No. 26-0467

In the Supreme Court of Texas

IN RE NOVARTIS PHARMACEUTICALS CORPORATION,

Relator.

Original Proceeding from the 71st Judicial District Court in Harrison County, Texas

Trial Court Cause No. 23-0276

The Honorable Brad Morin Presiding

BRIEF OF *AMICUS CURIAE* U.S. CHAMBER OF COMMERCE IN SUPPORT OF PETITIONER

GARY M. DREYER
State Bar No. 24131186
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
T: (212) 698-3568
F: (212) 698-3599
gary.dreyer@dechert.com

STEVEN A. ENGEL
(*Pro Hac Vice* Application Forthcoming)
DECHERT LLP
1900 K Street, NW
Washington, DC 20006

MICHAEL H. MCGINLEY
(*Pro Hac Vice* Application Forthcoming)
DECHERT LLP
2929 Arch Street
Cira Centre
Philadelphia, PA 19104

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IDENTITY OF PARTIES, *AMICUS CURIAE*, AND COUNSEL

The parties and their counsel are identified in Novartis Pharmaceuticals Corporation's Brief on the Merits. This *amicus curiae* brief is written on behalf of *Amicus Curiae* the Chamber of Commerce of the United States of America ("Chamber"). The Chamber is a nonprofit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

The Chamber is represented by the following counsel:

GARY M. DREYER
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

STEVEN A. ENGEL
(*Pro Hac Vice* Application Forthcoming)
DECHERT LLP
1900 K Street, NW
Washington, DC 20006

MICHAEL H. MCGINLEY
(*Pro Hac Vice* Application Forthcoming)
DECHERT LLP
2929 Arch Street
Cira Centre
Philadelphia, PA 19104

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The *qui tam* provisions of the Texas Medicaid Fraud Prevention Act ("TMFPA"), like their federal counterpart in the False Claims Act ("FCA"), violate the separation of powers. The law incentivizes "relators" to pursue litigation on the sovereign's behalf with the prospect of a bounty. These acts are no doubt designed to protect the federal and state

[1] No counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amicus curiae*, its members, and its counsel made a monetary contribution to this brief's preparation or submission. *See* Tex. R. App. P. 11.

treasuries from fraud. But *qui tam* litigation has been grossly abused. Lacking any accountability to the public, relators and their counsel have exploited these extraordinary and unusual powers to seek private profit in cases that do not involve genuine fraud against the federal or state governments.

That transfer of core government power to private hands has exacted a substantial economic toll. Companies frequently spend millions of dollars conducting investigations, fielding discovery demands, and engaging in motions practice—all to defend against baseless allegations that the government has deemed unworthy of prosecution. Those litigation costs quickly add up. As a result, even meritless cases can be used to extract enormous settlements.

Because *qui tam* provisions impose costs that affect businesses across the nation, the Chamber has a significant interest in this case. The Chamber files this *amicus curiae* brief to assist the Court and explain why the TMFPA violates the Texas Constitution.[2]

[2] The Chamber agrees with Novartis's argument that Health Selection Group lacks constitutional standing, but files this brief to address the separation-of-powers problems underlying the TMFPA.

INTRODUCTION

The "separation of powers is foundational" and "firmly embedded in our nation's history." *Fin. Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 570 (Tex. 2013). That time-honored principle of American government ensures that each branch remains in its respective lane. But the separation of powers does not exist merely to protect the branches from one another. Rather, our system of separated powers is, at its core, a "basic and fundamental guarantee of liberty." *Tex. & New Orleans R.R. Co. v. R.R. Comm'n of Tex.*, 286 S.W.2d 112, 124 (Tex. 1955). This Court has therefore long refused to allow any branch of government to "encroach upon the powers and duties" of another. *Ex parte Rodriguez*, 39 Tex. 705, 758 (1873) (citation omitted).

This case requires the Court to do so once again. In 2007, the Texas legislature amended the TMFPA to include *qui tam* provisions, thereby deputizing private parties to litigate for the Texas government. But the legislature may not enforce its laws through such private bounty hunters. The Texas Constitution commands that "[t]he powers of the Government of the State of Texas shall be divided into three distinct departments"—Legislative, Executive, and Judicial. Tex. Const. art. II, § 1. The power

to litigate on the government's behalf is a "'quintessentially executive' power," which "may not be cleaved off from the Executive Branch." *Trump v. Slaughter*, 609 U.S. 422, 456 (2026) (citation omitted). To the contrary, the Texas Constitution carefully vests that power in politically accountable actors, namely the Texas Attorney General, who "shall represent the State in all suits and pleas in the Supreme Court of the State," Tex. Const. art. IV, § 22, and the County Attorneys, who "shall represent the State in all cases in the District and inferior courts in their respective counties," *id.* art. V, § 21.

The TMFPA's *qui tam* provisions violate these core constitutional requirements. Through those provisions, the state legislature has wrested executive power from the hands of government attorneys—to whom it is assigned by the Texas Constitution—and bestowed it upon unaccountable private plaintiffs who are free to pursue claims that state officials have declined to chase. Such a transfer of power is "plainly" unconstitutional. *In re Novartis Pharms. Corp.*, 740 S.W.3d 199, 218 (Tex. App. 2026) (Brister, C.J., dissenting).

Lest there be any doubt, the separation-of-powers principles embodied in the Texas Constitution reflect those in the federal

Constitution. And, recently, three Justices of the U.S. Supreme Court observed that "[t]here are substantial arguments that the *qui tam* device is inconsistent with Article II" of the U.S. Constitution. *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 449 (2023) (Thomas, J., dissenting); *see id.* at 442 (Kavanaugh, J., joined by Barrett, J., concurring) (same). Two judges on the U.S. Court of Appeals for the Fifth Circuit have since agreed. *See United States ex rel. Gentry v. Encompass Health Rehab. Hosp. of Pearland, LLC*, 157 F.4th 758, 766–67 (5th Cir. 2025) (Ho, J., concurring); *United States ex rel. Montcrief v. Peripheral Vascular Assocs., P.A.*, 133 F.4th 395, 410–11 (5th Cir. 2025) (Duncan, J., concurring).

Those jurists are correct. And the issue is even easier under the Texas Constitution. Just as the FCA's *qui tam* provisions contravene the separation-of-powers principles underpinning the federal Constitution, the TMFPA's *qui tam* provisions violate the separation-of-powers principles expressly enshrined in the Texas Constitution. That text leaves no possible doubt. This Court should hold the TMFPA's *qui tam* provisions unconstitutional and issue a writ of mandamus directing the dismissal of Health Selection Group's claims.

ARGUMENT

I. The Separation of Powers Is Fundamental to Both the Texas and United States Constitutions.

Texas derived its understanding of separated powers from the U.S. Constitution, including its conception of executive power. *See, e.g.*, *Webster v. Comm'n for Lawyer Discipline*, 704 S.W.3d 478, 487 (Tex. 2024). Thus, to understand the nature of executive power under the Texas Constitution, it is necessary to understand its origin in the Anglo-American legal tradition. That history shows that the legislature may not authorize private bounty hunters to litigate for the government. Instead, the Framers understood that "[a] basic step in organizing a civilized society" was to take the "sword" of law-enforcement actions "out of private hands and turn it over to an organized government, acting on behalf of all the people." *Robertson v. United States ex rel. Watson*, 560 U.S. 272, 282–83 (2010) (Roberts, C.J., dissenting from the dismissal of a writ of certiorari as improvidently granted).

A. The Framers' Understanding of Centralized Executive Power Predated the Founding.

The U.S. Constitution's conception of centralized executive authority traces back to the influential political theory of John Locke. As he explained, "in the state of Nature[,] every one has the executive power

of the law of Nature." John Locke, *Two Treatises on Civil Government* 197 (George Routledge & Sons ed., 1884). But "when they enter into society," individuals "give up the . . . executive power they had in the state of Nature into the hands of the society." *Id.* at 258. That is, the people delegate their executive authority to public officials, whose power is "to be directed to no other end but the peace, safety, and public good of the people." *Id.* at 259.

William Blackstone's *Commentaries* reflect a similar understanding. "In a state of society," he reasoned, the right "to put [the law] in execution" is "transferred from individuals to the sovereign power," who "alone . . . bears the sword of justice by the consent of the whole community." 4 William Blackstone, *Commentaries on the Laws of England* *7–8 (1769). And because the public "delegate[s] all its power and rights, with regard to the execution of the laws, to one visible magistrate," that officer is "the proper person to prosecute for all public offences." 1 Blackstone, *Commentaries* at *268.

Importantly, this understanding of the executive power was not strictly limited to the prosecution of "criminal" offenses. Rather, it extended to the pursuit of relief for all "infraction[s] of the public rights

belonging to th[e] community." 4 Blackstone, *Commentaries* at *2. Vindicating those public rights is the prerogative of the sovereign actor whom the people have empowered to administer the laws. *See id.*

Of course, the common law recognized that if a person has personally "suffered the damage" from a public infraction, then he might have a concomitant right to demand redress "in his own name." Locke, *supra*, at 196. But that would not permit him to pursue relief on behalf of the public writ large. "[N]o person" other than the official entrusted with the executive authority "can have an action for a public nuisance, or punish it," unless that "private person suffers some extraordinary damage." 3 Blackstone, *Commentaries* at *219–20. Because individual persons give up the right to exercise executive authority when they enter society, "the law gives no *private* remedy for any thing but a *private* wrong." *Id.* at *219; *see also* 5 Matthew Bacon, *A New Abridgement of the Law* 153 (5th ed. 1798) (explaining that "common nuisances against the publick are only punishable by a publick prosecution").

B. The Framers Vested All Executive Power in a Politically Accountable Executive.

The Framers of the U.S. Constitution enshrined this understanding in Article II's text, which vests "[t]he executive Power" in a single

"President of the United States." U.S. Const. art. II, § 1, cl. 1. The Framers adopted that unitary structure to ensure that "a President chosen by the entire Nation" would "oversee the execution of the laws." *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 499 (2010). And they entrusted "the President alone" with "all" of the Nation's executive Power in order to ensure that he would remain accountable for all those who might act on his behalf. *Seila Law LLC v. CFPB*, 591 U.S. 197, 203, 213 (2020); *see Free Enter. Fund*, 561 U.S. at 495–96.

Consistent with this need for accountability, the Framers did not vest "[p]rivate entities . . . with the 'executive Power.'" *Dep't of Transp. v. Ass'n of Am. R.R.*, 575 U.S. 43, 62 (2015) (Alito, J., concurring) (quoting U.S. Const. art. II, § 1, cl. 1). "[T]he intention of the Constitution" was instead "that the first Magistrate should be responsible for the executive department" in its entirety. 1 *Annals of Cong.* 480 (1789) (statement of James Madison). It would therefore be "utterly inadmissible" for Congress to vest executive authority "in any other person." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat) 304, 330 (1816); *see also Ass'n of Am. R.R.*, 575 U.S. at 62 (Alito, J., concurring) (questioning the propriety of

"citizen suits" that might delegate "the 'Executive power'" (citation omitted)).

C. Texas Has Adopted an Even Stronger Commitment to the Separation of Powers.

"Like the United States," Texas has adopted "a tripartite system of government." *Webster*, 704 S.W.3d at 487. But the separation of powers is even "more aggressively enforce[d]" in Texas because, unlike the federal Constitution, the Texas Constitution contains an "express separation of powers provision" in Article II, Section 1. *State v. Stephens*, 663 S.W.3d 45, 49–50 (Tex. Crim. App. 2021). That provision mandates that "the Government of the State of Texas shall be divided into three distinct departments"—the "Legislative," "Executive," and "Judicial." Tex. Const. art. II, § 1. Then it makes plain what is implied in the federal Constitution—that "no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted." *Id.*; *see Garcia v. City of Willis*, 593 S.W.3d 201, 206 (Tex. 2019).

That "explicit Separation of Powers provision—something the U.S. Constitution lacks—prohibits not just the *exercise* of one branch's powers by another branch, but also any *interference* with another branch's

exercise of its own authority." *In re Allcat Claims Serv., L.P.*, 356 S.W.3d 455, 485–86 (Tex. 2011) (Willett, J., concurring in part) (footnote omitted). And that interference need not be motivated by "[i]ll intent" or the product of "one part of the government's effort to colonize the others." *In re Tex. House of Representatives*, 702 S.W.3d 330, 344 (Tex. 2024). Even when "every branch seeks to discharge its duties in utmost good faith," this Court must "ensure that no branch is exercising its core authority in a way that negates the ability of a coordinate branch to do so." *Id.*

This anti-interference principle means that one branch can violate the separation of powers without directly arrogating to itself the powers of another branch. *See id.*; *Armadillo Bail Bonds v. State*, 802 S.W.2d 237, 239 (Tex. Crim. App. 1990) (en banc). Impairing the "effectual function of another [branch] raises concerns of separation of powers" all the same. *In re Turner*, 627 S.W.3d 654, 660 (Tex. 2021) (per curiam). And that is particularly true where one branch purports to reassign the duties or powers of another.

D. The Texas Constitution Has Empowered Specific Politically Accountable Actors to Litigate for the State.

Although the Texas Constitution does not have a unitary executive like the federal government, it specifies the politically accountable officials who may exercise the executive power to litigate on the State's behalf. Article IV, Section 22 provides that the Attorney General "shall represent the State in all suits and pleas in the Supreme Court of the State." Similarly, Article V, Section 21 provides that county attorneys "shall represent the State in all cases in the District and inferior courts in their respective counties." Read together, these provisions confirm that the "Texas Constitution authorizes the attorney general, county attorneys, and district attorneys to represent the state in various cases." *State ex rel. Durden v. Shahan*, 658 S.W.3d 300, 303 (Tex. 2022) (per curiam).

Those powers are necessarily exclusive. Where the Texas "Constitution provides how a thing . . . shall be done, such specification is a prohibition against its being done in any other manner." *Ferguson v. Wilcox*, 28 S.W.2d 526, 532 (Tex. 1930) (citation omitted). Or, put another way: "the [C]onstitution, in selecting the depositaries of a given power," intends "that the depositary should exercise an exclusive power." *State*

v. Int'l & Great N. R.R. Co., 35 S.W. 1067, 1068 (Tex. 1896) (citation omitted); *Parks v. West*, 111 S.W. 726, 727 (Tex. 1908) (explaining that "where a power is expressly given and the means by which, or the manner in which, it is to be exercised is prescribed, such means or manner is exclusive of all others").

The constitutional text confirms as much. Both provisions use the word "shall." *See* Tex. Const. art. IV, § 22; *id.* art. V, § 21. This Court must "presume the language of the Constitution was carefully selected, interpret words as they are generally understood, and rely heavily on the literal text." *In re Allcat*, 356 S.W.3d at 466. And "the word 'shall' is generally construed to be mandatory." *Chisholm v. Bewley Mills*, 287 S.W.2d 943, 945 (Tex. 1956); *see also, e.g.*, *Image API, LLC v. Young*, 691 S.W.3d 831, 841 (Tex. 2024) ("[U]sing words like shall or must, is mandatory."); Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 114 (2012) ("[W]hen the word shall can reasonably be read as mandatory, it ought to be so read."). Given that mandatory language, the legislature has no latitude to redefine who represents the State in litigation.

Indeed, the scope of these mandatory provisions extends to "all" cases in which the State is involved. *See* Tex. Const. art. IV, § 22; *id.* art. V, § 21. "'All' means the entire quantity." *Life Techs. Corp. v. Promega Corp.*, 580 U.S. 140, 146 (2017). Therefore, the plain text of Article IV, Section 22 and Article V, Section 21 confirm that there are no exceptions for certain categories of cases.

Instead, these provisions "mark the limits of legislative authority to prescribe who shall represent the state and control its interests in a lawsuit." *Allen v. Fisher*, 9 S.W.2d 731, 732 (Tex. Comm'n App. 1928). Because the Constitution "lodges with the county attorneys" and the Attorney General "the duty of representing the State" in court, the "powers . . . conferred by the Constitution upon these officials are exclusive," and the "Legislature cannot devolve them upon others." *Maud v. Terrell*, 200 S.W. 375, 376 (Tex. 1918); *see also Am. Liberty Pipe Line Co. v. Agey*, 167 S.W.2d 580, 583 (Tex. Civ. App. 1942), *aff'd*, 172 S.W.2d 972 (Tex. 1943) (reiterating that since "the authority to bring and maintain actions in the courts to enforce the rights of the State is vested by the Constitution exclusively in the State's attorneys," the "legislature is without power to divest that authority or to delegate it to others").

If nothing else, the legislature certainly cannot transfer these government powers to private parties. After all, "private delegations clearly raise even more troubling constitutional issues than their public counterparts." *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 469 (Tex. 1997). For the "basic concept of democratic rule under a republican form of government is compromised when public powers are abandoned to those who are neither elected by the People, appointed by a public official or entity, nor employed by the government." *Id.* The people of Texas have therefore wisely refrained from authorizing private parties to litigate on the State's behalf. "Private plaintiffs are not accountable to the people and are not charged with pursuing the public interest in enforcing a defendant's general compliance with regulatory law." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021).

Simply put, "nothing in the Constitution authorizes the Legislature to delegate to private parties the State's power" to vindicate public rights. *In re Novartis Pharms. Corp.*, 740 S.W.3d at 212 (Brister, C.J., dissenting). That power belongs to the Attorney General and the County Attorneys alone. And the legislature may not "divest these officials of their collective constitutional authority by shifting representation to

some other attorney" in the plaintiffs' bar. *El Paso Elec. Co. v. Tex. Dep't of Ins.*, 937 S.W.2d 432, 439 (Tex. 1996).

II. The TMFPA's *Qui Tam* Provisions Violate the Texas Constitution.

The TMFPA runs afoul of these basic principles. The Act's *qui tam* provisions authorize a private person to "bring a civil action for a violation" of the TMFPA "for the person *and for the state*." Tex. Hum. Res. Code § 36.101(a) (emphasis added). But the Constitution vests that power to "represent the State" elsewhere—in specific, elected officials. Tex. Const. art. IV, § 22; *id.* art. V, § 21. To uphold a redelegation of that power to private parties would dash the constitutional scheme.

That constitutional problem has only grown worse in recent years. For the first decade after its enactment, the TMFPA mandated that the court "shall dismiss the action" if the State declined to pursue it. Tex. Hum. Res. Code § 36.104(b) (2005). That command made sense, given that TMFPA claims concern "injury and liability to the State." *In re Tafel*, 738 S.W.3d 440, 448 (Tex. 2026). But the Texas legislature has since amended the statute to allow private individuals to continue litigation without the State's consent or involvement. *See* 2007 Tex. Sess. Law Serv. Ch. 29, § 4 (S.B. 362).

Now, if the State declines to take over the action, "the person bringing the action may proceed without the state's participation." Tex. Hum. Res. Code § 36.104(b). All the while, that person will be "motivated primarily by prospects of monetary reward rather than the public good." *Hughes Aircraft Co. v. United States ex rel. Schumer*, 520 U.S. 939, 949 (1997). If a private person succeeds in her *qui tam* action, the defendant must pay the same civil penalties as if the State had brought the action itself. *See* Tex. Hum. Res. Code § 36.101(b). And the private person receives a significant bounty from that penalty award. *See id.* § 36.110(a-1).

Accordingly, the TMFPA authorizes—indeed, incentivizes—private individuals to sue on behalf of the State in circumstances where the state attorneys specifically empowered by Article IV, Section 22, and Article V, Section 21 affirmatively decline to press the litigation. That cannot be. The Texas legislature is "restrained from conferring such duty and responsibility on the individual citizen." *Allen*, 9 S.W.2d at 732; *see El Paso Elec. Co.*, 937 S.W.2d at 439. If the people of Texas wish to experiment with such politically unaccountable government litigation, then there is an amendment process available to do that. *See* Tex. Const.

art. XVII. But until they exercise that power, the legislature may not short-circuit the people's will expressed in the Constitution. "[E]ither the Attorney General or a county or district attorney may represent the State in a particular situation, but these are the only choices," for "whichever official represents the State exercises exclusive authority." *Hill v. Tex. Water Quality Bd.*, 568 S.W.2d 738, 741 (Tex. Civ. App. 1978).

This Court should therefore hold that the TMFPA *qui tam* provisions violate Article II, Section 1; Article IV, Section 22; and Article V, Section 21. Affording private parties the power to pursue public litigation violates the separation-of-powers principles enshrined in the State's Constitution.

III. History Cannot Salvage the Texas *Qui Tam* Provisions' Affront to the Separation of Powers.

In federal court, a "primary counterargument" for upholding the federal FCA's *qui tam* provisions emphasizes the "historical pedigree of *qui tam* suits." *Polansky*, 599 U.S. at 450 (Thomas, J., dissenting). Whatever purchase those arguments might have under Article II of the U.S. Constitution, they cannot save the *qui tam* provisions of the TMFPA. The State's "constitution has independent vitality, and this court has the power and duty" to uphold the additional safeguards it contains. *LeCroy*

v. Hanlon, 713 S.W.2d 335, 339 (Tex. 1986). That includes the unequivocal commands of Article IV, Section 22, and Article V, Section 21, neither of which have any federal counterpart.

There is also relatively little history of *qui tam* litigation in Texas. The legislature amended the TMFPA to add its *qui tam* provisions less than two decades ago. So, unlike in federal court—where the FCA has been around since the Civil War—the legislature cannot reasonably attempt to rely upon historical provenance to counter the plain text of the Texas Constitution. *See* Pamela Bucy et al., *States, Statutes, and Fraud: A Study of Emerging State Efforts to Combat White Collar Crime*, 31 Cardozo L. Rev. 1523, 1542–43 (2010) (noting that Texas is one of many States "relatively new to the world of qui tam litigation").

In all events, *qui tam* suffers from a checkered history at the federal level. The handful of early American *qui tam* laws "were essentially stop-gap measures, confined to narrow circumstances" to assist the fledging Executive. *Constitutionality of the Qui Tam Provisions of the False Claims Act*, 13 Op. O.L.C. 207, 213 (1989) (William P. Barr, Ass't Att'y Gen.) ("OLC Memo"). And the "transitory and aberrational" *qui tam* device "never gained a secure foothold within our constitutional

structure." *Id.* It produced "little actual litigation." Ann Woolhandler & Caleb Nelson, *Does History Defeat Standing Doctrine?*, 102 Mich. L. Rev. 689, 728 (2004). There is "no evidence" that Congress ever "considered the constitutional status of qui tam." OLC Memo, *supra*, at 214. And, "[w]ithin a decade, 'the tide had turned against' qui tam," leading Congress to "curtail[] its use." *Id.* at 235–36 (alterations adopted) (quoting Leonard D. White, *The Federalists* 417 (1956)).

Congress quickly abandoned the practice for good reason. English history had exposed *qui tam* as "a vexatious device that ultimately could not be reconciled with the institutions of free and responsible government." *Id.* at 235. The persons "occupied in this branch of executive jurisprudence" did not "give impartial efficiency to the laws," but acted instead as "instrument[s] of individual extortion, caprice, and tyranny." 8 Legal Observer No. 204, at 20 (1834) (citation omitted). Informers unearthed old and forgotten statutes "as means to gratify ill-will." 4 William S. Holdsworth, *A History of English Law* 356 (1923). They threatened enforcement suits to "levy[] blackmail" against potential defendants. *Id.* And they stirred up litigation simply in the hopes of recovering money. *Id.* These abuses led to considerable outrage—

prompting Lord Coke to denounce the informers as "viperous vermin" who "vex and depauperize the subject" for "malice or private ends, and never for love of justice." 3 Sir Edward Coke, *Institutes of the Laws of England* 194 (4th ed. 1797).

In short, the early federal *qui tam* statutes have all the hallmarks of action "taken thoughtlessly, by force of long tradition" from an archaic English device, "and without regard to the problems" presented to the new constitutional order. *Marsh v. Chambers*, 463 U.S. 783, 791 (1983). Such bare historical practice cannot cure constitutional infirmities even when it "covers our entire national existence and indeed predates it." *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 678 (1970). And, of course, federal historical practice cannot possibly cure infirmities under the Texas Constitution. The "guiding principle when interpreting" that document "is to give effect to the intent of the voters who adopted" it. *In re Dallas Cnty.*, 697 S.W.3d 142, 158 (Tex. 2024) (citation omitted). As described above, the Texas voters who ratified the Texas Constitution's separation-of-powers provisions intended to give the Texas Attorney General and the County Attorneys the exclusive power to seek remedies for public wrongs. No amount of history could alter that fact.

PRAYER

This Court should issue a writ of mandamus directing the district court to dismiss Health Selection Group's claims brought under the *qui tam* provisions of the TMFPA.

Dated: November 11, 2026 Respectfully submitted,

/s/ Gary M. Dreyer

GARY M. DREYER
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

STEVEN A. ENGEL
(*Pro Hac Vice* Application Forthcoming)
DECHERT LLP
1900 K Street, NW
Washington, DC 20006

MICHAEL H. MCGINLEY
(*Pro Hac Vice* Application Forthcoming)
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104

CERTIFICATE OF SERVICE

I certify that on November 11, 2026, a true and correct copy of the foregoing brief was served on counsel of record for all parties through electronic service.

/s/ Gary M. Dreyer
Gary M. Dreyer

CERTIFICATE OF COMPLIANCE

I further certify that this brief complies with the type-volume limitation in Texas Rule of Appellate Procedure 9.4(i) because, according to Microsoft Word, it contains 4,316 words, excluding exempted parts. This brief also complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because it has been prepared in a proportionally spaced typeface no smaller than 14-point for text and 12-point for footnotes.

/s/ *Gary M. Dreyer*
Gary M. Dreyer