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Norma Favela Barceleau
District Clerk
El Paso County
2025DCV3641

CAUSE NO: 2025DCV3641

POWERED BY PEOPLE *Plaintiff*,	§	IN THE DISTRICT COURT
v.	§	41ST JUDICIAL DISTRICT
KEN PAXTON, IN HIS OFFICIAL CAPACITY AS TEXAS ATTORNEY GENERAL *Defendant.*	§	EL PASO COUNTY, TEXAS

THE ATTORNEY GENERAL'S PLEA TO THE JURISDICTION AND PLEA IN ABATEMENT

This lawsuit is moot. On August 8, 2025, Defendant Ken Paxton (the Attorney General) filed a lawsuit against Plaintiff Powered by People (PxP) alleging violations of the Deceptive Trade Practices Act and, correspondingly, withdrew the presuit investigative RTE issued on August 6, 2025. There is no longer a presuit investigation nor a live RTE. Thus, PxP's lawsuit challenging the RTE is moot.

Even if it wasn't, this case must still be abated because the Attorney General's lawsuit against PxP in Tarrant County was first-filed and involves the same underlying issues and claims brought by PxP in this second-filed lawsuit in El Paso County. Tarrant County, therefore, has dominant jurisdiction.

This Court should dismiss this suit as moot or, in the alternative, abate this suit as the issues are already being litigated in the first-filed Tarrant County proceedings.

BACKGROUND

On August 6, 2025, the Attorney General served Plaintiff with a narrow Request to Examine (RTE) seeking only records from June 1, 2025, through the present, relating to the solicitation and expenditure of funds to aid and abet Texas legislators abandoning their offices and relating to

any benefits or compensation offered or provided to the legislators for abandoning their offices. Ex. A. Given the exceedingly narrow scope of the request and the emergency nature of the issues at stake, production was demanded by 5 p.m. on August 8, 2025. *Id.*; *see also* PxP's Orig. Pet. ¶ 15 (PxP admitting that it would only take "several days" to gather the documents for production).

On August 7, 2025, at 9:13 a.m., PxP emailed the Attorney General requesting a two-week extension while they obtained local counsel to "review and respond" to the RTE. Ex. B.

The same day, at 10:27 a.m., the Attorney General responded by noting that the investigation was time-sensitive such that a categorical two-week extension was impossible, but if there were specific requests for which timely compliance was impractical, they could discuss an extension on a case-by-case basis. *Id.*

On August 8, 2025, at 10:56 a.m., PxP emailed the Attorney General to confirm that they had obtained local counsel. *Id.*

The same day, at 11:21 a.m., ignoring the offer from the Attorney General relating to extensions on a case-by-case basis, PxP emailed the Attorney General requesting a categorical 10-day extension to respond to the RTE. *Id.* PxP failed to identify which requests were impractical to timely respond to and provided no details as to why it could not comply with *any* of the requests. *Id.* PxP, further, failed to offer to produce responsive documents on a rolling basis. *Id.*

At 1:47 p.m., the Attorney General notified PxP that the State of Texas (the State), had filed a Deceptive Trade Practice Act (DTPA) suit relating to the same conduct and documents at issue in the RTE and that the State sought an emergency *ex parte* temporary restraining order. Ex. B. The Attorney General attached a copy of the lawsuit to the email and asked if PxP wanted to be heard at the emergency temporary restraining order hearing. *Id.*; *see also* Ex. C (State's Orig. Pet.)

Nearly two hours later, at 3:26 p.m., PxP filed the instant 24-page lawsuit challenging the RTE. PxP's Orig. Pet. The lawsuit reveals that PxP had no intention of ever producing responsive documents. *Id.* PxP claims in the lawsuit that the Attorney General's investigation violates their constitutional rights and seeks a temporary and permanent injunction enjoining enforcement of the RTE or, alternatively, protection from compliance with the RTE. *Id.*

One minute after filing suit, at 3:27 p.m., PxP sent a colorful email claiming that the Attorney General had been "properly served" by email with the PxP lawsuit and claiming that the Attorney General had "an adequate chance to respond" to the lawsuit filed a minute earlier. Ex. B. The email went on to baselessly threaten sanctions (a threat later repeated on the phone to undersigned counsel). *Id.* Importantly, PxP asked to be heard at the emergency temporary restraining order hearing in Tarrant County, Texas. *Id.*

Pursuant to the request to be heard, counsel for the Attorney General worked diligently with the Court to ensure that accommodations were made for PxP to appear and participate in the emergency temporary restraining order hearing in Tarrant County, Texas.

At approximately 4:30 p.m., counsel for both parties appeared and were heard at the emergency temporary restraining order hearing in Cause No. 348-367652-25 before the 348th District Court in Tarrant County, Texas. Ex. D (Temporary Restraining Order). At the conclusion of the hearing, after considering the pleadings, evidence, and arguments of the parties, the Honorable Megan Fahey entered a temporary restraining order restraining PxP and Robert Francis O'Rourke (Robert Francis) from:

i. Using political funds for the improper, unlawful, and non-political purposes of (1) funding out-of-state travel, hotel, or dining accommodations or services to unexcused Texas legislators during any special legislative session called by the Texas

Governor, or (2) funding payments of fines provided by Texas House rules for unexcused legislative absences;

ii. Raising funds for non-political purposes, including to (1) fund out-of-state travel, hotel, or dining accommodations or services to unexcused Texas legislators during any special legislative session called by the Texas Governor, or (2) fund payments of fines provided by Texas House rules for unexcused legislative absences, through the ActBlue platform or any other platform that purports to exist for political fundraising purposes;

iii. Offering, conferring, or agreeing to confer, travel, hotel, or dining accommodations or services (or funds to support such accommodations or services) to unexcused Texas legislators during any special legislative session called by the Texas Governor as consideration for a violation of such legislators' Constitutional duties; and

iv. Removing any property or funds from the State of Texas during the pendency of this lawsuit.

The 348th District Court scheduled a hearing on the State's request for a temporary injunction for August 19, 2025. *Id.*

On August 9, 2025, at 1:15 p.m., the Attorney General notified PTP via email that effective immediately it withdrew the challenged RTE as moot, given that the issues under investigation and documents sought by the RTE were now being litigated before the 348th District Court. Ex. E. The Attorney General asked PxP if it would dismiss the instant lawsuit as moot considering the withdrawn RTE. *Id.* No response was received at the time of this filing and it is assumed that PxP is opposed.

PLEA TO THE JURISDICTION

The burden is on the plaintiff to affirmatively demonstrate the trial court's jurisdiction. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). Subject matter jurisdiction is "never presumed and cannot be waived." *Tex. Ass'n of Bus. v. Tex. Air Ctr. Bd.*, 852 S.W.2d 440, 443–44 (Tex. 1993).

A plea to the jurisdiction challenges the court's authority to determine the subject matter of the controversy. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553–54 (Tex. 2000). "In deciding

a plea to the jurisdiction, a court may not weigh the claims' merits but must consider only the plaintiff's pleadings and the evidence pertinent to the jurisdictional inquiry." *County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002) (quoting *Texas Natural Res. Conservation Comm'n v. White*, 46 S.W.3d 864, 868 (Tex. 2001). The Court must grant a plea to the jurisdiction if the plaintiff's pleadings affirmatively negate the existence of jurisdiction or if the defendant presents evidence that negates the existence of the court's jurisdiction. *Miranda*, 133 S.W.3d at 226-27.

I. PxP's claims are moot because the Attorney General withdrew the challenged RTE.

Mootness, like standing, is a prerequisite of subject matter jurisdiction and it may be raised in a plea to the jurisdiction. *See e.g. Heckman v. Williamson Cnty.*, 369 S.W.3d 137 (Tex. 2012); *see also Tex. Dep't of Family & Protective Services v. Grassroots Leadership, Inc.*, Cause No. 23-0192, 2025 WL 1642437, at *1 (Tex. May 30, 2025) (explaining that "the only proper judgment in a moot case is one of dismissal for lack of jurisdiction."). Courts "do not have the power to decide moot cases." *Morath v. Lewis*, 601 S.W.3d 785, 789 (Tex. 2020) (per curiam) (citing *City of Krum v. Rice*, 543 S.W.3d 747, 750 (Tex. 2017) (per curiam)).

"A case becomes moot if, since the time of filing, there has ceased to exist a justiciable controversy between the parties—that is, if the issues presented are no longer 'live,' or if the parties lack a legally cognizable interest in the outcome." *Heckman*, 369 S.W.3d at 162. "Put simply, a case is moot when the court's action on the merits cannot affect the parties' rights or interests." *Id.*; *see Glassdoor, Inc. v. Andra Grp., LP*, 575 S.W.3d 523, 530 (Tex. 2019).

Assessing mootness generally proceeds in two steps. First, the Court determines if the case is moot on its face—that is, has the live controversy come to an end. *See Travelers Ins. Co. v.*

Joachim, 315 S.W.3d 860, 865 (Tex. 2010). If the answer is yes, then the Court determines if any "exception" to mootness applies. *See Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001).

A. PxP's challenge to the RTE is moot on its face because the RTE is withdrawn.

PxP's seeks protection from the RTE requests and an injunction enjoining the Attorney General from enforcing compliance with the RTE. *See* PxP's Orig. Pet. at Prayer. These claims are facially mooted by the Attorney General withdrawing the challenged RTE. Ex. B; *see e.g. Villafani v. Trejo*, 251 S.W.3d 466, 469 (Tex. 2008) (nonsuiting renders a case moot); *see also Speer v. Presbyterian Child. Home & Serv. Agency*, 847 S.W.2d 227, 229 (Tex. 1993) (suit becomes moot when the action sought to be enjoined has been accomplished). Because no exceptions to the mootness doctrine exist this Court must dismiss PxP's suit for lack of jurisdiction.

B. PxP's claims are not subject to an exception to the mootness doctrine.

PxP will likely wrongly contend that that two exceptions to the mootness doctrine applies: (i) the voluntary cessation exception and (ii) the capable-of-repetition exception. *Gen. Land Office of State of Tex. v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 571 (Tex. 1990); *Grassroots Leadership*, 2025 WL 1642437 at *19 (explaining that exception is a bit of a misnomer because the exceptions only helps determine whether a case that seems moot at first glance really is—there is no "exception" allowing courts to adjudicate cases for which there is live controversy). Yet neither exception applies.

(i) PxP cannot rely on voluntary cessation as a mootness exception because it is absolutely clear that reissuance of the challenged RTE is not reasonably likely to occur.

Generally, voluntary cessation is not a basis for mootness because it often represents not a defendant's surrender but its attempt to avoid a binding loss. *Grassroots Leadership*, 2025 WL 1642437 at *14. If voluntary cessation always required dismissal, a defendant unilaterally "could

control the jurisdiction of courts with protestations of repentance and reform, while remaining free to return to their old ways." *Matthews v. Kountze Indep. Sch. Dist.*, 484 S.W.3d 416, 418 (Tex. 2016).

However, as is the case in this suit, voluntary cessation *can* serve as a basis for mootness when subsequent events make "absolutely clear that the [challenged conduct] could not reasonably be expected to recur." *Bexar Metro. Water Dist. v. City of Bulverde*, 234 S.W.3d 126, 129 (Tex. App.—Austin 2007) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)).

The Texas Supreme Court has held that for it to be "absolutely clear" that the challenged conduct is not reasonably likely to reoccur, there must be no qualification or prevarications in the representations by the defendant. *See e.g.*, *In re Cont. Freighters, Inc.*, 646 S.W.3d 810, 812–14 (Tex. 2022) (holding that a plaintiff's withdrawal of a discovery request after the court indicated interest in reviewing a mandamus petition did not moot the issue where the withdrawal lacked any guarantees that the same demands would not be made in the future).

The U.S. Supreme Court case *DeFunis v. Odegaard* is instructive. 416 U.S. 312 (1974). In *DeFunis*, the Court found that voluntary cessation of the challenged conduct mooted the case when the defendant's representations made it absolutely clear to the court that the challenged conduct was unlikely to reoccur. *Id.* at 316-20. DeFunis alleged that a state law school denied him admission based on his race. *Id* at 314. DeFunis was provisionally admitted after obtaining an injunction from a trial court. *Id.* When the case was argued before the U.S. Supreme Court, DeFunis was in his final term of last school. *Id.* at 315–16. The law school represented during oral argument that whether it won or lost the appeal, it would allow DeFunis to complete that term and graduate—

thereby eliminating the injury of being wrongly denied admission based on race. *Id.* at 316. The U.S. Supreme Court dismissed the case as moot, reasoning that even if there was voluntary cessation of the challenged conduct, the school's representation satisfied the principle that it was not reasonably likely to recur as to Defunis. *Id.* at 316–20. In doing so, the majority rejected as mere speculation the dissent's hypotheticals that the case was not moot because unexpected events such as illness, economic necessity, or academic failure might prevent DeFunis from graduating at the end of the term. *Id.* at 348 (Brennan, J., dissenting). The majority opinion observed, however, that the kind of "voluntary cessation" that would not lead to mootness would have existed if the law school had simply (and not irrevocably) changed its admission procedures, leaving it free upon dismissal of the case to restore those procedures and eject DeFunis. *Id.* at 318.

Texas courts have held similarly. For example, in *Robinson v. Alief Indep. Sch. Dist.*, Robinson sought injunctive and declaratory relief against his employer, a school district, including expungement of his personnel file and a declaration that the school district violated his constitutional rights. 298 S.W.3d 323 (Tex. App. - Houston [14th Dist.] 2009, pet. denied). After Robinson sued, the school district voluntarily expunged Robinson's personnel records as requested. *Id.* at 323, 327 n.2. The school district then filed a plea to the jurisdiction alleging mootness, which the trial court granted. *Id.* at 324. On appeal, Robinson argued his claim was not moot because, without a judicial admission of wrongdoing or judicial action barring the school district from reversing its decision, the school district could later retract its expungement of the records. *Id.* at 325. The Fourteenth Court of Appeals rejected this argument, finding that Robinson had no evidence of any reasonable expectation that the school district would later return the expunged documents to his personnel file; thus, his request for injunctive relief "*in the event [the school district] reinstates the documents*

sometime in the future" was "merely conjunctural and hypothetical" and would result in an advisory opinion. *Id.* at 326-27.

These cases are in sharp contrast with your typical findings of voluntary cessation, which involve state actors *not* making it clear that the challenged conduct will not recur, and instead reserving discretion to themselves to repeat the conduct again in the future. For example, in *Matthews v. Kountze Independent School District*, a group of middle and high school cheerleaders brought a constitutional challenge to the school districts policy prohibiting the display of banners containing religious signs or messages at school-sponsored events. 484 S.W.3d at 417. The school district filed a plea to the jurisdiction asserting mootness through voluntary cessation after it adopted a resolution providing that the school district was "not *required* to prohibit messages on school banners ... that display fleeting expressions of community sentiment solely because the source or origin of such message is religious," but retained "the right to restrict the content of school banners." *Id.* The trial court denied the plea to the jurisdiction, but the court of appeals held that the suit was moot. *Id.* The Texas Supreme Court reversed and remanded because the new policy merely stated that the school district was not *required* to prohibit the cheerleaders from displaying the challenged banners, and *reserved* to the school district unfettered discretion in regulating same, including the apparent authority to do so based solely on their religious content. *Id.* at 420. The case was not moot because the school district's voluntary cessation provided "no assurance that the District will not prohibit the cheerleaders from displaying banners with religious signs or messages at school-sponsored events in the future."[1] *Id.* at 419–20.

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[1] *See Texas Health Care Info. Council v. Seton Health Plan, Inc.*, 94 S.W.3d 841 (Tex.App.–Austin 2002, pet. denied) (State's voluntary abandonment of attempts to collect the challenged penalty did not render the controversy moot nor deprive the trial court of jurisdiction); *see also Austin Parents for Med. Choice v. Austin Indep. Sch. Dist.*,

This Court must dismiss PxP's lawsuit as moot. The instant suit is like the circumstances in *DeFunis* because the Attorney General withdrew the challenged RTE, and affirmatively and irrevocably represents that the agency will not reissue the challenged RTE nor send any other RTE to PxP seeking records relating to (1) the solicitation and expenditure of funds to aid and abet Texas legislators abandoning their offices, or (2) relating to any benefits or compensation offered or provided to the legislators for abandoning their offices during the 89th Special Legislative Session. *See* Stone Declaration. Unlike the representations made in *Matthews*, this unequivocal representation by the Attorney General makes it "absolutely clear" that the challenged RTE will not be reissued—thereby establishing mootness through voluntary cessation. The Texas Supreme Court has recently admonished an El Paso District Court "that respect is owed" to the Attorney General and it has a "duty to extend to the [Attorney General]—a member of a coordinate branch—a presumption of regularity, good faith, and legality." *Annunciation House*, 2025 WL 1536224 at *25 (quoting *Webster v. Comm'n for Lawyer Discipline*, 704 S.W.3d 478, 501 (Tex. 2024)). PxP has not and cannot overcome the Stone Declaration that the challenged RTE will not be reissued.

And, just as in *Robinson*, PxP cannot present any evidence—only conjecture and hypotheticals—that the Attorney General is reasonably likely to reissue the challenged RTE despite the Stone Declaration. *See Grassroots Leadership*, 2025 WL 1642437 at *15 (holding that "mootness poses a practical test, not one that turns on speculative, theoretical, contingent, or unlikely events that might happen."). This is especially true because RTEs are presuit investigative tools. Tex. Bus. Orgs. Code § 12.153 ("The attorney general may *investigate* the organization, conduct, and

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No. 03-21-00681-CV, 2023 WL 5109592, at *2 (Tex. App.—Austin Aug. 10, 2023, no pet.) (holding that voluntary cessation of a challenged policy by a school district did not moot a challenge to same where the school district had never expressed the position that it could not and would not reinstate the challenged policy.).

management of a filing entity or foreign filing entity and determine if the entity has been or is engaged in acts or conduct in violation of … any law of this state." (emphasis added)). But that presuit investigation ended when the State filed suit in Tarrant County. *See* Ex. C. Now, the allegations relating to the challenged RTE will be addressed in the pending lawsuit in Tarrant County, and any relevant records will be requested via the ordinary civil discovery process. *Id.* Any attempt to reissue the challenged RTE could be construed as an attempt to use a presuit investigatory tool circumvent the ordinary discovery process set forth in the Texas Rules of Civil Procedure. So even if the Attorney General *did* reissue the RTE—which he has repeatedly assured he will not—it may not even be enforceable. Accordingly, this Court, like the U.S. Supreme Court in *DeFunis* and the Fourteenth Court in *Robinson*, should find that the PxP's claims are moot because of the Attorney General's withdrawal of the RTE and unqualified representation that the challenged conduct will not reoccur.

(ii) The capable-of-repetition exception is inapt.

The capable-of-repetition exception likewise applies only in rare circumstances, and this is not one of them. *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001). To invoke it, a plaintiff must prove that "(1) the challenged action was too short in duration to be litigated fully before the action ceased or expired; and (2) a reasonable expectation exists that the same complaining party will be subjected to the same action again." *Id.* The "mere physical or theoretical possibility" is insufficient to invoke the capable-of-repetition exception. *Murphy v. Hunt*, 455 U.S. 478, 482 (1982). "[T]here must be a 'reasonable expectation' or a 'demonstrated probability' that the same controversy will recur involving the *same* complaining party." *Id.* (emphasis added); *see also Uresti*, 377

S.W.3d at 696 (observing that "a reasonable expectation must exist that the 'same complaining party will be subjected to the same action again'" (quoting *Williams*, 52 S.W.3d at 184)).

PxP fails on both counts. *First*, the challenged action, compliance with the challenged RTE or a future similar RTE, is not so short in duration that PxP cannot fully litigate its challenge before compliance with the challenged RTE ceases or expires. The Texas Supreme Court held in *Annunciation House* that all RTE recipients must have an opportunity to seek to precompliance review from district courts. 2025 WL 1536224 at *24 (identifying requests for protection pursuant to Tex. R. Civ. P. 176.6 as one such method of precompliance review). PxP sought protection from the challenged RTE under Tex. R. Civ. P. 176.6 and 192.6. PxP's Orig. Pet. ¶¶ 43-49. And, correspondingly, Tex. R. Civ. P. 176.6(e) provides that "a person need not comply with the part of a subpoena from which protection is sought under this paragraph unless ordered to do so by the court." PxP is aware of this because it emailed the Attorney General to advise that the filing of the instant suit relieved PxP of its duty to comply. *See* Ex. B (quoting Tex. R. Civ. P. 176.6(e)). These rules affording precompliance review of RTEs and relieving the party seeking review of their obligations to comply with the RTE during until the matter is adjudicated render the circumstances in the instant suit entirely distinguishable from other cases where courts have found that the challenged action was too short in duration to be litigated before the challenged action expires. *See e.g., Tex. Parks & Wildlife Dep't v. RW Trophy Ranch, Ltd.*, 712 S.W.3d 943 (Tex. App. [15th Dist.] 2025).

Second, and as discussed *supra*, the burden is on PxP to show a "reasonable likelihood" that the Attorney General will reissue the same RTE. None exists where the Stone Declaration makes absolutely clear that the same, or similar, RTE will not be sent to PxP in the future. *See* Stone

Declaration. PxP cannot produce any evidence otherwise. PxP's speculation and hypotheticals are insufficient to satisfy this burden. *Murphy*, 455 U.S. at 482.

PxP has failed to meet both necessary elements to show entitlement to the capable-of-repetition exception to the mootness doctrine; consequently, this Court must grant the Attorney General's Plea to the Jurisdiction and dismiss this suit as moot.

In the alternatively, should the Court conclude that this suit is *not* moot, it should abate this proceeding as Tarrant County has acquired dominant jurisdiction over the issues in dispute.

PLEA IN ABATEMENT

As a general rule, "the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts." *In re J.B. Hunt Transport, Inc.*, 492 S.W.3d 287, 299–300 (Tex. 2016) (orig. proceeding). (quoting *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974) (orig. proceeding)). When two suits are inherently interrelated, the court in which the second action was filed must grant a plea in abatement unless an exception to the general rule applies. *Id.* at 294. "Filing a plea in abatement is the proper method for drawing a court's attention to another court's possible dominant jurisdiction." *In re Puig*, 351 S.W.3d 301, 305 (Tex. 2011) (orig. proceeding).

A claim of dominant jurisdiction is asserted through a plea in abatement in the second-filed suit. *See In re Puig*, 351 S.W.3d 301, 305 (Tex. 2011) (per curiam) (orig. proceeding). If the party asserting dominant jurisdiction establisheses that the doctrine applies, the trial court in the second-filed suit has no discretion to deny the plea unless the party resisting abatement establishes an exception to the rule of dominant jurisdiction. *See In re J.B. Hunt*, 492 S.W.3d at 294 (concluding real parties' evidence "[fell] well below the legal standards" to establish exception to dominant jurisdiction); *see also In re Red Dot Bldg. Sys., Inc.*, 504 S.W.3d 320, 322–23 (Tex. 2016) (per curiam)

(orig. proceeding); *In re Tex. Christian Univ.*, 571 S.W.3d 384, 389, 391 (Tex. App.—Dallas 2019, orig. proceeding). Because the dominant jurisdiction doctrine applies and PxP have not demonstrated the existence of an exception, this Court should grant an abatement pending resolution of the first-filed suit in Tarrant County.

I. The Tarrant County and El Paso County suits are inherently interrelated.

Generally, a plea in abatement must be granted when an inherent interrelation of the subject matter exists in two pending lawsuits. *Perry v. Del Rio*, 66 S.W.3d 239, 252 (Tex. 2001). Abatement of a suit due to the pendency of a prior suit is based on the principles of comity, convenience, and the necessity for an orderly procedure in the trial of contested issues. *Miles v. Ford Motor Co.*, 914 S.W.2d 135, 138 (Tex. 1995).

The first question to address in the dominant-jurisdiction analysis is whether there is an inherent interrelationship between the two cases—in this case, between the first-filed suit in the 348th District Court in Tarrant County and the second-filed suit in the in El Paso County. *See J.B. Hunt Transp.*, 492 S.W.3d at 292; *In re Happy State Bank*, No. 02-17-00453-CV, 2018 WL 1918217, at *4 (Tex. App.—Fort Worth Apr. 23, 2018, orig. proceeding) (mem. op.). If yes, then dominant jurisdiction applies and, absent an exception, the second-filed suit must be abated. *J.B. Hunt Transp.*, 492 S.W.3d at 292; *see Happy State Bank*, 2018 WL 1918217, at *7. If not, then both suits may proceed. *J.B. Hunt Transp.*, 492 S.W.3d at 292; *see generally Happy State Bank*, 2018 WL 1918217, at *4.

In determining whether the suits are inherently interrelated, courts are *guided* by the compulsory counterclaim rule, Tex. R. Civ. P. 97(a), and joinder of a party rule, Tex. R. Civ. P. 39.

Wyatt v. Shaw Plumbing Co., 760 S.W.2d 247 (Tex. 1988); *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d at 292.

The Court should find that the Tarrant County and El Paso County proceedings are inherently interrelated. A counterclaim is compulsory if it meets the following six characteristics: (1) it is within the jurisdiction of the court; (2) it is not at the time of the filing of the answer the subject of a pending action; (3) the action is mature and owned by the defendant at the time of filing the answer; (4) it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; (5) it is against an opposing party in the same capacity; and (6) it does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction. *See* Tex. R. Civ. P. 97(a); *see also Ingersoll-Rand Co. v. Valero Energy Corp.*, 997 S.W.2d 203, 207 (Tex. 1999). All six of those elements are met here, and the undersigned counsel is not aware of any dispute on that point. The allegations and claims in the Tarrant County suit involve *the same* allegations underlying the investigation challenged by PxP in El Paso. *Compare* Ex. C *with* PxP's Orig. Pet. The first-filed Tarrant County suit, moreover, will necessarily involve the same underlying records and challenges that form the basis for this second-filed El Paso suit. *Id.* Tarrant County, therefore, has dominant jurisdiction and should adjudicate these issues.

The Tarrant County and El Paso County suits are, moreover, inherently interrelated due to the substantial risk of conflicting rulings creating "inconsistent obligations" for the parties. *Encore Enterprises, Inc. v. Borderplex Realty Tr.*, 583 S.W.3d 713, 724 (Tex. App. 2019) (applying Rule 39(a) in a dominant jurisdiction analyses). Should this Court rule that the withdrawn RTE requests to PxP are unconstitutional, it will create inconsistent obligations and confusion for the parties, because the same requests will be made to PxP in the Fort Worth suit under the Texas Rules of

Civil Procedure, and the Tarrant County Court will address the same questions about their scope and constitutionality. Not only will this create confusion and conflicting rulings, but it will also waste judicial resources by having two Courts consider the same issues involving the same parties.

This Court should abate this proceeding where Tarrant County has dominant jurisdiction.

II. There is no exception to the "first-filed" rule.

Exceptions to this "first-filed" rule may apply when its justifications fail, such as when the first court does not have the full matter before it, when conferring dominant jurisdiction on the first court will delay or even prevent a prompt and full adjudication, or "when the race to the court-house was unfairly run." *Perry*, 66 S.W.3d at 252. A plaintiff who filed the first suit may be estopped from asserting the dominant jurisdiction of the first court if it is found that he is guilty of inequitable conduct. *Hiles v. Arnie & Co.*, 402 S.W.3d 820, 825–26 (Tex. App.—Houston [14th Dist.] 2013, pet. denied).

A race to the courthouse by itself is not inequitable conduct. *In re Texas Christian Univ.*, 571 S.W.3d 384, 392 (Tex. App. 2019). In fact, one of the justifications for the first-filed rule is "simple fairness: in a race to the courthouse, the winner's suit should have dominant jurisdiction." *In re J.B. Hunt Transport, Inc.*, 492 S.W.3d at 296 (citing *Perry*, 66 S.W.3d at 252); *Lee v. GST Transp. Sys., LP*, 334 S.W.3d 16, 18 (Tex. App.—Dallas 2008, pet. denied). Moreover, this entire matter will come before the Tarrant county court, because as mentioned, the exact legal issues, records, and constitutional challenges will all be at issue.

No exception in the present case exists, nor have PxP alleged that one does. Accordingly, because the Tarrant County case is first filed, the dominant jurisdiction doctrine applies, and this the El Paso County case must be abated pending resolution of the Tarrant County matter.

PRAYER

For the reasons stated above, the Attorney General prays that the Court GRANT the Attorney General's Plea to the Jurisdiction, dismiss PxP's lawsuit and all claims and causes of action stated therein with prejudice, and render judgment that PxP take nothing; that the Attorney General recover its reasonable and necessary attorneys' fees and costs of court; and for all other relief, at law and in equity, to which it may show itself to be justly entitled. Alternatively, the Attorney General asks that the Court to abate this proceeding pending resolution of the first-filed Tarrant County suit and for all other relief, at law and in equity, to which it may show itself to be justly entitled, including attorneys' fees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2025, a copy of the foregoing document was served to all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ Johnathan Stone
JOHNATHAN STONE
Chief, Consumer Protection Division
State Bar No. 24071779

DECLARATION

Pursuant to Tex. Civ. Rem. & Prac. Code § 132.001(f), JOHNATHAN STONE submits this unsworn declaration in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by Texas Rule of Civil Procedure 682. I am an employee of the following governmental agency: Texas Office of the Attorney General. I am executing this declaration as part of my assigned duties and responsibilities.

I declare under penalty of perjury that the Office of the Texas Attorney General will not reissue the challenged RTE nor send any other RTE to PxP seeking records relating to the solicitation and expenditure of funds to aid and abet Texas legislators abandoning their offices and relating to any benefits or compensation offered or provided to the legislators for abandoning their offices during the 89th Special Legislative Session.

Executed in Travis County, State of Texas, on the 11th day of August 2025.

/s/ Johnathan Stone
JOHNATHAN STONE
Chief, Consumer Protection Division
State Bar No. 24071779