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FIFTEENTH COURT OF APPEALS
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No. 15-26-00099-CV

IN THE FIFTEENTH COURT OF APPEALS
AUSTIN, TEXAS

Texas Department of State Health Services, *et al.*
Appellants,

V.

Texas Hemp Business Council, *et al.*
Appellees.

ON INTERLOCUTORY APPEAL FROM THE 455TH DISTRICT COURT OF TRAVIS COUNTY, TEXAS; CAUSE NO. D-1-GN-26-002511; HON. DANIELLA DESETA LYTTLE

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Oral Argument Requested

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STATEMENT REQUESTING ORAL ARGUMENT

The Hemp Industry respectfully requests that this appeal be submitted on oral argument. Tex. R. App. P. 38.1(e). The issues to be decided include significant questions of first impression with statewide importance, impacting billions of dollars in economic activity. Importantly, the APA issues are governed by 2025 amendments, which were designed (according to Governor Abbott) to "put stricter standards on new regulations that could be costly to businesses, and put a check on the growth of the administrative state." *Infra* at 22, 38. These strengthened procedural requirements have not yet been considered in any appellate opinion as of the date this brief is filed. Tex. R. App. P. 39.1(c). The Hemp Industry believes oral argument would significantly aid the Court's decisional process by allowing for a discussion of these issues, as well as those regarding the difference in the THC legal compliance standard under the 2026 rules versus the 2019 statute, and the scope of equitable injunctive relief allowed under Texas rather than federal law. *Id*. at 39.1(d), 39.2.

TO THE HONORABLE FIFTEENTH COURT OF APPEALS:

INTRODUCTION

For nearly seven years, Texas regulated the lawful marketplace for consumable hemp products (CHPs) that the Legislature created. Thousands of licensed businesses invested capital, hired employees, and built integrated supply chains supporting more than 48,000 Texas jobs and billions in annual economic activity. The State concedes the statutory standard under which this industry grew and operated is based on a "0.3% delta-9 threshold," which "remains on the books in Texas." *Apts' Brf.* at 8.

This appeal asks whether the Department of State Health Services ("DSHS"), the Health and Human Services Commission ("HHSC"), and their executive heads (collectively, the "Agencies") were authorized to rewrite that framework by administrative rulemaking after the Legislature declined comparable changes and without complying with the APA's newly strengthened procedures.[1] The district court correctly answered no and temporarily enjoined rules that displaced the statutory

[1] Appellants, collectively referred to herein as the "State," include the Agencies and the Attorney General, who exercises civil enforcement authority over the challenged rules. CR385-88.

compliance standard, imposed unprecedented licensing and registration fees and penalties, and threatened to eliminate the industry our Legislature created. CR1333-44.

In arguing that these rules were authorized, the State conflates the hemp industry's distinct agricultural and commercial sectors by focusing on testing. *See, e.g., Apts' Brf.* at 7-8, 21-25. But the Hemp Industry[2] challenges no *testing* rules. It agrees the Agencies may require testing and labeling to disclose product ingredients and concentrations. That is fundamentally different from deciding, as a matter of state law, which CHPs may be manufactured, processed, distributed, and sold. The Hemp Industry's challenge focuses on this *legal compliance standard*, which is a policy choice for the Legislature, not a matter for ad hoc regulation.

Searching for a dramatic hook, the State opens its brief by mischaracterizing the testimony of THBC's executive director. *Apts' Brf.* at 1. Mr. Bordas did not ask the court to make a "policy choice" about what the legal compliance standard of CHPs should be. He correctly

[2] Appellees, collectively referred to herein as the "Hemp Industry," include two industry associations (the Texas Hemp Business Council, "THBC," and Hemp Industry & Farmers of America, "HIFA") in addition to seven businesses who are licensed as manufacturers and/or registered as retailers by DSHS to lawfully operate in Texas's consumable hemp industry. CR384-85.

recognized that is the Legislature's job and, therefore, asked the court to uphold the statutory standards, which is what Mr. Bordas understood the "policy" to be. 3RR90 ("[The] 2019 statute, that is the law. And I think that what happened with DSHS and their promulgation of rules and subsequent adoption of the rules is outside the bounds of the law. So I hope I understand your question clearly. Maybe I'm misinterpreting it."); *see also* 3RR71 (asking the court to enjoin the "regulators legislating"). This is hardly the anchor of a winning argument by the State.

Next the State turns to its familiar refrain that consumable hemp products are allegedly "dangerous." *Apts' Brf.* at 1. The State, however, has zero evidence to substantiate this claim—especially regarding the products at issue here, which are manufactured and sold by licensed and registered businesses following the statutory and pre-existing regulatory requirements. Lay and expert witnesses for the Hemp Industry testified that these products are safely and responsibly used by consumers, including a significant number of veterans, for wellness purposes (such as muscle balms and hair serums) and as preferred alternatives to alcohol and chemical drugs. *E.g.*, 2RR80-81, 166-68, 198-221, 237-40.

The temporary injunction order should be affirmed because the Hemp Industry demonstrated a probable right to relief on multiple independent grounds. It presented substantial evidence that the officials exceeded the authority delegated by Chapter 443, that the Agencies failed to satisfy the APA's procedural requirements as strengthened in 2025, and that the rules violate the Texas Constitution. The district court acted well within its discretion by denying the State's plea to the jurisdiction and granting the Hemp Industry a temporary injunction to preserve the status quo.

STATEMENT OF FACTS

I. The Legislature Established Separate Statutory Frameworks for Agricultural and Commercial Hemp.

In 2019, following Congress's enactment of the Agriculture Improvement Act of 2018, the Texas Legislature enacted House Bill 1325 ("HB 1325") to establish a lawful, regulated market for hemp and hemp-derived products in Texas. The Legislature broadly defined "hemp" to include "the plant *Cannabis sativa* L. and any part of that plant, including the seeds [thereof] and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers" containing not more than 0.3 percent delta-9 THC on a dry-weight basis. Tex. Agric. Code § 121.001.

Thus, the statutory definition of lawful hemp expressly includes the plant's cannabinoid acids, including tetrahydrocannabinolic acid ("THCA"). As the Hemp Industry's expert chemist explained, THCA and delta-9 THC are distinct molecules; THCA is a precursor that can convert into delta-9 THC through decarboxylation when exposed to sufficient heat. 2RR80-82.

HB 1325 created separate statutory frameworks for agricultural and commercial hemp products, administered by different agencies. *See* 5RR373-382 (demonstrative).

Agriculture Code Chapters 121 and 122, as administered by the Texas Department of Agriculture, govern the licensing of hemp producers and regulate the cultivation, sampling, testing, and transportation of hemp crops. Tex. Agric. Code §§ 121.001-.04, 122.001-.404. Texas's agricultural hemp program operates under a plan approved by the U.S. Department of Agriculture (USDA). *See* 7 U.S.C. § 1639p(a)(1), (2)(A)(ii); CR1179-84, 1309 n.8. Before a hemp crop may be harvested, licensed growers must obtain a pre-harvest test using post-decarboxylation or another similarly reliable methodology to determine whether the crop qualifies as lawful hemp. Tex. Agric. Code § 122.153(a). This accounts for the potential conversion of THCA to delta-9 THC, which naturally occurs during the harvest period. 2RR83-85, 90-91.

Texas's commercial program is separately codified in Chapter 443 of the Health and Safety Code and administered by HHSC and DSHS. Tex. Health & Safety Code §§ 443.001-.207. This governs the downstream manufacture, processing, distribution, and retail sale of CHPs. *Id.* A pre-harvest test may be provided as proof that the product satisfies the statutory delta-9 THC compliance standard for commercial purposes. *Id.* § 443.152(b). But at the commercial level, the Legislature imposed **no** "total THC" standard based on post-decarboxylated THCA. *Id.* § 443.152(a); 2RR84-87. Chapter 443 neither adopts Chapter 122's post-decarboxylation measure as the compliance standard nor excludes THCA from hemp; it measures compliance solely by the actual delta-9 THC concentration.

II. The Agencies and the Hemp Industry Operated Under that Framework Until the Challenged Rulemaking.

For nearly seven years, Texas's consumable hemp industry operated under the statutory framework established by Chapter 443. Businesses throughout the industry invested substantial capital, hired employees, expanded operations, and developed supply chains in reliance on the statutory framework the Legislature enacted. 2RR160-70, 173-78; 3RR15-24, 31-38, 63-65; *see also* CR465-67 ¶¶ 6-14; CR488 ¶¶ 4-7; CR494-95 ¶¶ 5-8; CR499 ¶¶ 4-7, 16-17; CR504-05 ¶¶ 5-7,10-11. The commercial sector operates as an integrated industry that depends on a supply of hemp from lawful agricultural production. 2RR160-70; 2RR186-90; 3RR18-23, 50-52, 63-64. By the time the challenged rulemaking began, that industry had grown into a substantial sector of the Texas economy, supporting 48,882 Texas jobs, generating nearly $10 billion in annual economic activity, and producing approximately $257 million in annual state sales tax revenue. 2RR115-19; 3RR59-60; 5RR192-99.

DSHS administered the commercial program without materially changing the statutory compliance standard for CHPs. In 2024, during its mandatory four-year review of Chapter 300, some commenters requested changes to the statutory standards. DSHS declined those requests, explaining in the Texas Register that "the definition of hemp is in statute" and that <u>changing the statutory definition "requires legislative action and, hence, is outside the scope" of the agency's rulemaking authority</u>. CR631 (emphasis added); 5RR385. DSHS then readopted Chapter 300 without making any substantive changes. CR633.

III. In 2025, the Legislature Declined to Change Hemp Policy While Strengthening Agency Accountability.

The political branches likewise treated the statutory compliance standard governing CHPs as a legislative matter. During the 89th Regular Session, the Legislature considered Senate Bill 3 ("SB 3"), which proposed substantial amendments to Chapter 443. 3RR68-69; 5RR79-100. Among other changes, SB 3 would have amended section 443.151 to change the legal compliance standard governing CHPs from delta-9 THC to a post-decarboxylation methodology accounting for potential delta-9 THC through the conversion of THCA. 5RR82.

SB 3 passed in the Legislature but was vetoed by Governor Greg Abbott. 3RR67-70; 5RR119-122. Following the veto, the Governor did not direct DSHS to accomplish SB 3's principal regulatory changes through rulemaking. Instead, he convened two special sessions of the Legislature, each of which included hemp regulation among the subjects designated for legislative consideration. 5RR123-128. The Legislature ultimately enacted no legislation adopting the amendments proposed in SB 3.

Although the Legislature enacted no changes to the statutory framework governing CHPs, it did enact the Regulatory Reform and Efficiency Act ("Texas DOGE Act"). Act of April 23, 2025, 89th Leg., ch.

1, §§ 10, 13 ("SB 14") (eff. Sept. 1, 2025).[3] Among other changes, SB 14 required agencies to provide additional information "in plain language" concerning the costs and effects of proposed rules. *Id.*, sec. 4 (amending Tex. Gov't Code § 2001.024(a)(2); adding § 2001.024(a)(8)). It expanded the procedural requirements with which agencies must substantially comply when adopting rules. *Id.*, sec. 5 (amending § 2001.035). And it directed courts to decide questions of law independently, without giving deference to an agency's legal interpretations. *Id.*, sec. 7-8 (adding §§ 2001.042, 2001.1721).

IV. Following the Governor's Executive Order, the Agencies Initiated Rulemaking.

After the conclusion of the 2025 legislative sessions, Governor Abbott issued Executive Order GA-56. 5RR129-133. He described the Agencies' rulemaking authority as expressly cabined by the "existing limits" of the governing statute:

> WHEREAS, the Department of State Health Services (DSHS) has authority under Chapters 431, 443, and 481 of the Health and Safety Code, to adopt rules to administer and enforce existing limits on the manufacture, distribution, and sale of consumable hemp products; and

5RR131 (highlighting added).

[3] *See* https://gov.texas.gov/news/post/governor-abbott-signs-texas-doge-into-law-at-texas-capitol.

With that understanding, GA-56 directed DSHS to immediately begin the rulemaking process to prohibit the sale of hemp-derived products to minors and require age verification before completing such sales. 5RR131. Separately, GA-56 directed DSHS to review its existing rules for "possible revision and update," including:

- revising its "testing requirements" so that they would "measure" both delta-9 THC and the conversion of THCA;

- revising application and renewal fees "to reflect the full regulatory and enforcement costs incurred by the State"; and

- clarifying and standardizing labeling requirements "to ensure [they] informed consumers, including by listing the amount and concentration of cannabinoids contained in a product[.]"

5RR131-132. Contrary to the State characterization of GA-56 as directing DSHS to establish a "total delta-9 THC framework" (*Apts' Br.* at 9), it actually directed DSHS to revise its testing requirements to *measure* total delta-9 THC, not to make that measurement the *legal compliance standard* under which CHPs could be manufactured, processed, distributed, or sold.

GA-56 also directed DSHS and other relevant agencies to "conduct a study on implementation" of a broader regulatory framework. 5RR132. Rather than requiring immediate action, GA-56 directed the agencies to develop a "timeline for phased implementation," identify "potential impediments" and "costs associated with" implementation, and recommend "[e]vidence-based methods" for determining appropriate regulatory and enforcement mechanisms. 5RR132.

Nevertheless, on December 26, 2025, the Agencies published proposed amendments extending far beyond the GA-56's directives in several significant respects. *See* 5RR139-153. Most notably, the Agencies proposed revising the regulatory definition of "hemp" itself. 5RR142. Rather than adhering to the Legislature's definition based on delta-9 THC concentration, the proposed definition defined hemp using a "total delta-9 THC" standard. *Compare* Tex. Agric. Code § 121.001 *with* 5RR142. The proposal likewise replaced the existing delta-9 THC compliance standard throughout the testing provisions with the new total-delta-9 THC standard. 5RR147-49.

The proposed rules also increased licensing and registration fees far beyond the predicted costs to administer the program. The Agencies initially proposed increasing annual manufacturer licensing fees from $250 to $25,000 per facility and annual retail registration fees from $150 to $20,000 per location. 5RR145, 151. In the fiscal note accompanying that proposal, the Agencies estimated that the revised fee structure would generate approximately $202,050,000 in additional annual revenue to the State while increasing agency costs by only $69,315 in fiscal year 2026 and $5,648 in each of the following fiscal years. 5RR140. Consistent with those projections, the Agencies stated in their Government Growth Impact Statement that the proposed rules would require no new employee positions. *Id.* ("The proposed rules will not affect the number of DSHS employee positions"); 2RR124.

Separately, the Agencies acknowledged that the proposal would adversely affect approximately 9,900 small businesses, microbusinesses, and rural communities and that "[t]he proposed rules will impact the local economy." *Id.* However, the accompanying Local Employment Impact Statement stated that "DSHS does not have sufficient data to define the impact." *Id.*

In response, THBC expressed support for reasonable regulation protecting minors and product safety but objected that several proposed rules exceeded the Department's statutory authority and would impose severe economic burdens on lawful Texas businesses. 3RR74-79; 5RR30-34. THBC challenged the proposal to alter the legal compliance standard through agency rulemaking in conflict with the governing statutes. 5RR30-32. THBC also challenged the proposed fee structure and the lack of supporting economic analysis. 5RR32-33. THBC "urge[d] the Department to publish the specific fiscal methodology and assumptions used to calculate the predicted fiscal impacts—both revenues and costs—of the proposed rules." 5RR33-34.

V. The Final Rules Restructured the Statutory Framework for Consumable Hemp Products.

Following the notice-and-comment period, the Agencies adopted the final rules with several revisions to the initial proposal. They removed the modified definition of "hemp" but simultaneously modified the term "acceptable hemp THC level" as being limited to "total delta-9 THC"—and used those terms as the operative compliance standards throughout the rules governing the manufacture, transportation, distribution, and retail sale of consumable hemp products. *See* 25 Tex. Admin. Code §§ 300.101, 300.206, 300.301-.303, 300.404. As a result, although the final rules facially retained the Legislature's statutory definition of hemp, regulatory compliance under Chapter 300 turned on these newly adopted measures rather than the statutory delta-9 THC standard, without any additional notice, comment, or public hearing.

Regarding the licensing and registration fees, in the final rules the Agencies implemented fees that were substantially higher than those previously charged, albeit not as high as the Agencies had initially proposed. Manufacturer licensing fees increased from $250 to $10,000 per facility, retail registration fees increased from $150 to $5,000 per location, ownership-change fees increased to $10,000, and delinquency fees increased tenfold. *See* 25 Tex. Admin. Code §§ 300.202(c)(1), (2)(A), (4), 300.502(g)(1), (2). The Agencies did not publish any revised economic analyses addressing either the substantially revised fee schedule or the anticipated economic consequences of the final rules. 5RR12-19.

The final rules also implemented several new consumer safety provisions, as supported by the Hemp Industry. 2RR188-90, 195-96; 3RR54, 57-58. Among other things, the rules imposed new age-verification requirements, revised packaging and labeling requirements, expanded testing requirements, strengthened recordkeeping and inspection requirements, and new transportation documentation requirements. *See, e.g.*, 25 Tex. Admin. Code §§ 300.203-.205 (recordkeeping requirements), .207 (product recalls), .301(a)(2), (b)(3) (testing for heavy metals, pesticides, residual solvents, and pathogens),

.301(d)-(f) (certificate-of-analysis requirements), .402, .405-.407 (labeling and packaging requirements), .502(b)(7), .602 (inspection requirements and violations), .701-702 (age-verification and enforcement authority).

VI. The Hemp Industry Challenged Only Discrete Provisions of the Final Rules.

The Hemp Industry promptly filed this suit, alleging that specific provisions of the rules exceeded the agency officials' statutory authority, were adopted in violation of the APA, and violated the Texas Constitution. CR4-66, 377-440. Based on these claims, the Hemp Industry sought injunctive and declaratory relief. CR438.

Consistent with the Hemp Industry's position throughout the rulemaking process, it did not challenge the new rules that enhanced consumer safety. *See*, *e.g.* CR378-79. Nor did it challenge the new *testing* rules, such as Rule 300.301(a)(3), requiring accredited laboratories to *measure* and *report* delta-9 THC, total delta-9 THC, and total THC concentrations. CR411-12.

Instead, the Hemp Industry's challenge was aimed at the new rules imposing a new *compliance standard* based on total THC concentrations, which fundamentally altered what the Legislature enacted. CR409-414. The Hemp Industry also challenged the new rules imposing significantly heightened licensing and registration fees and daily-accruing, substantial penalties without affording an opportunity for cure or discretionary application of the penalties. CR416-418; *see also* 5RR331-32 (demonstrative exhibit identifying and summarizing grounds for all rule challenges).

VII. The Trial Court Conducted a Multi-Day Evidentiary Hearing and Granted a Narrowly Tailored Temporary Injunction to Protect the Status Quo.

During a three-day evidentiary hearing, the district court heard testimony from industry participants, an expert chemist, an expert economist, and an expert in veterans' affairs in support of the Hemp Industry's application for temporary injunction. *See generally* 1RR6, 11.

The State, by contrast, presented testimony from a single lay witness, Dr. Timothy Stevenson, primarily concerning the unchallenged laboratory testing methodologies. *See generally* 1RR13. The State offered no testimony from any DSHS official or other witness involved in the rulemaking, fiscal analysis, economic analysis, licensing program, or fee development; nor did the State present any expert witness.

Instead, in support of its amended plea to the jurisdiction, the State filed a declaration from DSHS Senior Policy Officer F. James Charney presenting a new financial analysis of the adopted fee schedule. CR1175-77. This declaration was never mentioned during the hearing, much less did the State offer any actual evidence to support Charney's statements. Regardless, unlike the fiscal analysis published during rulemaking—which estimated minimal implementation costs and no additional employees (5RR140)—the declaration newly claimed that DSHS would incur approximately $16.7 million in annual program costs for an expanded inspection program, twenty-three additional full-time employees, and other expenses. CR1175-77. The Hemp Industry challenged Charney's declaration as being a retroactively created litigation position that provided no reliable evidence. SuppCR15-16.

Following the hearing, the district court denied the State's plea to the jurisdiction and granted the Hemp Industry's temporary injunction. CR1327-1345, 1346-1347. In a nineteen-page order, the district court made detailed findings supporting injunctive relief. CR1327-1345. The court concluded that the Hemp Industry established a probable right to relief on multiple independent grounds, including that the challenged rules were adopted in violation of the APA, exceeded the officials' delegated authority and were thus ultra vires, and violated several constitutional provisions. CR1329-1333. The court further found that the Hemp Industry demonstrated, imminent, and irreparable injury; lacked an adequate remedy at law; and that the balance of equities and public interest favored temporary injunctive relief. CR 1333-1339.

The injunction is expressly limited to preventing future enforcement of the eight challenged rules by the State defendants named in this suit. CR1341-1344. Contrary to the State's characterization, it does not grant "universal" relief. Rather, the injunction protects only "the named Plaintiffs including all members of THBC and HIFA" and "other commercial participant[s] in Texas's consumable hemp industry," limited to "a person or entity operating or seeking to operate as a *licensed or registered manufacturer, processor, distributor, or seller* of consumable hemp products within the state." CR1343 (emphasis added). Thus, the injunction gives no protection to unlicensed or unregistered "bad actors" as the State claims. The district court found this scope of relief was necessary to "afford complete relief to the named Plaintiffs, preserve the status quo across an industry that will suffer indivisible injury from the challenged rules, and prevent a multiplicity of suits." CR1343.

SUMMARY OF THE ARGUMENT

The Court should affirm in full the district court's orders denying the State's plea to the jurisdiction and granting the Hemp Industry's temporary injunction.

The State's jurisdictional challenge on appeal is limited to the merits of the ultra vires claims. No jurisdictional defect exists on the pleadings, and the evidence is sufficient to prevent dismissal of these claims. Sovereign immunity does not shield officials who act beyond their statutory authority, which is precisely what occurred here.

Regarding the injunctive relief, the Hemp Industry demonstrated a probable right to relief on multiple independent grounds (APA claims, ultra vires claims, and constitutional claims), and established imminent and irreparable injuries resulting from the challenged rules. Multiple fact and expert witnesses testified about the statutory framework, the rules' practical operation, their economic consequences, and the resulting disruption to lawful businesses. The State offered one lay witness, no expert, and no participant in the rulemaking, economic analysis, licensing program, or fee development. The district court was entitled to grant the application on the evidentiary record before it.

The district court exercised its authority in a measured way. The vast majority of the Agencies' 2026 rules—including new age restrictions, labeling, packaging, recordkeeping, and other consumer protections—remain in effect. The injunction reaches only discrete rule provisions the court found probably unlawful and, as to those provisions, preserves the status quo under which the regulated industry operated for many years before March 31, 2026. Further, the injunction is designed to afford complete relief to the named plaintiffs, protect against an indivisible injury caused by facially invalid rules, and prevent a multiplicity of suits by others equally harmed by the challenged rules. To accomplish this, the district court properly exercised its equitable authority to grant relief to the named plaintiffs (including all members of THBC and HIFA) and to other licensed and registered manufactures, processors, distributors, and sellers of consumable hemp products in Texas. The Texas Supreme Court has affirmed similar grants of injunctive relief on multiple occasions, and those cases remain governing law in this Court.

ARGUMENT

I. The District Court Correctly Denied the State's Plea to the Jurisdiction Because the Hemp Industry Pled Valid Claims Waiving Sovereign Immunity.

The State's jurisdictional challenge is narrow. The State does not contest the district court's jurisdiction over the Hemp Industry's APA or constitutional claims, and it expressly acknowledges that "[t]his appeal does not demand a total dismissal." *Apts' Brf.* at xvii, 2, 56. For the ultra vires claims, the State alleges no independent jurisdictional defect such as standing or ripeness; it argues only that the claims should be dismissed because they are "facially invalid." *Id.* at xvii, 19-40.

Sovereign immunity does not bar prospective relief against officials acting without legal authority. *Houston Belt & Terminal Railway Co. v. City of Houston*, 487 S.W.3d 154, 158 n. 1 (Tex. 2016) ("[W]hen a governmental officer is sued for allegedly ultra vires acts, governmental immunity does not apply from the outset."); *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372-73 (Tex. 2009). The Hemp Industry's claims pleaded precisely that. CR419-22.

The State argues the Hemp Industry cannot "ultimately prove" the merits of their ultra vires claims. *Id.* at 19-20. At most, the State identifies disputed jurisdictional facts that implicate the merits and "may require resolution by the finder of fact." *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). In that situation, the Court must construe the pleadings liberally and, absent an "incurable defect" "affirmatively negat[ing]" jurisdiction, remand with leave to amend. *Id.* at 266-67. If the evidence "create[s] a fact issue," the plea must be denied. *Id.* at 228.

Here, the district court concluded that the Hemp Industry pleaded legally cognizable ultra vires claims and supported those claims with sufficient evidence. CR1328-31. On this basis, the court correctly denied the State's plea, and that order should be affirmed.

II. The Hemp Industry Demonstrated a Probable Right to Relief on its APA Claims.

A temporary injunction is warranted where the applicant demonstrates (1) a cause of action against defendants on which plaintiffs have a probable right to the relief sought, (2) that a probable, imminent, and irreparable injury will occur in the absence of an injunction, and (3) there is no "clear, full, and adequate relief at law." *Huynh v. Blanchard*, 694 S.W.3d 648, 684 (Tex. 2024); *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). An order granting a temporary injunction is reviewed for abuse of discretion; the trial court does not abuse that discretion when some evidence reasonably supports its decision. *Henry v. Cox*, 520 S.W.3d 28, 33–34 (Tex. 2017).

The Hemp Industry presented sufficient evidence to support its claim that the challenged rules are invalid because they were adopted in violation of the APA's mandatory procedural requirements and are the product of arbitrary and capricious decision-making, and that their threatened enforcement interferes with and impairs, or threatens to interfere and impair, the Hemp Industry's legal rights and privileges. Tex. Gov't Code § 2001.038. The district court temporarily enjoined enforcement of the rules on this basis. CR1328-29, 1333-36; 5RR396-98.

The Hemp Industry also demonstrated a probable right to relief on its claims that the challenged rules constituted ultra vires acts (Argument III) and constitutional violations (Argument IV). Any one of these grounds supports affirmance of the injunction. *See* 5RR371.

A. This case is governed by the Legislature's 2025 Amendments (SB 14), which strengthened the APA's requirements.

This appeal presents one of the first significant opportunities to apply the Legislature's 2025 amendments to the Texas APA, which took effect under SB 14 in September 2025. *Supra*, Statement of Facts III.

The challenged rules were initially proposed four months later, on December 26, 2025. 5RR139. As of the date this brief is filed, no Texas appellate opinion has cited any of the APA provisions that were amended or adopted under SB 14.

Those amendments strengthened the procedural safeguards governing agency rulemaking in several respects relevant here. The Legislature expanded the information agencies must disclose when proposing rules, broadened the procedural requirements with which agencies must substantially comply before adopting rules, revised the remedies available for procedural violations, and directed courts to decide questions of law independently, without affording deference to an agency's legal interpretations. *See* Tex. Gov't Code §§ 2001.022, .024, .033, .035, .040, .042, .1721.

Importantly, through SB 14 (sec. 9), the Legislature repealed former Government Code § 2001.022(c), which had previously provided that an agency's failure to prepare the analyses required by § 2001.022 did not impair the legal effect of a rule. At the same time, the Legislature amended § 2001.035(a) to provide that a rule is voidable unless the agency adopts it in substantial compliance with § 2001.022. SB 14, sec.

5. By repealing the former safe harbor while simultaneously making § 2001.022 part of the substantial-compliance requirement, the Legislature made clear that compliance with § 2001.022 is no longer without consequence. Those amendments cannot be reconciled with the State's position that an agency substantially complies with § 2001.022 even when it acknowledges it lacks the information necessary to perform the analyses the statute requires.

If this Court were to accept the State's argument that the Agencies "substantially complied" with these rules and that "any errors are mere technicalities," it will open the floodgates to administrative agencies acting in violation of the very protections intended by our Legislature and our Governor. *See* https://gov.texas.gov/news/post/governor-abbott-signs-texas-doge-into-law-at-texas-capitol ("This law will slash regulations, **put stricter standards on new regulations that could be costly to businesses**, and put a check on the growth of the administrative state…. Texas is already the best state for business—but to stay on top, we must continuously improve how government works for entrepreneurs.") (emphasis added).

Moreover, SB 14—tracking the U.S. Supreme Court's overturning of the *Chevron* doctrine[4]—enacted §§ 2001.042 and 2001.1721 to mandate that a Texas "court is not required to give deference to a state agency's legal determination regarding the construction, validity, or applicability of the law or a rule adopted by the state agency responsible for the rule's administration, implementation, or other enforcement." SB 14, sec. 7-8. Courts have discretion to consider an agency's legal determination only if it "is reasonable and does not conflict with the plain language of the statute." *Id.* Here, the challenged rules do the opposite. This Court does not owe the Agencies any deference, nor should it give any discretionary consideration to their unreasonable interpretations.

B. The Agencies failed to substantially comply with the economic analysis requirements of §§ 2001.022, .024 and 2006.002.

The Agencies determined that the proposed rules would affect approximately 9,900 small businesses, microbusinesses, and rural communities and acknowledged that "[t]he proposed rules will impact the local economy." 5RR140. That determination triggered §§ 2001.022 and 2001.024(a)(6), which required the Agencies to prepare the prescribed

[4] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 410-412 (2024).

local-employment analyses and publish them with the notice. Tex. Gov't Code §§ 2001.022, .024(a)(6). The amended APA also required the notice to include "a request for information related to the cost, benefit, or effect of the proposed rule," including supporting "data, research, or analysis," from regulated or other interested persons. *Id.* § 2001.024(a)(8). These requirements work together by requiring the Agencies to analyze the rules' economic effects and to solicit cost, benefit, and effects information from the persons who would bear them.

Rather than comply, the Agencies said they lacked the information necessary to perform the required analysis. In the published Local Employment Impact Statement, the Agencies stated that the proposed rules would affect local economies but that "DSHS does not have sufficient data to define the impact." 5RR140; 2RR120-23. That admission establishes noncompliance: the Agencies acknowledged substantial economic consequences while conceding their failure to perform the Legislature's required analyses. Additionally, the expert economist testified the Agencies had more than enough data, they simply failed to conduct the required analysis. 2RR125-27, 132-34.

Those required analyses necessarily extended beyond the proposed fee schedule. The rules' principal economic consequence was a new compliance standard for the commercial manufacture, processing, distribution, and sale of CHPs—a change the Hemp Industry showed would devastate licensed and registered businesses. Infra, Argument V.C. Yet the Agencies did not conduct or publish an analysis of the effect of rendering previously legal products noncompliant, including whether Texas businesses would reduce, relocate, or cease operations and the resulting effects on employment and local economies. 2RR130-31; 3RR80-85. The expert economist described the rulemaking financial analysis as "surface level and incomplete" and "not credible." 2RR136-37, 153-54.

The same informational deficiency independently supports the district court's finding under § 2006.002(c). CR1333. That statute requires an agency to consider less burdensome alternatives when a proposed rule adversely affects regulated persons. When a proposed rule adversely affects regulated persons, that statute requires the agency to consider less burdensome alternatives and disclose its analysis so interested persons can comment meaningfully before adoption. *See Unified Loans, Inc. v. Pettijohn*, 955 S.W.2d 649, 651–54 (Tex. App.—

Austin 1997, no pet.) ("Unless they were supplied *some* such basis, the Commissioner's invitation to comment on the proposed rules was a masquerade, a disingenuous and counterfeit compliance with" the APA).

The State relies on *El Paso Hospital District v. Texas Health & Human Services Commission*, 247 S.W.3d 709 (Tex. 2008), to argue that the purpose of § 2001.022 is to ensure meaningful public participation in rulemaking and that the Agencies therefore substantially complied because interested persons extensively commented on the proposed rules. The premise is only partly correct, and the conclusion does not follow.

The Hemp Industry does not dispute that the analyses required by §§ 2001.022, 2001.024, and 2006.002 facilitate public participation. But *meaningful* participation requires disclosure of the agency's analysis, not merely notice that an economically significant rule has been proposed. The required disclosure enables interested persons to test the agency's assumptions, assess projected consequences, suggest less burdensome alternatives, and submit informed comments before adoption. This tracks the APA's broader requirement that agencies explain the factual and legal basis for their rulemaking decisions. *See Nat'l Ass'n of Indep.*

Insurers v. Tex. Dep't of Ins., 925 S.W.2d 667, 669-71 (Tex. 1996) (invalidating rules where the agency failed to explain its reasoning).

Measured against that objective, the resulting prejudice is not whether interested persons generally understood that the proposed rules would affect the consumable hemp industry. It is whether the Agencies' admitted failure to perform and disclose the required analyses deprived interested persons of the opportunity to engage the Agencies' reasoning prior to the rules' final adoption. It did. Commenters could dispute the Agencies' conclusions, but without the analyses the Legislature required, they were deprived of the opportunity to meaningfully test the Agencies' assumptions or respond to their reasoning.

Treating the Agencies' admitted failures as "substantial compliance" would restore the immunity from judicial review that the Legislature eliminated by repealing § 2001.022(c) and simultaneously incorporating § 2001.022 into § 2001.035(a). The amendment elevated these analytical and disclosure duties to be part of the substantial-compliance requirement, not procedural formalities. The Agencies' disregard for these requirements here was especially consequential because the rules affected a mature marketplace supporting tens of thousands of Texas jobs and billions of dollars in annual economic activity. On this record, the district court acted within its discretion by finding a probable right to relief based on the Agencies' violations of §§ 2001.002, .024, and 2006.002. CR1333.

C. The Agencies also failed to substantially comply with the reasoned justification requirement of § 2001.033.

The district court also correctly concluded that the Hemp Industry demonstrated a probable right to relief because the Agencies "failed to provide reasoned justification and fair response to comments raising significant statutory objections as required by § 2001.033." CR1333.

The Agencies argue that they substantially complied with this requirement by summarizing and responding to more than 1,421 comments and explaining the legal and policy justifications for the Rules. *Apts' Brf*. at 41-42 (arguing the Hemp Industry "identified no specific comments that went unaddressed").

That argument mistakes the nature of § 2001.033's requirement. The statute requires the Agencies to include "a summary of the factual basis for the rule as adopted which demonstrates a rational connection between the factual basis for the rule and the rule as adopted." Tex. Gov't Code § 2001.033(a)(1)(B). As the Texas Supreme Court held, the agency must explain "how and why it reached the conclusions it did." *Nat'l Ass'n of Indep. Insurers*, 925 S.W.2d at 669. This requirement exists to ensure the agency has genuinely considered significant comments, to inform the public of the factual basis for the adopted rule, and to facilitate judicial review. *Id.* Here, the Agencies' generic and cursory responses do not satisfy this requirement. 2RR136-37, 153-54.

Further, the Hemp Industry identified specific responses that failed to satisfy the statute. One example concerns the Agencies' response to THBC's comments challenging the factual basis for the proposed fee schedule and requesting the Agencies disclose the assumptions and analysis supporting those fees. 5RR32-34. In the final adopted rules, the Agencies modified the proposed fees to amounts that still resulted in significant hikes but were lower than initially proposed. *Compare* 5RR147, 151 *with* 25 Tex. Admin. Code §§ 300.202(c)(1), (2)(A), (4), 300.502(g)(1), (2). Section 2001.033 required the Agencies to explain the factual basis supporting the fee schedule they ultimately adopted.

The Agencies vaguely responded that the fees would support inspections, laboratory testing, legal expenses, administrative hearings, and assistance from other agencies. 5RR13. But the Agencies never disclosed the estimates, assumptions, staffing projections, anticipated inspection frequency, expected revenues, or analysis connecting those generalized categories to the specific fee amounts they ultimately adopted. A bare conclusion without the Agencies' reasoning does not satisfy § 2001.033.

The same is true of the Agencies' decision to replace the Legislature's commercial compliance standard. The order adopting the final rules identifies the policy choice the Agencies made but nowhere explains the factual basis or reasoning connecting the rulemaking record to the regulatory standard they ultimately adopted. 5RR13. Much less did the Agencies provide any explanation for their alleged authority to make such a critical change to the statute—which they had expressly declined to do just two years before. *See* CR631-33; 5RR385. On this record, the district court acted within its discretion by finding a probable right to relief based on the Agencies' violations of § 2001.033.

D. The Agencies' failures are not "mere technical defects," and the district court was not required to remand any rules to the Agencies.

The State's remaining APA arguments likewise fail. It contends that any procedural deficiencies were merely "technical defects" under §

2001.035(d), and that the district court was required to remand any rules under § 2001.040 rather than enjoin their enforcement. Neither argument has merit.

"[A] mere technical defect" may be excused only if it "does not result in prejudice to a person's rights or privileges." Tex. Gov't Code § 2001.035(d). The procedural deficiencies identified by the district court do not fit that description. Texas courts have held defects to be "merely technical" where an agency substantially complied with the APA's substantive requirements but erred in the manner of compliance. *See Pub. Util. Comm'n of Tex. v. Luminant Energy Co. LLC*, 691 S.W.3d 448, 465–66 (Tex. 2024) (holding agency substantially complied where imminent-peril findings appeared in the introductory paragraphs rather than a formal preamble and emergency notice was provided through alternative means that accomplished the Legislature's objectives without prejudice); *Office of Pub. Util. Counsel v. Pub. Util. Comm'n of Tex.*, 104 S.W.3d 225, 235 (Tex. App.—Austin 2003, no pet.) (holding challenge presented "at most ... a technical defect" where the adoption order fully explained the agency's reasoning and the only complaint was that the discussion was not expressly identified as the response to a particular comment).

This case is fundamentally different. The Hemp Industry does not complain about the placement of required findings, the labeling of responses, or the method by which notice was provided. Rather, the Agencies wholly failed to prepare and publish the substantive, economic analyses required by §§ 2001.022 and 2001.024(a)(6), failed to consider less burdensome alternatives under § 2006.002, and failed to disclose the factual basis and reasoned justification required by § 2001.033. Those omissions did not merely imperfectly accomplish the Legislature's procedural requirements, they failed to perform the requirements at all. Therefore, the Agencies' violations cannot be dismissed as "mere technical defect[s]" under § 2001.035(d). And those failures prejudiced the Hemp Industry's substantial rights. Without the required analyses and explanations, the Hemp Industry could not meaningfully evaluate the Agencies' assumptions and factual basis, challenge their assessment of the rules' economic consequences, or propose informed, less burdensome alternatives before the rules were adopted.

The State's reliance on § 2001.040 fares no better. That statute provides that, after a court determines an agency failed to substantially comply with the APA, the court "may remand" the rule to the agency—meaning the statute is discretionary not mandatory. Tex. Gov't Code § 2001.040; *see also id.* § 311.016(1) (providing that "'[m]ay' creates discretionary authority or grants permission or a power")

The remainder of the statute confirms that reading. Section 2001.040 provides that "if it does so remand," the court shall allow the agency a reasonable time to revise or readopt the rule; and if remanded, the rule remains effective during that period "unless the court finds good cause to invalidate the rule or a portion of [it]" immediately. *Id.* § 2001.040. These provisions are expressly conditioned on the court's discretionary decision to remand. If the court opts to not remand, these provisions never apply.

The State never requested that the district court remand any of the challenged rules (in whole or in part) under § 2001.040. The district court therefore had no occasion to exercise the discretionary authority the State now argues was required. The State cannot obtain reversal based on the lack of a discretionary remedy it never requested.

Moreover, the State's construction of § 2001.040 would eliminate a district court's equitable authority to enjoin the enforcement of a rule challenged under § 2001.038. Texas courts have repeatedly recognized such authority. *E.g., Tex. Dep't of State Health Servs. v. Balquinta*, 429 S.W.3d 726, 749 (Tex. App.—Austin 2014, pet. dism'd) ("This Court has repeatedly held that trial courts may award temporary injunctive relief against an agency in connection with pending rule challenges under section 2001.038, reasoning that the statute's waiver of immunity suffices to confer jurisdiction to grant the injunctive relief and that such relief is necessary to make effective the declaratory relief the Legislature has expressly authorized."); *Combs v. Entertainment Publ'ns, Inc.*, 292 S.W.3d 712, 723-24 (Tex. App.—Austin 2009, no pet.) (affirming temporary injunction against enforcement of an agency rule pending final disposition of an APA challenge). This authority is necessary and appropriate to preserve the status quo pending final trial while such a challenge is further litigated, and this authority is not displaced by § 2001.040's discretionary remand remedy.[5]

[5] Section 2001.040 was originally enacted in 1999, and was thus part of the statute at the time each of these cases was decided.

The State relies on *Texas Department of Public Safety v. Salazar*, 304 S.W.3d 896, 903 (Tex. App.—Austin 2009, no pet.), to support its argument that the APA allows a rule to be enjoined only on a permanent basis following a final trial. *Apts' Brf*. at 44, 46. But *Salazar* holds the opposite. The court expressly recognized that temporary injunctive relief was permissible under § 2001.038 to preserve the status quo pending a final trial, and to deny such relief would "defeat the purpose" of the statute. 304 S.W.3d at 903 (citing *Texas Alcoholic Beverage Comm'n v. Amusement & Music Operators of Tex., Inc*., 997 S.W.2d 651, 659 (Tex. App.—Austin 1999, pet. dism'd w.o.j.); *Watson v. North Tex. Higher Educ. Auth., Inc.*, No. 03-00-00139-CV, 2000 WL 1534905, *9-10 (Tex. App.—Austin Oct. 19, 2000, pet. dism'd by agrm't)).

The State's reliance on *Ford Motor Co. v. Butnaru*, 157 S.W.3d 142 (Tex. App.—Austin 2005, no pet.) is also misplaced. *Apts' Brf*. at 43-44. That decision should not be confused with the Texas Supreme Court's earlier decision in *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198 (Tex. 2002), which addressed temporary-injunction and primary-jurisdiction issues arising from related litigation. *Ford Motor* arose in an entirely different procedural posture from this case: it involved judicial review of a final agency order under § 2001.174, not a rule-validity challenge under § 2001.038. 157 S.W.3d at 149. In reviewing that agency order, the district court remanded the proceeding but went further, directing the agency to conduct an investigation and prescribing issues for it to decide. *Id.* at 146, 149-50. The Third Court held that a court reviewing agency action under § 2001.174 may order a general remand but may not "dictate how to correct" an agency error in a manner that usurps discretion committed to the agency. *Id.* at 149.

That holding says nothing about a court's authority under § 2001.038 to temporarily enjoin enforcement of a challenged rule while its validity is litigated. The injunction here does not direct the Agencies how to proceed on remand, prescribe the result of any future rulemaking, or otherwise exercise discretion entrusted to the Agencies. It simply prevents enforcement of the challenged rules pending adjudication of the Hemp Industry's statutory rule-validity challenge.

"When an agency promulgates a rule without complying with the proper rule-making procedures, the rule is invalid." *El Paso Hosp. Dist.*, 247 S.W.3d at 715; *see also* Tex. Gov't Code § 2001.035(a). The record before this Court supports the temporary injunction because the Agencies failed to substantially comply with mandatory APA rulemaking procedures governing economic analysis, local-employment impacts, and consideration of less burdensome alternatives.

III. The Hemp Industry Demonstrated a Probable Right to Relief on its Ultra Vires Claims.

An official acts ultra vires when she acts "without legal authority." *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). Where, as here, the Legislature grants an official some discretion, the relevant inquiry is whether the challenged conduct falls outside the delegated authority or was taken "without reference to or in conflict with the constraints of the law authorizing the official to act." *Hall v. McRaven*, 508 S.W.3d 232, 239, 241 (Tex. 2017) (quoting *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 163 (Tex. 2016)). Courts therefore begin with the statutory text to determine the boundaries of the official's authority.

Here, the Legislature delegated authority for the HHSC Executive Commissioner to adopt rules governing licensing and registration, laboratory testing, inspections, recordkeeping, labeling, packaging, transportation, recalls, and other matters necessary to implement the statutory program. *See*, *e.g.*, Tex. Health & Safety Code §§ 443.051, .151,

.202. The Executive Commissioner acted in conjunction with DSHS's Commissioner to propose the rules that were ultimately adopted. 5RR134, 139. Together, these Officials acted ultra vires. CR1329.

The rulemaking provisions grant discretion over how to implement the statutory program within the parameters set by the Legislature—not to unilaterally change the parameters. In arguing otherwise, the State repeatedly conflates the important distinctions between testing requirements and legal compliance standards, and between the agricultural program regulated by the Texas Department of Agriculture (and the U.S. Department of Agriculture at the federal level) and the commercial program regulated by the Agencies here (without a federal counterpart). *Apts' Brf.* at 20-25. When the appropriate distinctions between these concepts are respected, the analytical reasoning of the statute is clear.

The State principally relies on § 443.051 in an effort to expand the officials' delegated authority. *Apts' Brf.* at 20, 25-26, 31, 39-40, 48. But that provision merely directs the Executive Commissioner to adopt rules necessary to administer Chapter 443 and requires those rules to be "consistent with" Texas's approved agricultural hemp plan, federal hemp law, and implementing federal regulations. Tex. Health & Safety Code § 443.051; 5RR373. That requirement *constrains* the Agencies' exercise of delegated authority; it does not incorporate every requirement governing agricultural production into Chapter 443's distinct commercial program, nor does it authorize the Agencies to displace the testing and compliance standards the Legislature prescribed elsewhere in the chapter. *See id.* §§ 443.151-.152. The Officials are thus required to administer the commercial program consistently with the agricultural framework, not to erase the textual distinctions the Legislature created between them.

The State's reliance on cases distinguishing an ultra vires act from an erroneous exercise of delegated discretion assumes the disputed premise—that Chapter 443 delegated discretion to the Officials to determine the legal concentration standard governing commercial compliance. *See Apts' Brf.* at 25 (citing *Klumb v. Houston Municipal Employees Pension System*, 458 S.W.3d 1, 10-11 (Tex. 2015); *Thoele v. Hinojosa*, No. 15-24-00008-CV, 2025 WL 2348070, at *8 (Tex. App.—15th Dist. Aug. 14, 2025, no pet.). Those cases protect discretionary decisions made within the authority the Legislature conferred; they do not authorize an official to exercise discretion over a question the Legislature established by statute.

A. The challenged rules replace the Legislature's legal compliance standard with one created by the Officials.

The Legislature defined "hemp" to include the *Cannabis sativa* L. plant and "all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers" with a delta-9 THC concentration of not more than 0.3 percent on a dry-weight basis. Tex. Health & Safety Code § 443.001(5); Tex. Agric. Code § 121.001. Consistent with this definition, the Legislature prescribed the legal compliance standard governing whether a CHP may be manufactured, distributed, sold or otherwise introduced into commerce based exclusively on a delta-9 THC concentration at or below 0.3%, which the State concedes "remains on the books in Texas." Tex. Health & Safety Code § 443.152(a); *Apts' Brf*. at 8. The Legislature also established the relationship between the agricultural and commercial regulatory programs. *Id*. § 443.152(b). Those are legislative judgments embodied in statute, not matters left to administrative discretion.

Per legislative prerogative, agricultural hemp is subject to pre-harvest testing using a post-decarboxylation or similarly reliable methodology. Tex. Agric. Code § 122.153(a). "[I]f available," this test provides proof that harvested hemp satisfies the statutory delta-9 compliance standard for commercial purposes. Tex. Health & Safety Code § 443.152(b). But that does not mean the pre-harvest test becomes the operative legal standard governing every hemp-derived ingredient or finished product regulated under Chapter 443. The statutory compliance standard for commercial products remains 0.3% or less delta-9 THC. *Id.* § 443.152(a).

Contrary to the State characterization of the challenged rules as mere revisions to laboratory testing requirements *(Apts' Brf.* at 24-25), the rules fundamentally change the legal compliance standard governing commercial CHPs in Texas. *See* 5RR384.

First, Rule 300.101 introduces the defined terms "acceptable hemp THC level" and "total delta-9 THC," establishing the terminology through which the remainder of Chapter 300 redefines legal compliance. 25 Tex. Admin. Code § 300.101. These terms are activated by the provisions that follow. Rule 300.301(a)(4) provides that hemp may not be processed or used in manufacturing unless it satisfies the "acceptable hemp THC level." Rule 300.301(b)(4) imposes the same requirement before a CHP or hemp-derived ingredient may be sold, distributed, or introduced into commerce. Rules 300.206(c) and 300.404 incorporate these terms to prohibit transportation into Texas of hemp or hemp-derived ingredients exceeding the "acceptable hemp THC level" for further processing within Texas. *See* 5RR390.[6]

These rules apply to all commercial hemp products—even where the product is never intended to be heated or smoked, such as a topical balm or hair product, gummies, and pet treats. 2RR80-81, 173, 180-84, 244, 253-56. Read together, these rules significantly alter the statutory compliance standard in a manner that bans a broad variety of previously compliant products from the market. 2RR96-98, 105-06.

At the temporary injunction hearing, multiple witnesses testified that these rule changes drastically changed the products that their businesses were able to lawfully manufacture, process, distribute, and sell in Texas. *Infra*, Argument V.C. These consequences confirm that the challenged rules enacted a *substantive change* from the legal what the

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[6] The State defends Rules 300.206(c) and 300.404 as permissible transport restrictions. *Apts' Brf*. at 29-31. But regardless of any authority to regulate transport of hemp products, the problem is that the Officials lacked authority to set the compliance standard for which products are lawful to begin with, for purposes of transportation or any other commercial activity. In other words, the Hemp Industry challenges the legal predicate upon which those restrictions operate.

statute has provided since 2019. 2RR90-92. The rules do not, as the State contends, do “nothing more than align the [CHP] standard” with the post-decarboxylation testing methodology reflected in federal law and Texas’s agricultural hemp program. *Apts’ Brf.* at 25.

The State claims the trial court “erroneously” concluded that “measurements [determined by post-decarboxylation testing] are inconsistent with ‘Texas’s 2020 Approved Hemp Plan.” *Apts’ Brf.* at 22. But that’s not what the order says. It states, correctly, that the challenged rules imposing a total delta-9 THC “compliance standard” based on such testing “differ[] from and [are] more restrictive than the actual delta-9 concentration standard (0.3% or less on a dry weight basis) mandated by the Legislature for commercial compliance under Texas Health and Safety Code Chapter 443, as incorporated into Texas's 2020 Approved Hemp Plan.” CR1329-30. There is nothing “erroneous” about that conclusion, which correctly interprets the statutes and rules and is supported by the evidence.[7]

[7] The State also relies on a subsequent amendment to federal law that has not taken effect. *Apts’ Br.* at 8-9. Whatever ultimately becomes of that legislation, it does not supply authority for the challenged rules. If anything, the fact that a congressional amendment was required to materially change the federal standard reinforces the central point here: changes to the statutory compliance standard are legislative choices, not matters of administrative implementation.

The State heavily relies on *Texas Department of State Health Services v. Sky Marketing Corp.*, 733 S.W.3d 689 (Tex. 2026), but that decision does not resolve this case. There, the Court held the DSHS Commissioner had an "unusually high degree of discretion" to schedule controlled substances because those particular decisions are "final unless altered by statute." *Id.* at 701-06 (citing Tex. Health & Safety Code § 481.034(g)). Still, the Court recognized that "a statute will always trump agency action," and even the Commissioner's unusually broad scheduling authority remained subject to the "obvious limitation" that agency action cannot contradict what the Legislature has enacted. *Id*. at 702, 704.

The Commissioner's rulemaking authority under Chapter 443 is materially different. It does not confer authority to determine what the lawful compliance standard is, contrary to the Legislature's established standard of 0.3% or less delta-9 THC. Rather, the authority is limited to enacting rules only as "necessary to implement" the Legislature's statutory framework, which repeatedly ties commercial product compliance to the actual delta-9 THC concentration. Tex. Health & Safety Code §§ 443.051, .151-.152. It is not reasonable to interpret this longstanding statutory standard to mean "total THC" or "total delta-9

THC" (rather than "actual" delta-9 THC) because (1) nothing in the statute or rules ever required (prior to the 2026 rules) that commercial products demonstrate compliance with that standard before they could be lawfully manufactured, processed, distributed, or sold; and (2) THCA is a naturally occurring "acid" that the Legislature expressly included within the definition of lawful hemp. *See* Tex. Health & Safety Code §§ 443.151-.152; Tex. Agric. Code § 121.001.

The State's reliance on *United States v. Sirois*, No. 1:21-cr-00175-LEW, 2026 WL 674125 (D. Me. Mar. 10, 2026), fares no better. There, for purposes of a criminal charge, a district court judge in Maine interpreted the federal 0.3% standard as incorporating post-decarboxylation because the immediately following provision required that methodology for purposes of agricultural hemp production administered by the USDA. *Id.* at *2. Texas's commercial sector statutes at issue here do not contain this requirement.

The criminal opinion in *Barlow v. State* is further afield. No. 05-21-00392-CR, 2022 WL 16847694 (Tex. App.—Dallas Nov. 10, 2022, no pet.). The products there contained approximately 22.1% and 40.5% actual delta-9 THC, independently exceeding the 0.3-percent threshold many times over. *Id.* at *8. *Barlow* therefore had no occasion to decide whether converted THCA may render an otherwise compliant product unlawful, much less whether DSHS may impose that standard by rule.

B. The challenged rules also impose excessive fees beyond the Officials' delegated authority.

The State contends that Chapter 443 permits DSHS to impose "any fees" associated with licensing, registration, and enforcement. *See Apts' Brf.* at 36, 39-40 (citing Tex. Health & Safety Code § 443.103(3)). To the contrary, the Legislature authorized fee-setting authority with limits on their amount and purpose.

Chapter 443 authorizes DSHS to establish licensing fees for manufacturers, processors, and distributors; and registration fees for retailers. Tex. Health & Safety Code §§ 443.103(3),.2025(f). Section 12.0111(b) separately requires licensing fees to be set "in an amount designed to allow the department to recover from its license holders all of the department's direct and indirect costs in administering and enforcing the applicable licensing program." *Id.* § 12.0111(b). Read together, those statutes delegate authority to establish a fee schedule designed to recover the costs of administering and enforcing the consumable hemp licensing program—not unfettered authority for DSHS to charge any amount its Commissioner desires.

The district court had ample basis to conclude that the Hemp Industry demonstrated a probable right to relief under that standard. The final rules increased annual manufacturer licensing fees from $250 to $10,000 and annual retail registration fees from $150 to $5,000 per location, while imposing substantial increases in other fees. 2RR127. Shockingly, these fees being imposed on small businesses are much higher than TABC imposes on the giant Anheuser-Busch corporation. 3RR85-86. The expert economist testified that, based on the number of licensed and registered businesses subject to these fees, the new schedule would generate approximately $43 million annually. 2RR108-19, 127-28; 5RR392. Nothing in the Agencies' published fiscal analysis identified (much less justified) regulatory costs approaching that amount.

The State offered no evidence at the temporary-injunction hearing explaining how the adopted fee amounts were calculated or demonstrating that they were designed to recover the regulatory costs contemplated by § 12.0111(b). It called no official responsible for developing the fee schedule or its fiscal analysis and no witness capable of explaining how the Officials determined that the particular fee amounts adopted were designed to recover only the direct and indirect costs authorized by § 12.0111(b). Although Dr. Stevenson testified that DSHS desired additional inspections and enforcement resources, he did not testify that he participated in developing the challenged fee schedule or that the adopted fees were derived from any fiscal analysis linking the specific fee amounts to anticipated regulatory costs. 4RR53-57.

The State now relies on the Charney declaration to supply those missing facts. But the State never introduced that declaration into evidence at the hearing nor called Charney or any other witness to testify regarding his assumptions. The State cannot demonstrate an abuse of discretion by relying on evidence that was not part of the evidentiary record on which the district court ruled.

Even if considered, Charney's declaration does not overcome the Hemp Industry's probable right to relief. Charney projected approximately $16.7 million in annual program costs, while the Hemp Industry's expert economist testified that the adopted fee schedule would generate approximately $43 million annually. 2RR123-24. The district court acted within its discretion by concluding the Hemp Industry demonstrated a probable right to relief on its claims that the challenged fee rules exceed the authority delegated by § 12.0111(b).

C. The challenged penalty rule conflicts with the Legislature's notice-and-cure framework.

Chapter 443 mandates the Executive Commissioner to provide retailers "fair notice" of potential violations and "an opportunity to cure a violation made unintentionally or negligently." Tex. Health & Safety Code § 443.201(b). Chapter 431 authorizes administrative penalties but allows discretion that each day of a violation "may be considered a separate violation." *Id.* § 431.054(d) (emphasis added).

Challenged Rule 300.601(b), by contrast, removes that discretionary standard and fails to provide any cure provisions. It states that "each day a violation continues or occurs counts as a separate violation when calculating an administrative penalty." 25 Tex. Admin. Code § 300.601(b) (emphasis added). That mandatory accrual eliminates the statutory discretion to avoid accumulating additional violations while a retailer cures an unintentional or negligent violation. *See* 5RR394. The State points to Rule 300.606's notice procedures, *see Apts' Brf.* at 33-34, but notice does not resolve the conflict: § 443.201(b) separately guarantees an opportunity to cure, which is impossible when Rule

300.606 permits DSHS to issue the notice of violation together with an assessment of the penalty. *See* 25 Tex. Admin. Code § 300.606(d)-(e); 3RR87.

The State also emphasizes that the daily-accrual language predates the 2026 rulemaking. *Apts' Brf.* at 10 n.3. But the challenged rules materially expanded the conduct to which that penalty framework now applies, including by making previously compliant products unlawful under the new total-delta-9 standard. The injunction properly prevents DSHS and the Officials from enforcing that mandatory penalty framework against the newly expanded prohibitions consistently with Chapter 443's statutory cure protection.

IV. The Hemp Industry Demonstrated a Probable Right to Relief on its Constitutional Claims.

A. The challenged fee rules operate as an unauthorized occupation tax.

Rules 300.202(c) and .502(g)) impose dramatically increased fees, which the Hemp Industry established are not correlated to the Agencies' administrative enforcement costs reflected in the rulemaking record but instead serve an unconstitutional, revenue generating purpose.

The Legislature is authorized to impose occupation taxes; agencies are not. Tex. Const. art. VIII, § 1(c). Consistent with that constitutional limitation, the Texas Supreme Court has recognized that administratively imposed regulatory fees are permissible only when they are reasonably necessary to fund the government's regulation of the industry, not to raise general revenue. *Builder Recovery Servs., LLC v. Town of Westlake*, 650 S.W.3d 499, 506 n.8 (Tex. 2022) (quoting *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 461–62 (Tex. 1997), while resolving the case on statutory grounds). The State has no answer to this legal proposition, which supports affirmance of the temporary injunction against the fee provisions on constitutional grounds.

Pursuant to these constitutional limitations, the Legislature tied the Agencies' fee authority to regulatory costs. Tex. Health & Safety Code §§ 12.0111(b) (requiring licensing fees to be set "in an amount designed to allow the department to recover" its direct and indirect costs of administering and enforcing the licensing program); 443.2025(f) (authorizing DSHS to establish "reasonable" retail registration fees). Executive Order GA-56 also directed DSHS to revise fees only "to reflect the full regulatory and enforcement costs incurred by the State." 5RR131.

The rulemaking record and hearing testimony establish that the challenged fees far exceed any demonstrated regulatory costs. The final rules increased manufacturing licensing fees from $250 to $10,000 and retail registration fees from $150 to $5,000 for retailers, while also substantially increasing ownership-transfer fees and delinquency fees. *See* 25 Tex. Admin. Code §§ 300.202(c), .502(g); *see* 5RR400. The Hemp Industry's expert economist testified this will generate around $43 million annually. 2RR123-24. The State attacks other aspects of his analysis, *see Apts' Brf.* at 12, 40, but those criticisms do not undermine this revenue calculation. *See* 2RR153-54. Indeed, the State faults the economist for not considering variables or costs that the Agencies never disclosed during rulemaking—the very APA deficiency challenged here. The district court was entitled to credit the expert's testimony in evaluating whether the adopted fees bore a reasonable relationship to demonstrated regulatory costs.

The proposed rules projected implementation costs of less than $70,000 during the first fiscal year and approximately $6,000 annually thereafter, while simultaneously representing that implementation of the rules "will not affect the number of DSHS employee positions."

5RR140; 2RR124. The State now emphasizes the Agencies' general statement at adoption that the fees would support inspections, testing, enforcement, and related costs. *Apts' Brf.* at 37-39. But identifying regulatory purposes does not establish that fees projected to generate approximately $43 million annually bear a reasonable relationship to the costs of those activities. And although a regulatory fee need not "perfectly match" regulatory costs, *id.* at 39, the constitutional test still prohibits administrative fees that raise revenue beyond what is reasonably needed for regulation. *Lewellen*, 952 S.W.2d at 461.

The State attempts to bridge that disparity with cost projections that did not appear in the proposed-rule analysis. It now asserts that DSHS will require 23 additional employees and approximately $3.135 million in additional enforcement expenditures, *Apts' Brf.* at 38, relying principally on the Charney declaration. But that declaration was never introduced into evidence—or even mentioned—at the temporary-injunction hearing. *See id.* (citing CR1176). Even if considered, Charney's $16.7 million estimate in total annual program costs does not eliminate the disparity: The expert economist testified that the adopted fee schedule would generate approximately $43 million annually, resulting in a revenue windfall of over $26 million, even using Charney's amount.

On this record, the district court did not abuse its discretion by concluding the Hemp Industry demonstrated a probable right to relief on its claim that the challenged fee provisions violate article VIII, section 1(c) of the Texas Constitution.

B. The challenged penalty rule imposes excessive fines without due course of law.

The district court also found a probable right to relief on the Hemp Industry's constitutional claims regarding the challenged penalty framework under article I, sections 13 and 19 of the Texas Constitution. CR1332-33; 5RR401-02.

Article I, section 13 prohibits excessive fines, with proportionality turning principally on whether a fine is "fixed with reference to the object it is to accomplish." *Pennington v. Singleton*, 606 S.W.2d 682, 690 (Tex. 1980); Tex. Const. art. I, § 13. Chapter 431 authorizes penalties of up to $25,000 per day for each violation, while Rule 300.601(b) mandates that each day a violation continues "counts as a separate violation." Tex. Health & Safety Code § 431.054(c)-(d); 25 Tex. Admin. Code § 300.601(b). Applied to the newly expanded prohibitions challenged here, that framework permits substantial penalties to accumulate daily while Rule 300.606's notice and hearing procedures remain pending, even if the violation was inadvertent or negligent.

The State's cases approving daily penalties are distinguishable because they involved dramatically smaller amounts or prolonged violations left uncured. *See Duisberg v. City of Austin*, No. 07-20-00171-CV, 2020 WL 6122951, *4 (Tex. App.—Amarillo Oct. 16, 2020, no pet.) ($10 per day and $500 per week); *McKinney v. Wright*, No. 02-17-00100-CV, 2018 WL 2976420, *1, 3 (Tex. App.—Fort Worth June 14, 2018, no pet.) ($100 per day and $500 per month); *State v. Morello*, 547 S.W.3d 881, 884, 889 (Tex. 2018) ($50 per day over nine years).

Article I, section 19 provides that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19. This requires notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." *Univ. of Tex. Med. Sch. at Hous. v. Than*, 901 S.W.2d 926, 930 (Tex. 1995). Although Rule 300.606 provides notice and hearing procedures, Rule 300.601(b) mandates that daily penalties accumulate before those procedures have run their course. The district court has authorized to find a probable right of relief on this basis.

V. The District Court Properly Exercised its Equitable Authority in Granting the Temporary Injunction.

Texas trial courts exercise broad, general jurisdiction with blended equitable and legal powers. Tex. Const. art. V, § 8; Tex. Gov't Code § 21.001(a) ("A court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction."); *id.* §§ 24.007(a), 24.008, 24.011 (confirming broad writ powers). Hence, once a court obtains jurisdiction, it "may exercise any power, or grant any writ, including the writ of injunction, necessary to administer justice between the parties, preserve the subject-matter of the litigation, and make its judgment effective." *City of Dallas v. Wright*, 36 S.W.2d 973, 975 (Tex. 1931).

The temporary injunction awarded here should be affirmed as an appropriate exercise of this broad discretion.

A. The injunction preserves the status quo.

In the context of injunctive relief, the status quo is "the last, actual, peaceable, noncontested status which preceded the pending controversy."

Transport Co. v. Robertson Transports, Inc., 261 S.W.2d 549, 553-54 (Tex. 1953).

Here, the status quo to be preserved is the statutory framework established by the Legislature under the 2019 Farm Bill, specifically including Texas Health & Safety Code Chapter 443, as incorporated to Texas's 2020 Approved Hemp Plan, and as administered under the rules in 25 Texas Administrative Code chapter 300 that were effective prior to the March 31, 2026 adoption date of the challenged rules. CR1337; 5RR409. On that date, the Agencies significantly altered the legal landscape, upending the previously lawful business operations of the commercial sector of Texas's hemp industry. The injunction protects the rights of industry participants to continue such operations under the status quo. CR1337-38.

The State claims the status quo should be disregarded because it was allegedly facilitated by an "early victory" in *Sky Marketing*. *Apts' Brf*. at 49. But that injunction prevented enforcement of a controlled substances schedule primarily regarding delta-8 THC; it had nothing to do with THCA or a "total THC" compliance standard or the fee and penalty provisions at issue here. And after the *Sky Marketing* injunction was issued, the Legislature tried but failed to amend the delta-9 statutory compliance standard, reinforcing that it remained the status quo governing the Hemp Industry's lawful operations.

B. The Hemp Industry has no adequate remedy at law.

The State has never challenged that the Hemp Industry is limited to equitable relief on its claims and may not seek damages against the State based on the causes of action asserted. SuppCR21. Hence, the Hemp Industry has no adequate remedy at law, and a temporary injunction is the only way to prevent the significant and irreparable harm from occurring under the challenged rules before final trial. CR1336-37.

C. The State does not and cannot deny the immediate and irreparable harms suffered by the Hemp Industry under the challenged rules.

An injunction may be granted when "irreparable injury to real or personal property is threatened, irrespective of any remedy at law." Tex. Civ. Prac. & Rem. Code § 65.011(5).

The Hemp Industry presented testimony from multiple business owners, association representatives, an expert economist, an expert chemist, and an expert on veterans' issues establishing that the challenged rules immediately disrupt ongoing lawful operations throughout Texas's hemp industry, including manufacturing, processing, transporting, distributing, and retail selling activities. 2RR186-90, 195-97, 208, 225-27; 3RR16-25, 63-64, 86-87; 5RR189-99, 386, 405-06; CR1333-37. The evidence further established that the challenged rules require businesses to reformulate or remove products, alter supply-chain relationships, incur substantial new compliance costs, and risk the loss of customers, goodwill, and market access developed under the Legislature's enacted framework. 2RR244-45; 3RR33-39; 5RR387-88; CR1333-37. And it's not just the change to the legal compliance standard that is harming the industry; it's also the significantly increased fees and penalty structure, which are so high they will likely force small businesses to close. 2RR127-28, 161-65, 172, 242-43, 245-47; 3RR18-25.

One business owner testified that approximately 80 percent of his inventory became unsellable when the rules took effect and described resulting disruptions to his manufacturing operations and supply chain. 3RR37-39, 51-52. Another testified that the rules forced her company to halt significant manufacturing activity and rendered substantial inventory and raw materials unusable; and if the challenged rules continued to be enforced, it would cause her to lose her business, which would be devastating for her family and her employees. 2RR161-65, 172-73, 183-84. And the industry's expert economist placed those individual effects in industry-wide context, estimating that the challenged restrictions could eliminate more than 36,000 jobs and approximately $7.2 billion in economic activity. 2RR134, 137.[8]

The State offered **no** contradictory evidence at the hearing about the harms and disruptions caused by the challenged rules; and the State has never denied that this was the *intended* impact of the rules.

The State attempts to disregard these harms by characterizing the hemp industry as a "speculative venture" exploiting a supposed statutory "loophole." *Apts' Brf.* at 48-49 (citing *AK Futures LLC v. Boyd St. Distro, LLC*, 35 F.4th 682, 693 (9th Cir. 2022)). But *AK Futures* did not hold that Congress created a loophole; it merely observed that, if Congress had done so, "it is for Congress to fix." *Id.* Likewise in Texas, if the Agencies

[8] The State's argument that some Appellees won't suffer irreparable damage because they have outside income is mystifying—and unsupported by any legal authority. *Apts' Brf.* at 12-13. Even large companies with multiple product lines can be "irreparably harmed." Here, the small business owners testified unequivocally to the significant financial losses they were suffering and would suffer under enforcement of the challenged rules.

perceive a "loophole" in the statute, it is for the *Legislature* to fix. To date, the Legislature has not done so.[9]

The State also blames the Hemp Industry for assuming the risk of regulatory change. *Apts' Brf*. at 32 (citing *DSHS v. Crown Distrib. LLC,* 647 S.W.3d 648, 663-64 (Tex. 2022). But that argument misses the point. The Hemp Industry seeks protection from non-statutory restrictions imposed through rules that were enacted without following the APA's required procedures, and that exceed the Officials' authority and violate the Texas Constitution. And unlike the narrow challenge to a particular type of product that was only lawful for a "brief window" of time due to an "administrative quick" addressed in *Crown Distributing*, the rules here threaten to shut down an entire marketplace of products that have been lawful for years under a comprehensive statutory regime.

D. The balance of equities supports the injunction.

Courts exercising equity jurisdiction must "among other things, balance competing equities." *In re Gamble*, 71 S.W.3d 313, 317 (Tex. 2002). As shown above, the challenged rules have caused immediate and

[9] The State also claims that Congress has now "fixed" it. But the proposed legislation they cite has not taken effect, and it may never. Regardless, a congressional change to the federal statute does not justify an administrative change to the Texas statute, especially one that occurred prior to the date of any such federal act.

ongoing harm to the Hemp Industry's business operations, legal rights, and economic interests. Protecting these interests provides strong equitable support for the injunction.

Additionally, multiple public interests weigh in favor of the injunction. CR1338-39; 5RR411. First, enjoining the challenged rules provides significant economic benefit to the State and its citizens. Under the preexisting statutory framework, the hemp industry generated billions of dollars in annual revenue and made significant contributions to Texas employment. 2RR115-119; 3RR59-60; 5RR189-99; CR465, 470 at ¶6. The challenged rules largely eradicate this industry and, hence, the economic boon it has provided our state for many years. 2RR119-20, 137; 5RR189-99. The expert economist projected 36,000 lost jobs and $1.4 billion in lost wages. 2RR134.

Second, the injunction protects against broader harm to consumers of the Hemp Industry's products, including a significant population of military veterans and other service members. Testimony at the temporary injunction hearing from industry participants and an expert in veterans' affairs described the widespread use of hemp-derived products for wellness purposes, including the relief of chronic pain, sleep disorders, PTSD, anxiety, nausea associated with cancer treatment, and as means to avoid the use of alcohol or chemical drugs. 2RR166-68, 173-74, 195-97, 198-221, 229-33, 237-40, 253-56; 3RR26-30, 42-45.[10] If these products are not lawfully available on the market, consumers likely will turn to less safe or illicit alternatives. .2RR174-75, 177-78, 200-01; 3RR25-26, 42-45.

By contrast, the injunction does not result in cognizable harm to the State. Nothing about the injunction impairs the State's ability to enforce statutory requirements or rule provisions that fall within the Agencies' delegated authority, including those directed at consumer protection and public safety. The injunction prevents enforcement of only the eight rules challenged in this lawsuit. 5RR331-332.

Nor does the injunction prevent enforcement of *anything* against "bad actors" operating outside of the regulatory framework. Instead, the injunction is limited to protecting only the named plaintiffs and "a person or entity operating or seeking to operate as a <u>licensed or registered</u> manufacturer, processor, distributor, or seller of consumable hemp

[10] The issue isn't whether there is a "medical necessity to ingest THC." *Apts' Brf.* at 50. Rather, the issue is whether the State established a need for challenged rules to prevent harm. It didn't.

products within the state." CR1343. The Hemp Industry supports enforcement against unlicensed or unregistered operators attempting to manufacture, distribute, or sell non-compliant products. 3RR54, 58.

The State claims that the challenged rules are necessary to protect public safety. *Apts' Brf*. at 48, 50-51. But the State presented **no** evidence at the hearing to establish that CHPs manufactured, processed, and sold in compliance with the preexisting statutory and regulatory requirements are *unsafe*. The products at issue here—which are manufactured, distributed, and sold by lawful business operators who are licensed and registered by the Agencies—are tested under § 443.151 to ensure there are no "harmful microorganisms," "heavy metals, pesticides," or similar substances. The Hemp Industry has never challenged enforcement of such testing.

To the contrary, multiple witnesses testified that they consider compliance with the governing statutes and regulations as essential to their businesses. 2RR166-72, 240-42; 3RR15-23, 31-33, 40-53. As a result, they immediately complied with the challenged rules, despite the immediate and significant economic harms that caused them. 2RR165-178; 3RR33-39; 5RR404; *see also* CR488-91 ¶¶ 4, 14-18, 21; CR500-01 ¶¶

10, 13, 16. This case is not about the State enforcing rules against "the illicit cannabis market." *Apts' Brf*. at 47, 48. That is a red herring.[11]

In attempt to generate a safety issue, the State cites an amicus brief that was never mentioned at the TI hearing, much were its claims supported by any evidence. *Apts' Brf*. at 50. Critically, the amicus brief does not address the relief actually granted. It largely discusses unlawful actors operating outside Texas's existing regulatory framework, to whom the injunction does not apply. CR1343. Moreover, the brief lacks credibility because it is a self-serving complaint from a participant of the medical marijuana program, which has contrary financial interests.

Finally, the challenged rules were adopted in blatant violation of the APA's protections, as recently strengthened by our Legislature and touted by our Governor in support of Texas as a business-friendly state. Preventing enforcement of these rules promotes the public's interest in lawful governance based on regulatory certainty and the separation of powers.

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[11] The State falsely characterizes the plaintiffs here as "the only ones who" did not "agree[] to play by the rules." *Apts' Brf*. at 55-56. The record shows the opposite: that they have followed every rule, even to their own detriment, and that their arguments in this suit (including by two associational groups) were advanced on behalf of broad group of licensed and registered, rule-abiding industry participants.

E. The scope of the injunction is appropriate.

A Texas district court, exercising its broad and general jurisdiction, is empowered to grant an "adequate and complete" remedy. *Id.*; *see also Huynh v. Blanchard*, 694 S.W.3d 648, 685 & n.53 (Tex. 2024) ("[T]he remedy at law must be as practical and efficient to the ends of justice and its prompt administration as the remedy in equity.") (internal quotations omitted).

1. The State waived any objection to the scope of the injunction by not raising it in the district court.

Although the State argued that no injunction should be granted, it raised no complaint regarding the *form* or *scope* of such an injunction, if granted. "[A]rguments related to the breadth of injunctive relief," are "generally considered waived" if not presented to the trial court. *See Polston v. State*, No. 03-20-00130-CV, 2022 WL 91974, at *17 (Tex. App.—Austin Jan. 6, 2022, no pet.) (collecting cases); *Hartwell v. Lone Star, PCA*, 528 S.W.3d 750, 766 (Tex. App.—Texarkana 2017, pet. dism'd) ("By failing to present their complaints to the trial court [that the injunction was overly broad], Appellants failed to preserve any error regarding the terms of the temporary injunction.") (collecting cases).

The Court can and should conclude that the State waived any complaint about the scope of the injunction. Tex. R. App. P. 33.1(d).

2. The injunction is *in personam* against specific State actors.

The primary limitation on a district court's authority to grant injunctive relief is that it must be *in personam*, *i.e.*, awarded against specific defendants, commanding them to take or refrain from specific actions. *See* Tex. R. Civ. P. 683, 687(b), (d).

The injunction here expressly satisfies that requirement, and the State does not contend otherwise. CR1341-44.

3. The injunction benefits the named plaintiffs and a defined group of similarly situated business operators, as allowed by the Texas Supreme Court in multiple cases.

In claiming that the injunction awards relief to an overly broad group, the State never quotes the full language of the order, which contains important limitations. Namely, the injunction prohibits prospective enforcement of the challenged rules "against the named Plaintiffs including all members of THBC and HIFA, and against any other commercial participant in Texas's consumable hemp industry (meaning a person or entity operating or seeking to operate as a *licensed* *or registered manufacturer, processor, distributor, or seller* of consumable hemp products within the state), as is necessary to, afford complete relief to the named Plaintiffs, preserve the status quo across an industry that will suffer indivisible injury from the challenged rules, and prevent a multiplicity of suits." CR1343 (emphasis added). The district court had equitable authority to issue this injunction.

The governing statutes, rules, and cases do not expressly limit who may benefit from an injunction. *See Texas Liquor Control Board. v. Diner's Club, Inc.*, 347 S.W.2d 763, 767 (Tex. App.—Austin 1961, writ ref'd n.r.e.) ("There is no requirement that all persons who are injured by the wrongful act complained of should be made parties plaintiff. It is enough that [] one such party[] is plaintiff.").

Although the initial determination of irreparable harm looks at the impact on the named plaintiffs, determining the appropriate scope of injunctive relief includes considerations of the broader public impact. *Huynh*, 694 S.W.3d. at 689. "When a policy or <u>procedure is challenged as being in conflict with state law</u>, any injunction that issues <u>will necessarily affect individuals beyond the named parties</u>." *Campbell v. Wilder*, 487 S.W.3d 146, 153 (Tex. 2016) (emphasis added) (citing *Dallas*

Cty. v. Sweitzer, 881 S.W.2d 757, 769 (Tex. App.—Dallas 1994, writ denied) ("A party suing for all persons adversely affected by enforcement of a statute has standing to sue for an injunction.")); *see also* Restatement (Second) of Torts § 942, cmt. a (1979) ("The interests of identifiable third persons, not parties to the tort or to the injunction suit, the public interests of the local community and the interests of the public in various social policies, must often be balanced against other factors in the determination of the appropriateness of injunction against tort.").

The Texas Supreme Court has repeatedly held injunctive relief benefiting non-parties it is appropriate: (1) when necessary to afford "complete relief," (2) when the injury shared between the named plaintiffs and others similarly situated is indivisible, and (3) when the denial of such relief would result in a multiplicity of suits. *Campbell*, 487 S.W3d at 152-53 & n.33, n.37 (affirming injunction benefitting "thousands" of indigent litigants similarly situated to six plaintiffs, restraining court clerk from improperly billing costs against them) (citing *Tex. State Emps. Union v. Tex. Dep't. of Mental Health & Mental Retardation*, 746 S.W.2d 203, 206 (Tex. 1987) (affirming "an injunction that restrained a state agency from disciplining any employee who refused to take a polygraph test, despite the fact that only a few individuals and the state union raised the constitutional challenge"); *Tyra v. City of Houston*, 822 S.W.2d 626, 628 (Tex. 1991) (holding injunction should have been granted to protect all firefighters, "even though only a few firefighters brought the action," against a fitness assessment policy)); *El Paso Cnty. Hosp. Dist. v. Tex. Health & Human Servs. Comm'n*, 400 S.W.3d 72, 82 & n.8 (Tex. 2013) (HHSC acknowledged injunction prevented it from using an invalid cutoff date "to compute all Texas hospitals' rates," not only for the fourteen plaintiff hospitals); *Morris v. Cummings*, 45 S.W. 383, 384-85 (Tex. 1898) (affirming injunction benefitting all taxpayers similarly situated to two named plaintiffs, restraining town marshal from collecting a tax levied without legal authority).[12]

The State claims *Campbell* is distinguishable because its relief allegedly applied only to "parties already before the court." *Apts' Brf.* at

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[12] *See also Career Colleges & Sch. of Tex. v. United States Dep't of Educ.*, 98 F.4th 220, 234-35, 255-56 (5th Cir. 2024), cert. granted in part sub nom., *Dep't of Educ. v. Career Colleges & Sch. of Tex.,* 145 S. Ct. 1039, (2025), dism'd by agreement, 146 S. Ct. 59 (2025) (in a federal APA case brought by a trade school association (CCST), affirming preliminary injunction to the benefit of "all Title IV participants" against enforcement of administrative rule). If "agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed." *Id.* at 255 (citation omitted).

55. To the contrary, the opinion states only six plaintiffs filed suit but the injunction benefitted thousands. And *Campbell* has never been overruled. It contains clear language throughout the opinion, which remains binding on this Court, to support the scope of relief awarded.

The Hemp Industry's uniquely integrated nature supports the trial court's conclusion that it was necessary to include other licensed and registered participants "to afford complete relief to the named Plaintiffs CR1334-35, 1340,1343. The evidence supports the court's finding that "it would be impossible to afford complete relief to the named Plaintiffs if only they were the only parties in the state allowed to operate under the previously-existing framework. Without the broader marketplace, there would be no 'industry' in which they could continue to operate as they did before the challenged rules took effect." CR1340; *see also* 2RR119-120, 128-136; 3RR21-24, 37-39.

Additionally, because the challenged rules are "facially invalid," the court found their enforcement would "result in an indivisible injury" across the industry of licensed and registered participants. CR1340. "This is supported by the two associational groups who are Plaintiffs to this suit [THBC and HIFA] and the evidence … regarding the broader harms being incurred by their members under the challenged rules." CR1340; 2RR186-88, 195-97; 3RR63-64; CR465-68, 485-86. The State does not challenge this finding on appeal, which provides an independent ground to affirm the full scope of the injunction.

Finally, the court found that, "if the benefits of this injunction are limited to only the named Plaintiffs, it will result in a multiplicity of suits. At least two other lawsuits have already been filed in Travis County to challenge these rules, and the Court finds a substantial likelihood that several other affected businesses will file suit seeking the same relief if not covered by this injunction." CR1341. The State also does not challenge this finding on appeal, which provides another independent ground to affirm the scope of the injunction.

In arguing for the first time on appeal that the injunction is overly broad, the State claims that *Trump v. CASA*, 606 U.S. 831 (2025), categorically prohibits universal injunctions. That is overstated. *CASA* holds "[a] universal injunction can be justified only as an exercise of equitable authority, yet Congress has granted federal courts no such power [under] [t]he Judiciary Act of 1789." *Id.* at 832. The State ignores that Texas courts exercise much broader general jurisdiction, which requires Texas law to control a decision about the trial court's exercise of authority. *See S. Pac. Co. v. Porter*, 331 S.W.2d 42, 45 (Tex. 1960).

Even under *CASA's* interpretation of the narrower statute, it left open the availability of such injunctions when necessary to afford "complete relief," and did not comment on the scope of injunctive relief authorized under the federal APA. 606 U.S. at 847 n.10, 852-54 & n.12; *id* at 834 (recognizing that "party-specific injunctions sometimes 'advantag[e] nonparties'" when "there is no way 'to peel off just the portion of the [wrongful conduct] that harmed the plaintiff'").[13] And the forum shopping concerns in *CASA* are not present here, where essentially all suits against state actors must be brought in Travis County and proceed to this Court for review, including all APA claims like those asserted here. *See id*. at 855; *see also* Tex. Gov't Code § 2001.038(b); Tex. Civ. Prac. & Rem. Code §§ 15.004, .016.[14]

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[13] On remand, the lower courts reimposed universal injunctions as necessary to afford complete relief. *See Washington v. Trump*, 145 F.4th 1013, 1038 (9th Cir. 2025), cert. denied, No. 25-364, 2026 WL 1871300 (U.S. June 30, 2026); *Doe v. Trump*, Nos. 25-1169, 25-1170, 2025 WL 2814730, *34 (1st Cir. 2025).

[14] The State cites dicta in *Sky Marketing*, 733 S.W.3d at 707 (*Apts' Brf*. at 53); but there, the Court did not resolve anything about the scope of the injunction. Regardless, the order here makes express findings substantiating why the scope of relief was necessary to afford complete relief to the named plaintiffs. CR1340-41.

Finally, the State relies on *In re Abbott*, 645 S.W.3d 276 (Tex. 2022), regarding the scope of temporary relief under Rule 29.3. *Apts' Brf*. at 54. That presents a narrower question based on the rule's express limitation to granting relief necessary to "preserve the parties' rights." Moreover, there, no evidence suggested any interdependency between the parties who filed the lawsuit and similarly situated nonparties. In other words, permitting the State to investigate nonparties would not imperil the plaintiffs. To the contrary here, preventing enforcement of the challenged rules against only the named plaintiffs does not afford them complete relief, as addressed above.

PRAYER

Appellees, the Hemp Industry, respectfully pray that this Court fully affirm the orders denying the State's plea to the jurisdiction and granting a temporary injunction, and that the Court immediately reinstate the injunction pending any further proceedings on appeal.

The State does not request a complete reversal and rendition of judgment. Its prayer is limited to seeking a reversal of the order denying its plea on the ultra vires claims and dismissing only those claims. *Apts' Brf*. at 56. The Hemp Industry prays that all claims be retained. But under any outcome, this case should be remanded for further proceedings consistent with the opinion. *See Abbott v. Harris Cnty.*, 672 S.W.3d 1, 21 (Tex. 2023) (remanding even where temporary injunction was dissolved).

The Hemp Industry further prays for any other relief to which it may be entitled at law or in equity.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with Texas Rule of Appellate Procedure 9.4(e) because it has been prepared in a conventional typeface of 14-point for text and 12-point for footnotes. This brief also complies with Rule 9.4(i) because, according to the word count tool in Microsoft Word©, it contains 14,662 words, excluding any parts exempted by Rule 9.4(i).

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