, 561 S.W.3d 146, 156 (Tex. 2018) (orig. proceeding). Even before Rules 29.3 and 52.10 existed, this Court recognized that "incorrect identity of the writ sought is of no significance." *City of Dallas v. Dixon*, 365 S.W.2d 919, 922 (Tex. 1963) (orig. proceeding), *rev'd on other*

Here, the status quo is that these funds have not been paid. The status quo is "the last, actual, peaceable, non-contested status which preceded the pending controversy." *Clint ISD v. Marquez*, 487 S.W.3d 538, 556 (Tex. 2016). To the best of the State's knowledge, a program like Uplift Harris has never been implemented either here or in any other County. At a minimum, during the pendency of this appeal, that status quo should remain in place while the Court considers the merits of the parties' positions about article III, section 52(a)'s Gift Clause. *See* Order at 1, *Abbott*, No. 21-0720.

Second, denial of the requested relief risks the Court's own jurisdiction. *See Geomet*, 578 S.W.3d at 90. It is black-letter law that "the only remedies available in an *ultra vires* action" or challenges to the constitutionality of a local policy are "injunctive and declaratory relief." *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020); *see Rolling Plains Groundwater Conservation Dist. v. City of Aspermont*, 353 S.W.3d 756, 760 (Tex. 2011) (per curiam) ("Generally, however, only prospective relief is available; retroactive relief dictated by a court is not."); *City of Elsa v. M.A.L.*, 226 S.W.3d 390, 392 (Tex. 2007). Absent relief here, no court will be able to issue adequate prospective relief in the future because (as Harris County has never disputed) once paid, the funds will never be recoverable. The first such payment will be distributed in less than forty-eight hours, and the entire pool of funds will be exhausted in only eighteen

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grounds sub nom. Donovan v. City of Dallas, 377 U.S. 408 (1964). The requested relief, and particularly the prerogative writs, are generally considered "similar" except for the identity of the recipient. O'Connor's *Texas Civil Appeals* ch. 10-D § 2 (2020 ed.).

months, MR.264—long before this appeal is likely to conclude.[2] Under such circumstances, it was a clear abuse of discretion for the court of appeals to deny temporary relief to prevent the entire case from becoming moot before the full appellate process concludes.

II. The State Lacks an Adequate Remedy on Appeal.

The State is also entitled to mandamus relief because it *cannot* appeal the denial of Rule 29.3 relief, which in this instance vitiates the State's "justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporations"—and counties—"in accordance with law." *Hollins*, 620 S.W.3d at 410. One factor that the Court considers in determining whether such relief is "adequate" for the purposes of mandamus proceedings is whether the ordinary appellate process can afford timely relief. *See In re Woodfill*, 470 S.W.3d 473, 480-81 (Tex. 2015) (per curiam). As just discussed, it cannot: Harris County will make its first payment on April 24, and the case will become moot after eighteen months, likely before the full appellate process concludes. For that reason, ordinary appellate remedies are not adequate, and the State meets the second prong of this Court's test for interim relief: It will "be prejudiced in the absence of such relief" from this Court. *Dietz*, 924 S.W.2d 932-33.

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[2] For example, the notice of appeal in *Borgelt v. Austin Firefighters Association, IAFF Local 975*, No. 22-1149 (Tex. argued Feb. 21, 2024), the Gift Clause case currently before the Court, was filed on May 14, 2021.

III. Harris County's Counterarguments Below Fail.

In its response to the State's emergency motion for Rule 29.3 relief below, Defendants made what appear to be six additional jurisdictional or equitable arguments as to why Rule 29.3 relief was inappropriate. All fail.

First, the County argues, MR.384 n.26, that jurisdiction over this suit is lacking under a line of cases requiring a party seeking to overcome sovereign immunity to sue the entity that actually enforces the allegedly unlawful policy. *E.g.*, *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 75 (Tex. 2015). Here, Harris County claims that it is not that entity because it has already transferred some funds to a third-party administrator called GiveDirectly to disburse on Wednesday, April 24. MR.114, 139. This argument misunderstands those cases, which require a plaintiff to sue the correct government official in order both to establish standing and to ensure that the named defendant is not being improperly used as proxy for the State. *Abbott v. Mexican Am. Legislative Caucus, Tex. House of Representatives*, 647 S.W.3d 681, 697 (Tex. 2022) (collecting cases). GiveDirectly is not a sovereign entity but instead a contractor of, and working in concert with, Harris County and the named officials. MR.135. Accordingly, because the County has not challenged that Defendants are directing GiveDirectly's actions, Defendants are the relevant enforcement authority, and any relief against would them would require the County to direct its contractor not to distribute the funds. *Contra* MR.384 n.26.

Second, the County contended that the Attorney General has argued in the past that Rule 29.3 does not permit courts to issue injunctions. MR.383. Assuming that the County correctly represents those arguments (and it does not), the Court has,

however, recently clarified that Rule 29.3 "authorize[s] a court of appeals to preserve the status quo and prevent irreparable harm to the parties during the pendency of the appeal." *In re Abbott*, 645 S.W.3d 276, 282 (Tex. 2022). Unlike the injunctions sought in the cases that the County invoked, MR.383, that is all that this motion seeks to achieve. Under such circumstances, at least three members of this Court have suggested that the standard to obtain relief under Rule 29.3 in the temporary-injunction context should be the same standard as that required to obtain the injunction in the trial court. *See Abbott*, 645 S.W.3d at 288 (Blacklock, J., concurring in part).

Third, Harris County mistakenly argued that the status quo includes effectuating the program because the County has been *planning* the program. *Contra* MR.388. Thus, the County asserts that the State is really trying to *change* the status quo. Not so. Courts "presume that public officials act in good faith and without invidious bias in formulating policy." *Abbott v. Anti-Defamation League Austin, Sw., & Texoma Regions*, 610 S.W.3d 911, 923 (Tex. 2020) (citing *Miller v. Johnson*, 515 U.S. 900, 915 (1995)). As a result, there is no constitutional violation just because a municipality is *investigating* whether it can take a particular action. Thus, the status quo is the existence of the funds *before* Harris County distributes them in violation of the Constitution. Because Harris County has not yet distributed the funds, Rule 29.3 relief would have preserved—and Rule 52.10 will preserve—the status quo.

Fourth, Defendants have argued that the State is not entitled to an equitable remedy because it "had ten months to sue," MR.386, as the Harris County Commissioners Court first approved the program in June 2023, MR.376. But the exact details

of the payments—and, in particular, their timing—was unclear until March 18, 2024. In January 2024, Commissioner Ellis stated that the first checks would arrive in March but possibly in April. KPRC 2, *Who Qualifies for $500 a Month in 'Uplift Harris' Program*, YouTube (Jan. 2, 2024), https://www.youtube.com/watch?v=m7zBzUkrSF8 (4:15). The Uplift Harris website explains that "All participants will receive their first payments by the end of May 2024. Most participants will receive their first payments in April 2024." MR.276. But it was not until March 18, 2024, that Harris County finally stated the specific date on which funds would be distributed: "as early as April 24." Press Release, HCPH, *Uplift Harris Guaranteed Income Pilot Announces Award Notifications Starting Today* (Mar. 18, 2024), https://tinyurl.com/HarrisUplift. This case was filed in early April.

Fifth, Defendants contend that equity and the need to preserve the Court's jurisdiction favor *them* because they are required to "commit" the funds at issue by the end of 2024 and "spend" the funds by the end of September 2026 or surrender them to the federal government. MR.387. This argument is mutually inconsistent with their position that the Attorney General improperly delayed because the County has possessed these funds since May 2022. Letter from Judge Lina Hidalgo to Commissioners Court (Mar. 26, 2021), https://tinyurl.com/HarrisARPA. Moreover, it highlights the impropriety of the entire program: The funds were committed by Congress to respond to immediate economic hardship caused by COVID in 2021—not to provide gratuitous payouts to particular Harris County residents without any regard to whether those residents were affected in any particular way by the

pandemic. Thus, it is far from clear that the County can engage in this program consistent with *federal* law.

Sixth, Defendants argue that the State will suffer no harm from the implementation of Uplift Harris. MR.389. But this Court has held that "ultra vires conduct automatically results in harm to the sovereign as a matter of law." *Hollins*, 620 S.W.3d at 410. Further, "when the State files suit to enjoin ultra vires action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction." *Id.* Here, each monthly payment individually and collectively harms the State because each violate the State's ultimate law, the Constitution.

PRAYER

The Court should grant this motion and issue a temporary order prohibiting Defendants or their agents, MR.114, 139, from making payments under the Uplift Harris program during the pendency of the State's appeal, as well as grant any other relief the Court deems appropriate. **Because the first payment is scheduled to be made on Wednesday, April 24, the Attorney General requests a ruling on this motion as soon as possible, preferably by the end of the day on Tuesday, April 23, 2024**. If that is not possible, the Attorney General requests relief in time to prevent the second such payment in a month's time and an administrative stay in the interim.

Respectfully submitted.

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CERTIFICATE OF CONFERENCE

In accordance with Texas Rule of Appellate Procedure 52.10(a), I certify that on April 22, 2024, Relator's counsel contacted Jonathan Fombonne and Christopher Garza, counsel for real parties in interest, and notified them that this motion would be filed. Real parties in interest are opposed to the relief requested.

/s/ Lanora C. Pettit
LANORA C. PETTIT

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 3,546 words, excluding exempted text.

/s/ Lanora C. Pettit
LANORA C. PETTIT