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Mr. Christopher A. Prine
Clerk of the Court
FIFTEENTH COURT OF APPEALS
300 W. 15th Street, Suite 607
Austin, Texas 78701

Re: Case No. 15-25-00140-CV; In re Powered By People and
Robert Francis O'Rourke, Relators

Trial Court Cause No. 348-367652-2025

Supplemental Notice Responding to the State's October 23, 2025 Advisory
and Relating to Jurisdictional Defect

To The Honorable Fifteenth Court of Appeals:

In the course of preparing for oral argument and reanalyzing the impact of the State's October 23, 2025 Advisory, Relators determined that the State introduced a jurisdictional defect into the proceeding below through their most recent amended pleading. Given that "all courts bear the affirmative obligation to ascertain that subject matter jurisdiction exists," *City of Houston v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013) (internal quotation marks and citations omitted), Relators respectfully submit this notice in advance of the argument to give the Court an opportunity to consider the issue and the State an opportunity to respond.

The State's Second Amended Petition, which was attached to its Advisory, withdraws its claims for a temporary restraining order, temporary injunctions, and permanent injunctions. As it relates to the DTPA, it pleads only a claim for civil penalties based on Texas Business and Commerce Code § 17.47(c). However, Section 17.47 does not permit, and therefore courts have no jurisdiction to hear, a standalone request for civil penalties under subsection (c). The relevant language reads:

In addition to the request for a temporary restraining order, or permanent injunction **in a proceeding brought under Subsection (a)** of this section, the consumer protection division may request, and the trier of fact may award, a civil penalty

Tex. Bus. & Comm. Code § 17.47(c) (emphasis added).

Without a request for injunctive relief in a proceeding under Subsection (a), there is no statutory jurisdiction for a standalone civil penalty proceeding under Subsection (c). The State essentially made this point itself in an earlier brief at the trial court. MR.0373 (“The only action Section 17.47 (titled, ‘Restraining Orders’) authorizes the State to bring is one for injunctive relief, and any civil penalties must be ‘in addition to the request’ for injunctive relief.”) (quoting Tex. Bus. & Comm. Code § 17.47). Relators agree that the plain text of the statute only authorizes the State to bring suits for civil penalties when those requests are brought with a request for injunctive relief.

This appears to be a novel legal issue. Relators have found no authority addressing, even implicitly, a situation where the Attorney General brought a stand-alone DTPA civil penalty action. On top of the “in addition to” and “in a proceeding” language, as well as the Section’s title, “Restraining Orders,” legislative history appears to support this reading. *See* Bill Analysis on S.B. 75 Before the Senate Subcommittee on Consumer Affairs at 42, 63d Leg., R.S. (Feb. 2, 1973)¹ (“Section 17.47: Restraining Orders. Sets forth in great detail the manner by which the Consumer Protection Division shall go about obtaining restraining orders . . . [and] civil penalties to be applicable only to those violations occurring prior to the awarding of the restraining order or injunction.”). Additionally, the Legislature knows how to create independent civil penalty jurisdiction when it wishes to, but did not do so here. *Cf.* Tex. Bus. & Com. Code § 20.11 (“attorney general may file . . . for: (1) injunctive relief . . . **or** (2) a civil penalty.”) (emphasis added).

Although this development further bolsters Relator’s request that this Court direct dismissal for lack of jurisdiction, the request for mandamus of the temporary restraining order is not moot. The State continues to attempt to rely on alleged violations of that order as the basis for seeking quo warranto, *see* Ex. A to State’s Advisory ¶ 43, and as grounds

¹ Available at https://lrl.texas.gov/scanned/DTPA/SB75_63R.pdf.

for criminal and civil contempt. *Cf. Ex parte Browne*, 543 S.W.2d 82, 86 (Tex. 1976) (“Mootness of the merits does not wash away one's prior contemptuous conduct toward the court.”). Section 17.47(e) further permits the Attorney General or a district attorney to seek civil penalties for the violation of any injunctive relief granted under subsection (a). Therefore, this Court’s mandamus ruling “would affect substantial rights of” Relators. *Zipp v. Wuemling*, 218 S.W.3d 71, 74 (Tex. 2007). And, as described in Relator’s previous letter response, other exceptions to mootness exist.

Respectfully Submitted,

/s/ Mimi Marziani

Mimi Marziani

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true and correct copy of the foregoing pleading was served on the following as set forth below, on November 3, 2025.

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Mimi Marziani

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