

CAUSE NO._____

**STEVEN HOTZE, MD.,
Hotze Health & Wellness Center,
NORMAN ADAMS,
Adams Insurance,
AL HARTMAN,
Hartman Income REIT,
PASTOR JUAN BUSTAMANTE,
City on a Hill Church,
PASTOR GEORGE GARCIA,
Power of Love Church,
PASTOR DAVID VALDEZ,
World Faith Center of Houston
Church,
PASTOR JOHN GREINER,
Glorious Way Church,
PASTOR MATT WOODFILL,
The Way Church,
GARY GIUFFRE,
Saint Jude Shrine,
PASTOR BRIDGETTE LOZANO,
New Mission Church,
HANNAH YOUNG,
KEN PREJEAN,
MIKE MORTON,
MIKE ZULLO,
ALICIA ZULLO,
ASHLEY ZULLO,
ROB ZULLO,
TRISHA LABLANC, AND
JUDSON AJA,
Plaintiffs,**

V.

**GREG ABBOTT, in his capacity as
Governor of the State of Texas, AND
KEN PAXTON, in his capacity as
Attorney General of the State of Texas
Defendant.**

IN THE DISTRICT COURT

JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR TEMPORARY
INJUNCTION AND PERMANENT INJUNCTION**

COME NOW Plaintiffs, Steven Hotze, MD, Norman Adams, , Al Hartman, Pastor Juan Bustamante, Pastor George Garcia, Pastor David Valdez, and Pastor John Greiner, Pastor Matt Woodfill, Gary Giuffre, Pastor Bridgette Lozano, Hannah Young, Ken Prejean, Mike Morton, Mike Zullo, Alicia Zullo, Ashely Zullo, Rob Zullo, Trisha LaBlanc, and Judson Aja, and file this their Original Petition, Application for Temporary Injunction and Permanent Injunction, and for cause would show as follows:

I. BACKGROUND

The corona virus has resulted in politicians creating an environment and policy based on fear. Once government and its constituents start operating on the basis of fear rather than facts, they are willing to take whatever medicine is prescribed, no matter how harmful the side effects may be. The fear surrounding the corona virus/COVID-19 has resulted in Governor Abbott imposing draconian, unconstitutional requirements upon Plaintiffs and the residents of the State of Texas.

Churches and small businesses are shut down, and Texans right to move about freely is restricted. For all practical purposes, the Governor's Executive Orders constitutes a "lock-down". Governor Abbott is exerting unconstitutional authority and impinging upon the civil rights and liberties of Plaintiffs and all Texans. As a result of churches and other businesses being closed, the rights Plaintiffs enjoy under the Texas Constitution are being trampled on, while millions of individuals have lost their jobs and hundreds of thousands of businesses are on the verge of bankruptcy. This situation demonstrates how easily some officials are willing to sacrifice liberty

for a promise of safety and security. When this is allowed to happen, we have neither liberty nor security.

The Texas Constitution guarantees our God-given unalienable rights to worship, to peaceably assemble, and to move about freely without unconstitutional restrictions on one's ingress and egress. None of these rights is contingent upon our health status or subject to the limitations Governor Abbott is attempting to impose on these rights.

If Governor Abbott's Orders are not declared unconstitutional and void, once this virus passes, the rights we are afforded under the Texas Constitution will be forever damaged. Viruses mutate, so there may be a different coronavirus strain next year. Like the flu vaccine, this year's coronavirus vaccine may not protect against next year's strain. Will we allow Governor Abbott's Orders to set precedent for future governmental remedies to virus or diseases? Will it be a little easier to shut down a church or small business next time? Every day Governor Abbott's Orders suspending laws are allowed to stay in place, the religious liberties of pastors, business owners and other individuals are trampled on and the freedoms Plaintiffs and all Texans enjoy are forever damaged.

A. Governor Issues Disaster Declaration

On March 13, 2020, Governor Abbott issued a disaster proclamation, certifying under Section 418.014 of the Texas Government Code that COVID-19 poses an imminent threat of disaster for all counties in the State of Texas. (Exhibit "A"). In the interim, Governor Abbott has issued numerous executive orders that mandate the "suspension of Texas laws" in response to the COVID-19 virus. (Exhibit "B" and "C"). On their face, the Governor's COVID-19 Orders state that the Governor can and is suspending regulatory statutes, and that his executive orders have "the full force and effect of law." (Exhibit "B" and "C").

B. Governor Issues Executive Order GA-08

On March 19, 2020, Governor Abbott issued Executive Order GA-08, "mandating certain obligations for Texans" to "slow the spread of COVID-19 for 15 days...." (Exhibit "B"). GA-08 states that "businesses should be allowed to continue providing essential services during the COVID-19 disaster...." (Exhibit "B"). Those businesses that do not provide "essential services" are, for all practical purposes, shut down.

The Governor invokes the authority to shutter businesses, trample on religious liberties, and limit one's ability to move about freely, under Texas Government Code Section 418.012: "[T]he governor may issue executive orders...hav[ing] the force and effect of law." (Exhibit "B" and "C"). For instance, to limit Plaintiffs ability to move about freely, Governor Abbott references Texas Government Code Section 418.018(c) where he contends that "the governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area...." (Exhibit "B" and "C"). Those who fail to comply with the Governor's Executive Orders "issued during the COVID-19 disaster," commit "an offense punishable by a fine not to exceed \$1,000, confinement in jail for a term not to exceed 180 day, or both fine and confinement." (Exhibit "B").

C. Governor Issues Executive Order GA-14

GA-08 expired on April 3, 2020. (Exhibit "B"). On March 31, 2020, Governor Abbott issued GA-14, extending GA-08 through April 30, 2020. (Exhibit "C"). GA-14 added "religious services conducted in churches, congregations, and houses of worship" as "essential services". (Exhibit "C"). At first glance this sounds great to pastors and individuals who want to hold in-person worship services; however, the language that follows demonstrates that the Order does not truly consider in-person worship services to be "essential". Specifically, the details of the

Order state that “churches, congregations, and houses of worship” are limited to “remote services.” (Exhibit “C”). GA-14 states, “If religious services cannot be conducted from home or through remote services, they should be conducted consistent with the Guidelines from the President and the CDC by practicing good hygiene, environmental cleanliness, and sanitation, and by implementing social distancing to prevent the spread of COVID-19.” (Exhibit “C”). The Pastor Plaintiffs all have the ability to hold remote services. Therefore, the Order precludes them from meeting as a corporate body.

Governor Abbott's Executive Orders related to COVID-19 suspend several rights Plaintiffs enjoy under the Texas Constitution, and in so doing reach beyond the statutory and constitutional authority of the Governor. Plaintiffs contend that to the extent the Governor's Executive Orders and the Texas Disaster Act of 1975 (“Disaster Act”) allow the Governor to “suspend the laws of this state,” the Disaster Act and the related Executive Orders are unconstitutional under the Texas Constitution, Article I section 28, and are, therefore, void.

D. Governors Abbott’s Powers Are Limited

The Texas Constitution limits the Governor's authority even in times of crisis. Churches, schools, restaurants, stores and courthouses have closed, many people have lost their jobs, and the threat of the virus will cause many more months of economic insecurity and devastation.

As part of these efforts, local governments across the State have sought to implement Executive Orders similar to those promulgated by Governor Abbott. Like Governor Abbott, these local officials assert their authority under the Disaster Recovery Act of 1975.

By suspending provisions of the Texas Constitution and the laws of the state of Texas, Governor Abbott’s Executive Orders and those of local officials related to COVID-19, unlawfully violate the Texas Constitution and undercut the authority of the Texas Legislature.

II. DISCOVERY CONTROL PLAN

Plaintiffs intend to conduct discovery to be conducted under Level 3 of the rules set forth in Rule 190 of the Texas Rule of Civil Procedure.

III. PARTIES

Plaintiff Steven Hotze, M.D. is a resident of the State of Texas and resides in Harris County, Texas. He is the President of Hotze Health & Wellness Center, located at 20214 Braidwood Drive, Katy, Harris County, Texas. Dr. Hotze resides in Harris County, Texas and attends church in Harris County, Texas.

Plaintiff Norman Adams is a resident of the State of Texas and resides in Harris County, Texas. Mr Adams owns Adams Insurance. He also attends church in Harris County, Texas.

Plaintiff Al Hartman is a resident of the state of Texas and resides in Harris County, Texas. Mr. Hartman owns Hartman Income REIT. He also attends church in Harris County, Texas.

Plaintiff Pastor Juan Bustamante is pastor of City on a Hill Church, located at 3902 Cochran Street, Houston, Harris County, Texas 77009.

Plaintiff Pastor George Garcia is pastor of The Power of Love Church, located at 17431 Barnwood Road, Houston, Harris County, Texas 77090.

Plaintiff Pastor David Valdez is pastor of the World of Faith Center of Houston, Inc., located at 8117 East North Belt, Humble, Harris County, Texas 77396.

Plaintiff Pastor John Griener is pastor of Glorious Way Church, located at 11611 Champion Forest Drive, Houston, Harris County, Texas 77066.

Plaintiff Pastor Matt Woodfill is the pastor of The Way Church, 24418 I-45 North, Spring, Montgomery County, Texas 77386.

Plaintiff Gary Giuffre is the leader of the Saint Jude Shrine located at 3101 N. Main Street, Stafford, Fort Bend County, Texas 77477.

Plaintiff Pastor Bridgette Lozano is the pastor of New Mission Church located at 1500 Meadow Park Drive, Fort Worth, Tarrant County, Texas 76108.

Plaintiff Hannah Young is a citizen and resident of Harris County, Texas. She is a legal adult of the age of eighteen (18) and she resides in Harris County, Texas.

Plaintiff Ken Prejean is a citizen and resident of Montgomery County, Texas. He is a legal adult over the age of eighteen (18), and he resides in Harris County, Texas.

Plaintiff Mike Morton is a citizen and resident of Montgomery County, Texas. He is a legal adult over the age of eighteen (18), and he resides at 165 Carriage Hills Blvd, Ap. 531, Conroe, Texas 77384.

Plaintiff Mike Zullo is a citizen and resident of Montgomery County, Texas. He is a legal adult over the age of eighteen (18), and he resides at 6 N. Havenridge Dr., The Woodlands, Texas 77381.

Plaintiff Alicia Zullo is a citizen and resident of Montgomery County, Texas. He is a legal adult over the age of eighteen (18), and he resides at 6 N. Havenridge Dr., The Woodlands, Texas 77381.

Plaintiff Ashley Zullo is a citizen and resident of Montgomery County, Texas. He is a legal adult over the age of eighteen (18), and he resides at 6 N. Havenridge Dr., The Woodlands, Texas 77381.

Plaintiff Rob Zullo is a citizen and resident of Montgomery County, Texas. He is a legal adult over the age of eighteen (18), and he resides at 6 N. Havenridge Dr., The Woodlands, Texas 77381.

Plaintiff Trisha LaBlanc is a citizen and resident of Montgomery County, Texas. She is a legal adult over the age of eighteen (18), and he resides at 11714 Fawnview Dr., Houston, Texas 77070.

Plaintiff Judson Aja is a citizen and resident of Montgomery County, Texas. He is a legal adult over the age of eighteen (18), and he resides at 25116 Glen Loch Dr., The Woodlands, Texas 77380.

Defendant Greg Abbott is the Governor of the State of Texas and is sued in his official capacity only. He may be served at 1100 San Jacinto Blvd., Austin, Texas 78701.

Defendant Ken Paxton is the Attorney General of the State of Texas and is sued in his official capacity only. He may be served at the Office of the Attorney General, 300 W. 15th St., Austin, Texas 78701.

IV. JURISDICTION AND VENUE

The subject matter in controversy is within the jurisdictional limits of this Court, and the Court has jurisdiction over this action pursuant to Article V, Section 8, of the Texas Constitution and section 24.007 of the Texas Government Code, as well as the Texas Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code §§ 37.001 and 37.003. This Court has jurisdiction over the parties because all Defendants reside or have their principal place of business in Texas.

This Court has jurisdiction over this action and the requested relief sought under Tex. Civ. Prac. & Rem. Code sections 110 et seq.

Sovereign immunity to be sued and from liability are waived and abolished, and Plaintiffs may sue for declaratory relief, injunctive relief and damages under the Texas Religious Freedom Restoration Act. Tex. Civ. Prac. & Rem. Code section 110.008.

Venue is proper in Travis County because Defendants have their principal office in Travis County. Tex. Civ. Prac. & Rem. Code § 15.002(a)(3).

V. CAUSES OF ACTION

THE DECLARATION

On March 13, 2020, Governor Abbott declared a State of Disaster for the State of Texas due to the viral infection-COVID 19. *See* GA 08 Order No. 1, Order No. 2, Order No. 3, Order No. 4 (Exhibit “B”). “In accordance with the Guidelines from the President and the CDC, every person in Texas shall avoid social gatherings in groups of more than 10 people. In accordance with the Guidelines from the President and the CDC, people shall avoid eating or drinking at bars, restaurants, and food courts, or visiting gyms or massage parlors; provided, however, that the use of drive-thru, pickup, or delivery options is allowed and highly encouraged throughout the limited duration of this executive order. In accordance with the Guidelines from the President and the CDC, people shall not visit nursing homes or retirement or long-term care facilities unless to provide critical assistance. In accordance with the Guidelines from the President and the CDC, schools shall temporarily close. This, executive order does not prohibit people from visiting a variety of places that are identified as “essential services”. (Exhibit “B”).

Governor Abbott references “the power and authority vested in me by the Constitution and laws of the State of Texas” as the justification for the Orders. He then goes on to state, “I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code.” However, this power belongs to the legislature, not the Governor. Accordingly, those portions of Governor Abbott’s Executive Orders that suspend laws are unconstitutional and, thus, void. Again, the power Governor Abbott asserts is also unconstitutional in that, among other things, he is exercising powers the Texas Constitution limits to the legislature.

A. GA-08 and GA-14 Violate the Constitutional Prohibition on Suspension of Laws

The Texas Constitution states, “No power of suspending the laws of this state shall be exercised, except by the Legislature.” TEX. CONST. Art. I, § 28. The Disaster Act does not and cannot empower the Governor to suspend the subject provisions of the Texas Constitution. The Texas Supreme Court has long held that the Legislature cannot delegate “to anyone else the authority to suspend a statute law of the state.” *Brown Cracker & Candy Co. v. City of Dallas*, 104 Tex. 290, 294-95 (1911); *Arroyo v. State*, 69 S.W. 503, 504 (Tex. Crim. App. 1902) (“Under the constitution, the legislature ha[s] no right to delegate its authority . . . to set aside, vacate, suspend, or repeal the general laws of this state.”). “[P]rior to 1874 this section was as follows: ‘No power of suspending laws in this state shall be exercised, except by the legislature, or its authority.’” *Arroyo*, 69 S.W. at 504. This constitutional provision was then specifically amended to prohibit the Legislature’s delegation of its suspension authority to remedy “the history of the oppressions which grew out of the suspension of laws by reason of such delegation of legislative authority and the declaration of martial law.” *Id.*

Article I, section 28 was created in part in response to then-Governor F.J. Davis “declar[ing] . . . counties under martial law” and depriving of liberty “offenders by court martial in Houston.” George D. Braden, 1 *The Constitution of the State of Texas: An Annotated and Comparative Analysis* 84 (1977).

As GA-08 and GA-14 attempt to suspend several provisions of the Texas Constitution, and on their face admit that Governor Abbott is suspending laws, the Orders are an unconstitutional suspension of the laws and, therefore, violate Article I section 28 of the Texas Constitution. The Orders are “null and void.” See *Arroyo*, 69 S.W. at 504. Additionally, to the extent the Disaster

Act allows for the suspense of laws by the Governor or any local official, it is unconstitutional and also void.

B. The Executive Order Is an Impermissible Violation of Separation of Powers Established by the Texas Constitution.

Not only do the provisions of the Order unconstitutionally suspend laws in violation of Article I, section 28, they also infringe on the roles of the coequal branches of the Legislature and the Judiciary. The Texas Constitution divides the government into “three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another.” TEX. CONST. art. II, § 1. This Article provides 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.” *See also In re Dean*, 393 S.W.3d 741, 747 (Tex. 2012).

The Texas separation of powers doctrine “prohibits one branch of government from exercising a power belonging inherently to another.” *Id.* Because of the Texas Constitution’s “explicit prohibition against one government branch exercising a power attached to another,” *Perry v. Del Rio*, 67 S.W.3d 85, 91 (Tex. 2001), exceptions to the constitutionally mandated separation of powers may “never be implied in the least; they must be ‘expressly permitted’ by the Constitution itself.” *Fin. Comm’n of Texas v. Norwood*, 418 S.W.3d 566, 570 (Tex. 2013).

GA-08 and GA-14 infringe on the constitutionally ascribed powers of the Texas Legislature. The Orders infringes upon the Legislature’s powers by suspending laws enacted by the Legislature, in the absence of constitutional authority to do so. Since the Texas Constitution was adopted 175 years ago, it has vested all lawmaking power in the Legislature. This includes

the power to make, alter, and repeal laws, in accordance with the other provisions of the Constitution. *Walker v. Baker*, 196 S.W.2d 324, 328 (1946).

On their face, the Orders seeks to determine which people, services and groups are essential and all others are non-essential. Such authority to make or alter constitutional rights and/or create legislation is the province of the legislature and the people.

C. Governor Abbott's March 31, 2020 Amendment (GA-14) to his March 19, 2020 Order (GA-08) Violate Article I Section 6 of the Texas Constitution

On March 31, 2020, Governor Abbott amended his March 19, 2020 Order to include “religious services conducted in churches, congregations, and houses of worship” as “essential services”. (Exhibit “B” and “C”). However, this “essential service” was limited by the following language: “If religious services cannot be conducted from home or through remote services, they should be conducted consistent with the Guidelines from the President and the CDC by practicing good hygiene, environmental cleanliness, and sanitation, and by implementing social distancing to prevent the spread of COVID-19.” (Exhibit “B” and “C”).

Governor Abbott does not have the constitutional authority to relegate religious services conducted in churches, congregations, and houses of worship to the internet or “through remote services.” Additionally, Governor Abbott’s March 31, 2020 Order is unconstitutional in that it is vague and does not define “remote services.” Churches or individuals who violate the Order will be fined up to \$1,000, can be incarcerated for up to 180 days, or both. (Exhibit “B” and “C”).

The infringement on Plaintiffs’ religious liberty by Governor Abbott is shocking when one considers that on March 19, 2020 Governor Abbott told the press, “There is nothing specific in the executive order about churches because there is freedom of religion here in the United States of America.” It appears that sometime between March 19, 2020 and March 31, 2020, Governor Abbott’s understanding of religious freedom changed.

In person religious services are needed now more than ever as suicides and domestic violence numbers skyrocket. Over the last few weeks, the number of texts to the domestic violence hotline have been 47% to 116% higher than an average day, corresponding with a dramatic spike in novel corona virus cases, as well as historic unemployment in the United States. *Business Insider*, April 5, 2020. Adding another public health crisis to the toll of the new coronavirus, mounting data suggests that domestic abuse is acting like an opportunistic infection, flourishing in the conditions created by the pandemic.

According to the New York Times, “there was every reason to believe that the restrictions imposed to keep the virus from spreading would have such an effect, said Marianne Hester, A Bristol University sociologist who studies abusive relationships . . . Now, with families in lockdown worldwide, hotlines are lighting up with abuse reports, leaving governments trying to address a crisis that experts say they should have seen coming.” Amanda Taub, “*A New Covid-19 Crisis: domestic Abuse Rises Worldwide*”, New York Times, April 6, 2020.

For the Plaintiff Pastors and others in Texas, Governor Abbott has given them an unconstitutional choice - follow his Orders or abide by their deeply held religious beliefs and the scriptures found in their Bible (Hebrews 10: 24-25). Should these pastors or individuals elect to follow their faith and hold in-person services when they could do so remotely, Governor Abbott’s Order subjects them to fines and incarceration.

To the extent Governor Abbott’s Order conflicts with Art. 1. §§ 6-8 of the Texas Constitution, it must be declared void and of no further force or effect and the court should enjoin its enforcement.

Governor Abbott’s Preparedness and Mitigation Orders mandates that all “non-essential” businesses close. (Exhibit “B” & “C”). The Orders places unconstitutional restrictions on

churches freedom to hold in person services, shutters numerous small businesses, while allowing other “essential” businesses/services to stay open - including but not limited to, liquor stores, bicycle repair shops, big-box stores, pool cleaners, yard and maintenance crews, housekeepers, janitorial staff. (Exhibit “B” and “C”). The penalty for violating the order is up to 180 days in jail and a \$1,000 fine. (Exhibit “B” and “C”). The Orders infringe upon the fundamental right to assemble and worship God as a corporate body. (Exhibit “C”).

1. Governor Abbott’s Orders Violate the Texas Constitution

Many pastors in Texas and around the country adhere to the biblical mandate founded in the Bible, Hebrews 10: 24-25, “And let us consider one another to provoke unto love and to good work: Not forsaking the assembling of ourselves together, as the manner of some; but exhorting one another: and so much more, as ye see the day approaching.” Governor Abbott’s Executive Order GA-14 relegates places of worship to the internet, Facebook, or some other form of a “remote service”.

The Disaster Act gives limited powers to elected officials, including the Governor, to order Texas residents to take certain actions or to prohibit others in the interests of public safety, particularly in the case of emergency or disaster. However, assuming, *arguendo*, the Disaster Act is not unconstitutional, these powers are strictly limited by the text of the governing statutes and by the provisions of the Texas Constitution.

The Texas Government code also gives political subdivisions of the State of Texas certain limited powers to declare “local emergencies” or “disasters,” and similarly provides those subdivisions limited powers to meet and address the conditions causing or fostering the emergency or disaster. *See Texas Government Code § 418.001 et seq.*

Specific to this case, Plaintiffs here complain about the provisions of GA-14 in that it not only is in excess of the limited powers granted to Governor Abbott under the Government Code, but it also violates the Texas Constitution, Art. 1, §§ 6-8 and the Texas Religious Freedom Restoration Act by restricting the Plaintiffs' religious freedom.

Article I Sec. 6 of the Texas Constitution states:

FREEDOM OF WORSHIP. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

GA-14 violates Plaintiffs' religious liberties under the Texas Constitution and the Texas Religious Freedom Restoration Act. Specifically, GA-14 states: "If religious services cannot be conducted from home or through remote services, they should be conducted consistent with the Guidelines from the President and the CDC by practicing good hygiene, environmental cleanliness, and sanitation, and by implementing social distancing to prevent the spread of COVID-19." (Exhibit "C"). Failure to comply with the Order is punishable by a fine that does not exceed \$1,000.00 or confinement in jail for a term that does not exceed 180 days. (Exhibits "B" and "C").

Governor Abbott does not have the constitutional authority to relegate religious services conducted in churches, congregations, and houses of worship to the internet or "through remote services." Additionally, GA-14 is unconstitutionally vague in that it does not define "remote services," and imposes fines and incarceration on those who do not follow the Order. (Exhibit "B" and "C"). For the Plaintiffs and others in Texas, Governor Abbott has given them an

unconstitutional choice - follow his Orders, or abide by their deeply held religious beliefs and the scriptures found in their Bible (Hebrews 10: 24-25). Should these pastors or individuals elect to follow their faith and hold or attend in person church services, Governor Abbott will have them fined and put in jail.

To the extent GA-08 and GA-14 conflict with the Art. 1. §§ 6-8 of the Texas Constitution, they must be declared void and of no further force or effect, and the court should enjoin its enforcement.

Governor Abbott's GA-08 and GA-14 violate the Texas Constitution in the following particulars:

a. GA-14 Does Not Meet a Compelling State Interest

A government regulation that impairs rights under the Texas Constitution must meet a higher standard of need, called a "compelling government interest," to be constitutional. Regulation vital to the protection of public health and safety, including the regulation of violent crime, the requirements of national security and military necessity may be compelling governmental interests.

A compelling state (or governmental) interest is an element of the strict scrutiny test by which courts exercise judicial review of legislative and executive branch enactments that affect constitutional rights, such as those found in the Article 1 of the Texas Constitution. An interest is compelling only when it is essential or necessary rather than a matter of choice, preference, or discretion.

Attached to this Petition is the affidavit of Dr. Shiva Ayyadurai. Dr. Ayyadurai is a world-leading expert in systems biology, the immune system, personalized and precision medicine, systems science, data analysis and visualization, enterprise software development, email

technology, and information technology. (Exhibit “D”) Dr. Ayyadurai has been invited to deliver Distinguished and Keynote lectures at institutions such as the National Science Foundation (NSF), the Massachusetts Institute of Technology (M.I.T.), Harvard Medical School, the Arthritis Foundation, American Society of Clinical Pharmacology and Therapeutics (ASCPT), University Health Network of Canada, Tufts Medical School, National Institute of Health (NIH)/ National Center for Advancing Translational Sciences (NCATS), Council for Scientific and Industrial Research, India (CSIR-India), to name a few. (Exhibit “D”).

Dr. Ayyadurai has earned four (4) degrees from the Massachusetts Institute of Technology (M.I.T.) including:

- a. Ph.D. from M.I.T. Department of Biological Engineering;
- b. Masters from M.I.T. Department of Mechanical Engineering;
- c. Masters in Visual Studies from M.I.T. Media Laboratory; and,
- d. Bachelors from M.I.T. Department of Electrical Engineering & Computer Science.

Dr. Ayyadurai’s full curriculum vitae is attached to this Petition. (Exhibit “D”).

i. General Overview of Data in the United States for COVID-19

As of Saturday, April 3, 2020 at 4pm, according to the U.S. Center for Disease Control (“CDC”): a) there have been 277,205 confirmed and suspected cases of the coronavirus (“COVID-19”) in the United States; b) **U.S. COVID-19 incidence rate** – the number of cases of a disease in the U.S. divided by the U.S. population of 317,000,000 - is approximately 1 out of 1,000, or **0.09%** confirmed with or presumed to have the COVID-19; and, c) there have been 6,593 confirmed or presumed deaths due to the COVID-19. [Ref.: <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html>]. (Exhibit “D”)

As of Saturday, April 3, 2020 at 4 pm, according to the CDC, the overall **U.S. COVID-19 death rate** - the number of deaths in the U.S. - 6,593 - due to the diseases in the U.S. - divided

by the U.S. population of 317,000,000 – is approximately 1 out of 50,000 Americans or **0.002%**. [Ref.: <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html>]. (Exhibit “D”).

ii. Comparative Analysis of COVID-19 Relative to Flu in the United States

Compared to the 277,205 confirmed and presumptive cases of coronavirus COVID-19, per the CDC’s estimates, there have been nearly 54,000,000 - 54 Million (“Fifty-Four Million”) - cases of the flu in the U.S between October 1, 2019 and March 21, 2020. This means the **U.S. flu incident rate** – 54 Million divided by the U.S. population of 317 Million – is **17.03%** [Ref: <https://www.cdc.gov/flu/about/burden/preliminary-in-season-estimates.htm>]. (Exhibit “D”).

There have been upwards of 730,000 hospitalizations and upwards of 62,000 deaths due to this year’s flu. That is upwards of 344 deaths per day due to the flu since October 1, 2019. **The U.S. flu death rate** - the number of deaths in the U.S. – 62,000 deaths due to the flu in the U.S. - divided by the U.S. population of 317,000,000 – is **0.02%** [Ref: <https://www.cdc.gov/flu/about/burden/preliminary-in-season-estimates.htm>]. (Exhibit “D”).

Compared to the **U.S. flu incident rate of 17.03%**, the **U.S. COVID-19 incident rate of is 0.09**. This means the incident rate of the flu in the U.S. is nearly 200 times more than COVID-19. (Exhibit “D”) Compared to the **U.S. flu death of .02%**, the **U.S. COVID-19 incident rate of is 0.02%**. This means the death rate due to the flu in the U.S. is nearly 10 times more than COVID-19. (Exhibit “D”).

iii. Analysis of COVID-19 Relative to Flu in the Texas

According to the Texas Department of State Health Services (“TDSHS”), there have been 6,110 coronavirus COVID-19 cases reported in Texas as of Friday, April 3, 2020 at 8 pm. (Exhibit “D”). The **Texas COVID-19 incidence rate** – the number of cases of a COVID-19 in Texas divided by the Texas population of approximately 30,000,000 – is about is 1 in 5000, or **0.02%**. The TDSHS reports 105 deaths in Texas from the COVID-19. The **Texas COVID-19 death rate**

due to the coronavirus COVID-19 is about 3 out of 1,000,000 - 1 million – Texans, or **0.00035%**. [Ref: <https://dshs.texas.gov/coronavirus/>]. (Exhibit “D”).

The TDSHS further reports that there have been **1106 cases of coronavirus COVID-19 in Harris County, the largest county in Texas**, as of Friday, April 3, 2020 at 8 pm. (Exhibit “D”). The incidence rate of the coronavirus in Harris County is 1 out of 5000. The TDSHS reports only **13 deaths** in Harris County due to the coronavirus COVID-19, <https://dshs.texas.gov/coronavirus/>. (Exhibit “D”).

iv. A Perspective on the Lock Down

The flu season, 2017 - 2018, was extremely severe. The U.S. CDC estimated that there were 45,000,000 cases of the flu with 810,000 flu related hospitalizations, and 61,000 deaths due to the flu. There was no lock down during these events. [Ref.: <https://www.cdc.gov/flu/about/burden/2017-2018.htm>]. (Exhibit “D”).

The record shows that there have been no widespread closings of businesses, churches, schools and public gatherings due to an epidemic in the U.S. since the Spanish flu epidemic of 1918, when it is estimated that 675,000 Americans died. (Exhibit “D”). As of April 5, 2020, approximately 7,000 deaths have occurred in the U.S. – that is 1% of the total number of Americans that died in the Spanish flu epidemic. (Exhibit “D”).

During the Obama administration the swine flu (H1N1) epidemic occurred between April 12, 2009 and April 10, 2010. (Exhibit “D”). The CDC estimated that there were 60,800,000 cases of the swine flu in the U.S. and 12,469 deaths. (Exhibit “D”). President Obama did not declare a national emergency until October 24, 2009, six (6) months after the swine flu (H1N1) had been recognized. (Exhibit “D”). In this incident, there was no lock down. (Exhibit “D”).

If the incident rate and the death rate, as aforementioned, for the annual influenza infection were the criteria for determining a public health hazard, and the basis for locking down a country, the COVID-19 rates being orders of magnitude less, would not constitute COVID-19 as a public health hazard, and therefore would not be a rational basis for a lock down. (Exhibit “D”).

If Americans were to react to the annual flu epidemic in the same way that people are reacting to COVID-19, then all Americans would isolate themselves from school, church services, work, and public gatherings for six (6) months annually during the flu season. (Exhibit “D”). But this is not what has occurred, and something Americans do not do. (Exhibit “D”).

Locking down and shutting down the country and Harris County, based on the metrics available to date on COVID-19, seems to be setting a new norm – a new standard - for determining a public health hazard, and a new norm for the basis to shut down a country. (Exhibit “D”). If this is the new norm, a new paradigm will likely need to be created for the U.S. economy, if it is to survive in its current form. (Exhibit “D”).

v. Standardizing Our “Concern” for Public Health

The recent events provide an opportunity to develop a standard for modulating our “concern” for public health – in general. (Exhibit “D”). Consider that every year upwards of 650,000 people worldwide die of respiratory illness related to the flu. (Exhibit “D”). That is 1,781 per day. A million and a half, or 4,109 per day, die of tuberculosis. (Exhibit “D”). Over 800,000 children die of diarrhea annually—2,192 deaths per day. (Exhibit “D”). There are 200 million cases of malaria every year and nearly 450,000 deaths. (Exhibit “D”). That is 1,232 deaths daily. (Exhibit “D”).

Below are some statistics about illness and death in the United States. These statistics may vary; however, the error is likely to be no more than +/- 5% (“five-percent”):

- **Iatrogenic** (Medical Errors incl. Prescription Drugs): 780,000 deaths/yr, 2136/day

• Heart Disease:	650,000 deaths/yr, 1,772/day
• Cancer:	600,000 deaths/yr, 1,650/day
• Traffic Deaths:	37,000 deaths/yr, 100/day
• Traffic Injuries:	2.35 million/yr, 6,438/day
• Lung Infections:	160,000 deaths/yr, 438/day
• Stroke:	146,000 deaths/yr, 400/day
• Alzheimer's:	121,000 deaths/yr, 332/day
• Diabetes:	84,000 deaths/yr, 230/day
• Flu:	Ave. 50,000 deaths/yr, 278/day
• Kidney Disease:	51,000 deaths/yr, 140/day
• Suicides:	47,000 deaths/yr, 129/day
• Abortions:	800,000 deaths/yr, 2,192/day
• Opioid/Narcotic Overdoses:	47,000 deaths/yr, 129/day
• HIV/AIDS:	56,500 new cases/yr, 155/day
• STD Infections (gonorrhea, syphilis & chlamydia):	2.4 million cases/yr, 6,575/day
• Coronavirus (Jan. 21 – April 3, 2020):	6,593 deaths, 97/day
•	

[Ref.: <https://www.cdc.gov/nchs/fastats/leading-causes-of-death.htm>]

(Exhibit “D”).

If one considers that there are approximately 2.4 million injuries from traffic accidents every year, resulting in 37,000 deaths per year - that means there are 6,575 injuries per day, and 100 deaths per day from traffic accidents. (Exhibit “D”). We as society no doubt acknowledge that this is significant and ongoing public health issue. (Exhibit “D”). However, there appears to be neither lock down orders being issued to stop driving nor outcry from our public health officials about eliminating all motor vehicles and forcing Americans to only travel via bicycles and horses. (Exhibit “D”).

vi. **The Science**

When one rationally, with common sense, considers the current situation on COVID-19, the mathematics simply do not add up. (Exhibit “D”). The reaction – or, more specifically the over-reaction – is dissonant to the incident and death rates of COVID-19 situation, particularly given the data on the annual and daily death rates of other public health events. (Exhibit “D”).

The reality is that it is the over-reaction of a weakened and dysfunctional immune system, many times solved by food and nutrition that is the root cause of illness in most cases. (Exhibit “D”). In fact, a true understanding of the immune system reveals that it is *not* the pathogen or virus which damages cells and tissues, but rather the over-reaction via a “cytokine storm” of the individual’s own immune system attacking their own tissue and cells. (Exhibit “D”).

In the current situation with COVID-19, the infection inspires a “cytokine storm” in those that have weakened and dysfunctional immune systems. (Exhibit “D”). As one ages, the immune system has a tendency to become weakened. (Exhibit “D”). Indicative of this is that the more serious symptoms, in the current situation, occur in those over the age of 60, who are debilitated and infirmed, and those with pre-existing conditions, such as heart disease, chronic lung disease, diabetes, and obesity. (Exhibit “D”). The older and sicker the individual, the more severe the disease tends to be. (Exhibit “D”). Younger and healthier people are less likely to manifest serious symptoms, even if they are infected. (Exhibit “D”). If they do have any symptoms, then they will be mild or moderate, and they will recover. (Exhibit “D”). Up to 25% of those who have the COVID-19 are without symptoms. (Exhibit “D”).

Dr. Ayyadurai further suggest a prudent and balanced approach, based on the principles of modern personalized medicine, where one size does not fit all, for using our vast scientific understanding of nutritional interventions to differentially support four groups: COVID-19 positive, those in critical care, immuno-compromised, and the healthy, to enable immune health, as well as to end the lock down so we can get our economy back in order. (Exhibit “D”).

vii. Unintended Consequences

Judge Hidalgo’s Order has huge unintended consequences. On a daily basis, one can see the harm such orders are causing society by trampling on individual liberties, shutting down

businesses, and closing places of worship, and preventing the exercise of one's rights under the Texas Constitution.

b. Order Must Be Narrowly Tailored

Strict scrutiny requires the government to demonstrate that it is using the most narrowly tailored, or least restrictive, means to achieve an interest that is compelling. Although not explicitly defined, “compelling” is obviously intended to be a higher interest than “legitimate” or “important”; some have described it as “necessary” or “crucial,” meaning more than an exercise of discretion or preference.

c. GA-14 Violates Article I §§ 6-8 of the Texas Constitution

In her concurring opinion in *Matthews v. Kountze Independent School District*, 484 S.W.3d 416 (Tex. 2016), Justice Eva Guzman identified the religious liberty all Texans enjoy:

“The fundamental right of every American to hold and profess individual religious beliefs is deeply rooted in our constitutional firmament and derives from the ideal of religious liberty that gave birth to our nation. In enacting the Texas Constitution, the people of this great State, ‘[h]umbly invoking the blessing of Almighty God,’ further guaranteed freedom of religious expression. See TEX.CONST. PREAMBLE &ART. 1, §§ 6–8.”

The Constitution of the State of Texas guarantees our citizens the right to practice their own religion in their respective places of worship. See TEX.CONST. art. 1, §§ 6–8. The Texas Constitution guarantees religious freedom through a pair of complementary directives prohibiting laws respecting an establishment of religion or prohibiting the free exercise thereof. TEX.CONST. art. 1, §§ 6–8; *HEB Ministries, Inc. v. Tex. Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 642 (Tex. 2007).

The free exercise of religion cannot be taken lightly and should not be sacrificed at the altar of political expediency. Our state constitution embodies a fundamental commitment to religious liberty and guarantee the freedom to express diverse thoughts without governmental interference.

To adequately protect these rights, courts must not jealously guard their jurisdiction when disputes arise. “[O]ur Constitution requires vigilance lest courts overstep their jurisdictional bounds, [but] courts also must dutifully exercise jurisdiction rightly theirs.” *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 144 (Tex. 2012).

d. Governor Abbott’ Orders Arbitrarily Picks Winners and Losers

Governor Abbott’s corona virus related Orders, unilaterally and arbitrarily pick winners and losers. People of faith are prohibited from worshipping in person, most private businesses are prevented from operating, and people are not allowed to associate together in group is limited, and Texas right to ingress and egress (movement) – these are some of the individual freedoms Governor Abbott has chosen to sacrifice. However, liquor stores, yard maintenance crews, housekeepers, pool cleaners, janitorial staff, furniture suppliers, big box stores, bicycle repair shops, and dry cleaners have been allowed to survive under Governor Abbott’s Orders. Because his hand-picked losers have been shuttered, his self-identified winners are allowed to thrive while other private businesses are closed indefinitely.

Further, like the church, members of the media enjoy protections under the Texas Constitution. However, Governor Abbott distinguishes the two groups, shutting down in-person church services, while placing no restrictions on the media/press.

e. Governor Abbott Engaged In *Ultra Vires* Activity

Governor Abbott’s corona related Orders are illegal in that they violate the Texas Constitution and trample on the freedoms and liberties Plaintiffs enjoy under the Texas Constitution. A government official does not have discretion to disobey the law. It is well established that in order to determine whether an official has acted *ultra vires*, a court must interpret the relevant legal enactments. *Klumb v. Houston Mun. Emp. Pension Sys.*, 458 S.W.3d 1, n. 2 (Tex. 2015) (jurisdiction question

was “a matter of statutory construction, which is determined as a matter of law considering the statute’s plain language”). As in *ultra vires* litigation, the fact that the action is foreclosed by law should end the legal inquiry. *Hall v. McRaven*, 508 S.W.3d 232, 243 (Tex. 2017) (citing *SW Bell Tel., L.P. v. Emmett*, 459 S.W.3d 578, 587 (Tex. 2015), for definition of ministerial duty). The courts have held that *ultra vires* and mandamus/injunctive relief are two sides of the same coin, addressing the cessation of ongoing action by a governmental official. *City of Houston v. Houston Municipal Employees Pension Sys.*, 549 S.W.3d 566, 576-77(Tex. 2018). GA-8 and 14 violate constitutional limitations on the Governor’s authority.

To the extent there is any ambiguity as to whether GA-08 and 14 are *ultra vires* the Disaster Act, this Court should interpret the Act to not permit the suspension of Plaintiffs constitutional rights. See *Barshop v. Medina Cty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 629 (Tex. 1996) (“When possible, we are to interpret legislative enactments in a manner to avoid constitutional infirmities.”).

D. GA-14 Violates the Texas Religious Freedom Restoration Act

The Texas Religious Freedom Restoration Act (“Texas RFRA”) defines the “[f]ree exercise of religion” as an act or refusal to act that is substantially motivated by sincere religious belief. Tex. Civ. Prac. & Rem. Code section 110.001(a)(1). In determining whether an act or refusal to act is substantially motivated by sincere religious belief under the Texas Religious Freedom Restoration Act, it is not necessary to determine that the act or refusal to act is motivated by a central part or central requirement of the person's sincere religious belief. *Id.*

Texas RFRA defines a “[g]overnment agency” as the state or a municipality or other political subdivision of this state. Tex. Civ. Prac. & Rem Code section 110.001 (a)(2)

Texas RFRA applies to any ordinance, rule, order, decision, practice, or other exercise of governmental authority such as GA-14. Tex. Civ. Prac. & Rem Code section 110.002(a)

As described above, GA-14 does not satisfy a compelling governmental interest that would justify infringing on the religious liberties and enjoyed by Plaintiffs. Tex. Civ. Prac. & Rem Code section 110.001 (b).

Governor Abbott's GA-14 substantially burdens Plaintiffs' free exercise of religion and is not the least restrictive means of furthering a governmental interest. Tex. Civ. Prac. & Rem Code section 110.003 (b).

E. Declaratory Relief

Plaintiffs request declaratory relief under the Uniform Declaratory Judgments Act ("UDJA"). The UDJA is remedial and intended to settle and afford relief from uncertainty and insecurity with respect to rights under state law and must be liberally construed to achieve that purpose. Tex. Civ. Prac. & Rem. Code. § 37.002. The UDJA and the Texas Religious Freedom Restoration Act ("Texas RFRA") waive the sovereign immunity of the State and its officials in actions that challenge the constitutionality of government actions and statutes that seek equitable relief.

Pursuant to the UDJA and Texas RFRA, Plaintiffs seek a declaratory judgment of the Court that Executive Orders GA-08 and GA-14:

- a. Are ultra vires and exceeds the Governor's authority under the Texas Constitution;
- b. Impermissibly suspends state laws in violation of Article I, Section 28 of the Texas Constitution;
- c. Contravenes separation of powers established by Article II of the Texas Constitution.

d. Impermissibly infringe upon Plaintiffs' rights under Article I section 6 of the Texas Constitution; and

e. Violate the Texas Religious Freedom Restoration Act.

See also *id.* § 2001.003(6) (defining a rule as a "state agency statement of general applicability that . . . prescribes law"); *id.* § 2001.003(7) (defining a state agency as "a state officer . . . that makes rules").

In order to stop this ultra vires and unconstitutional Orders from being enforced, Plaintiffs also seek temporary and permanent injunctive relief pursuant to Texas Civil Practices & Remedies Code §§ 37.011, 65.011 and 110 *et seq.*

F. Governor Abbott's Orders Violate Article I sections 6 and 28 of the Texas Constitution and Are Void Under Art. I section 29

As described throughout this Petition, GA-08 and GA-14 violate Article I sections 6 and 28 and are, therefore, void under article I section 29. Specifically, Article I section 29 states, "Everything in this 'Bill of Rights' is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to following provisions, shall be void". Tex. Const. Art. I sec. 29.

Accordingly, Plaintiffs respectfully request declaratory relief and injunctive relief to prevent the continued violation of their right to freely exercise their deeply held religious belief by holding or attending in-person services. Additionally, Plaintiffs request compensatory damages for pecuniary and nonpecuniary losses and reasonable attorney's fees, court costs, and other reasonable expenses incurred in bringing the action.

VI. APPLICATION FOR TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

In addition to the above-requested relief, Plaintiffs seek a temporary injunction, and permanent injunction to stop this ultra vires and unconstitutional Orders from being enforced by Defendants.

Plaintiffs meet all of the elements necessary for injunctive relief. Plaintiffs state a valid cause of action against each Defendant and have a probable right to the relief sought. For the reasons detailed above, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits because GA-08 and GA-14 are ultra vires the Governor's authority and unconstitutional. Plaintiffs have already been injured by GA-08 and GA-14 and will continue to experience imminent and irreparable harm without injunctive relief.

Plaintiffs in this suit include pastors, small business owners, and individuals from different parts of Texas. Absent injunctive relief by this Court, Plaintiffs will continue to be imminently and irreparably harmed by the Governor's ultra vires actions.

For the same reasons above, Plaintiffs request the Court issue a temporary injunction and a permanent injunction after a trial on the merits. Since there is no adequate remedy at law that is complete, practical, and efficient to the prompt administration of justice in this case, equitable relief is necessary to enjoin the enforcement of enforcement of Defendants' illegal policy, preserve the status quo, and ensure justice.

Plaintiffs are willing to post a bond if ordered to do so by the Court, but request that no bond be required because Defendants are acting in a governmental capacity, have no pecuniary interest in the suit, and no monetary damages can be shown. Tex. R. Civ. P. 684..

VII. INJUNCTIVE RELIEF REQUESTED

For the foregoing reasons, Plaintiffs request the Court grant the following relief:

- a. A temporary injunction to preserve the status quo and restrain Defendants from enforcing GA-08 and GA-14, while the Order's validity is determined.

Respectfully submitted,

/s/ Jared R. Woodfill

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DECLARATION

My name Steven Hotze, my date of birth is July 5, 1950, and my address is 20214 Braidwood #215, Katy, Texas 77450.

I am a citizen and resident of Harris County, Texas. I am a devout Christian and attend religious services regularly. Not being allowed to attend in-person services violates my sincerely held religious beliefs. The Bible tells us: "25 not giving up meeting together, as some are in the habit of doing, but encouraging one another – and all the more as you see the Day approaching." Hebrews 10:25 New International Version (NIV).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 16th day of April, 2020.


Steven Hotze