

# In the Name of and under the Authority of the State of Texas

I, **Randall Kelton**, have reason to believe and do believe that Gregory Abbott, hereinafter referred to as “Defendant”, while acting, or purporting to act, under the color (pretense) of an official capacity exerted an authority the beyond the scope of the authority of his office and, in the process denied Complainant and others similarly situated in the full and free access to and/or enjoyment of rights secured by the Constitution and laws of the State of Texas.

## I. A PHILOSOPHY OF OUR FOUNDERS

H.G. Wells, in his Outline Of History, on speaking to the corruption of the Pope’s during the “dark age” very aptly observed,

*“The giver of the law most owes the law allegiance. He of all beings should behave as though the law compels him. But it is the universal failure of mankind that, what we are give to administer we promptly presume we own.”*

Texas is not a democracy. Ben Franklin once quipped

*“Democracy is a terrible form of government. But it is the best that we have.”*

All our founders knew this so they opted to give up a republic instead. The Legislature, on adopting the act titled: Open Government; Ethics stated their philosophy very succinctly in the first sentence of [Section 552.001](#) which reads in pertinent part as follows:

*“Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the “people...”*

### A. Land of Laws

Our founders intended that Texas be a land of law where its functionary officials adhered to the letter of that law as demonstrated by [Texas Constitution Bill of Rights at Article 29](#) which reads as follows:

[Sec. 29. BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT AND INVIOULATE.](#)  
*To guard against transgressions of the high powers herein delegated, we declare that 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 the following provisions, shall be void.*

With so many lives expended securing freedom for Texas, our funders intended that those lives not be spent in vain. They assured that laws be very hard to pass and change. In order to insure the sanctity of the corpus juris(body of law), our founders created a separate branch of the government dedicated to the purpose of creating a body of law and of protecting that corpus from political passions of the moment and pork barrel politics.

## **B. Enforcement Authority**

While the Legislature created the laws, it did not enforce them. That power was given to a second branch of government, the Executive. The head of the Executive branch is the Governor of the State of Texas. The Governor charged with the duty of executing the intent of the Legislature, and holds in trust, the affairs of the State. In order to accomplish control over the governmental instruments the Legislature created, the Governor was given the power to issue executive orders to all agencies and government functionaries through “executive orders.”

## **C. Primary Political Protection**

Knowing the tendency of power to corrupt, the Legislature, in delegating operational authority to the Governor, placed strict limits on that authority. The limit being that the Governor could issue orders to public agencies and employees, but not to the public itself. That power was restricted to the legislature. The intent of our founders in this regard can hardly be misconstrued on reading the [Texas Constitution Bill of Rights as Section 28](#) which reads as follows:

*Sec. 28. SUSPENSION OF LAWS. No power of suspending laws in this State shall be exercised except by the Legislature.*

## **D. Founder’s Supreme Law**

The founder’s law is the supreme law of the land. All Legislative laws flow from and are governed by the Texas Constitution as the supreme law. It should be remembered that the Texas Constitution grants no rights to the people, but rather, creates governmental instruments then forbids strictly defines the limits of the powers granted.

## **E. Functional Executive**

Our founders created the Executive branch of government to carry out the intent of the Legislature by governing the execution of the laws. In order to effect this outcome, the Governor was given the power to issue Executive Orders. It should be remembered that the

Governor was only given power over governmental instruments. It was never intended that the Governor have power over the people.

### **F. Keeping Them Honest**

Our founders created the judicial branch as a third branch of government. While the executive was given the duty to carry out the intent of the Legislature, it was the Judicial who was given power to determine what that intent was where the intent was clouded by facts and circumstances. Our founders were well aware that an unchecked executive would inevitably decay into a despot. As a check to potential abuses of the executive, our founders installed the judiciary as a buffer between the Legislative and Executive and a buffer between the Executive and the people.

### **G. Fourth Branch of Government**

Our founders were well aware that three branches of government were not enough to secure our republic. They knew the ultimate power for the people rest with the people and in their wisdom created the grand jury system. The grand jury is not a part of any other branch of government. While the grand jury is empaneled by a member of the judiciary and assisted by a member of the executive it is beholden to neither. Justice Scalia in *Montgomery v. State* referred to the grand jury system as follows:

*[T]he grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three Articles. It 'is a constitutional fixture in its own right'[case cites]. In fact the whole theory of its function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people. [United States v. Williams, 504 36 \(US Supreme Court 1992\)](#).*

It is to this branch of government Complainant now appeals.

### **H. Trust the System**

Complainant is a radio talk show host out of Austin, Texas. We do a show about how the system really works as opposed to the high-minded rhetoric we hear from public officials and political pundits. Our schools teach our children how the system should work and in a perfect world it might. But then, if this were a perfect world Complainant is sure he would not be in it.

The world is not perfect and neither is our constitution, laws, governmental instruments or the people.

We do the best we can and have created a self-regulating system of which the grand jury plays a key role. It is intended that Grand juries come to the with no political agendas or influences. The judges and prosecutors, with whom the grand jury regularly interacts, both are emersed in a polyglot of competing political interests. This is not intended as an indictment, but rather, as a recognition that each person brings their own circumstance to the table.

Grand juries are intended to be fresh outsiders with no particular partisan or political interest in the matters before it. It is your duty to faithfully find based on the facts before you. You are the pin point on which the rest of the system balances.

As the complainant, I implore you to trust the system. Your only function is to determine if there is sufficient facts to give a reasonable person of ordinary prudence reason to believe that a crime has been committed and that the named defendant committed that crime.

Trust the system to find a just adjudication of the matter.

#### Decisions

Complainant is a combat veteran. In combat, we all were bound by rules of engagement. As crisis go, they don't get much more immediate than combat, but even then we had rules to follow. The governor, in this time of crisis has power conveyed upon him but that power comes with rules of engagement.

Complainant was a twin once. With 7 days left in country, Richard and 13 others jumped out of a helicopter somewhere southwest of Da Nang. He was the last man on the LZ(landing zone) when he stepped on a bouncing betty. He knew what it was and knew what it would do. He could have dove as far from the projectile as possible but chose to drop onto the projectile and capture it to protect his fellow soldiers.

Choice always carries consequences. Richard chose his course and paid heavy. Fourteen days later, at the 3<sup>rd</sup> Field Hospital in what was then Saigon, he died hard. Complainant was given the honor and privilege of holding his hand as the gangrene and morphine took his mind away but never once did he indicate regret for his decision.

Richard was not alone in his sacrifice. Our police and first responders make decisions every day that can have horrible consequences. It is my contention that Governor Abbott, being faced with a pandemic, felt compelled to make decisions with consequences. Lest there be some consideration that this presentation is motivated by anything other than honor and respect for our Governor, I assure you, Complainant holds the Governor in the highest regard.

With that said, decisions without consequences, can have no power or honor.

## II. EXECUTIVE ORDERS

During his tenure as Governor of the State of Texas, Greg Abbott has issued 31 executive orders. Reading the orders should embarrass us all. When the governor first stepped across a legal line, it was our duty to rise up and rail in righteous indignation. It was our job to police the governmental instruments we have created. But, instead, we sat back and winked at his bad behavior. We created a sense of self-confidence as his orders became more blatant and wrongful until they had the effect of completely undermining the republic we hold in safe keeping.

When Ben Franklin, upon leaving the Continental Congress, was asked what they had given the people Mr. Franklin replied, “A republic, if you can keep it.”

### A. GA-01

The first executive order by Governor Abbott was issued on 30<sup>th</sup> day of March, 2016. GA-01. This order was [Related to the continuation of the Governor's Commission for Women](#). This is precisely the type of executive order the Governor of the State was intended to have power to issue.

### B. GA-02

On the 13<sup>th</sup> day of September, 2017 the governor issued a second executive order [Relating to the suspension of the seven-day waiting period for certain state unemployment insurance claimants who have become unemployed as a direct result of the disaster created by Hurricane Harvey](#). Said order reads in pertinent part as follows:

*NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, by virtue of the power and authority vested in me by Section 207.0212 of the Texas Labor Code, do hereby order the suspension of the seven-day waiting period requirement imposed under Section 207.02 l(a)(\$) of the Texas Labor Code to authorize an individual to receive benefits for that waiting period if the individual is:*

1. *unemployed as a direct result of a natural disaster that resulted in the major disaster declaration issued by the President of the United States (FEMA 4332- DR) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Section 5121 etseq.; and*
2. *otherwise eligible for unemployment compensation benefits under the Texas Unemployment Compensation Act; and*
3. *not receiving disaster unemployment assistance benefits for the period included in that waiting period.*

It is clear from the context of the order that Governor Abbott was well aware of the limitations on a governor changing law as this change is shown to be in precise compliance with a statutorily authorized crisis adjustment. Whether this violates Texas Constitution Bill of Rights at Article 28 is a complex legal question but the question in this case does appear to be in direct compliance with a special statute authorizing such a change.

Mens rea (culpable criminal intent) would be in question here.

### **C. GA – 03**

On the 5<sup>th</sup> day of September, 2018 Governor Abbot issued an executive order [Relating to the establishment of the Governor's Committee to Support the Military](#). Like GA – 01, this order is completely within the authority of the governor as it addresses a governmental entity within the scope of the authority of the Governor’s legal authority.

### **D. GA – 4**

On the 5<sup>th</sup> day of September, 2018 Governor Abbot issued an executive order [Relating to the establishment of the Governor's Committee to Support the Military](#). Like GA – 01 and 3, this order is completely within the authority of the governor as it addresses a governmental entity within the scope of the authority of the Governor’s legal authority

### **E. GA – 05**

On the 3<sup>rd</sup> day of December, 2018 Governor Abbot issues an executive order [Relating to emergency management of natural and human-caused events, emergencies, and disasters](#).

Said order reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following: The Emergency Management Council (the “Council”) shall be created and maintained. The Council*

*shall consist of the following state agencies, boards, and commissions, and the following volunteer groups, or the successors of each of these entities:*

This instant order confines itself to the regulation of state agencies and raises no criminal issues.

## **F. GA – 06**

On the 13<sup>th</sup> day of July, 2019 Governor Abbot issues and order [Relating to necessary assistance from qualified plumbers with disaster recovery and preparedness, suspending Section 1301.003 of the Texas Occupations Code to prevent the imminent abolition of the Texas State Board of Plumbing Examiners and expiration of the Plumbing License Law on September 1, 2019, and delaying that abolition and expiration until disaster needs subside or the 87th legislature addresses the matter](#)

It is clear from the above that this order is in direct violation of the specific constitutional prohibition contained in the [Texas Constitution Bill of Rights as Section 28](#) which reads as follows:

*[Sec. 28. SUSPENSION OF LAWS.](#) No power of suspending laws in this State shall be exercised except by the Legislature.*

There was no immediate emergency at the time of the signing of this executive order. There was also provision available to the governor whereby he could have convened a session of the Legislature to deal with the issue as granted by [Texas Constitution Article 4\(8\)\(a\)](#) which reads as follows:

*[Sec. 8. CONVENING LEGISLATURE ON EXTRAORDINARY OCCASIONS.](#) (a) The Governor may, on extraordinary occasions, convene the Legislature at the seat of Government, or at a different place, in case that should be in possession of the public enemy or in case of the prevalence of disease threat. His proclamation therefor shall state specifically the purpose for which the Legislature is convened.*

In fact, the Texas Legislature was in session from the 8<sup>th</sup> day of January until the 27<sup>th</sup> day of May, 2019. The governor issued his executive order on the 13<sup>th</sup> day of June, 2019 and claimed as authority a Senate Bill 285 of the 86<sup>th</sup> Legislature which would not take effect until the 1<sup>st</sup> day of September, 2019.

It should be clear to a reasonable person of ordinary prudence that the above amounts to a violation [Texas Penal Code Article 38.02\(a\)\(2\)](#) which reads in pertinent part as follows:

*[Sec. 39.02. ABUSE OF OFFICIAL CAPACITY.](#) (a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:*

*(1) violates a law relating to the public servant's office or employment; or*

*(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.*

The amount at issue here, considering the budgets of the agencies involved, would easily exceed the \$300,000.00 requirement for a charge of 1<sup>st</sup> degree felony.

Is anyone else scratching their heads in wonderment? If the Legislature intended that Section 1301.003 of the Texas Occupations Code be extended, it would have done so before it closed in May of 2019. If Governor Abbot felt the extension was necessary there was nothing preventing him from petitioning the Legislature to do so.

It is clear from the above that public officials in the State of Texas feel they operate outside the laws that govern their masters. You can be sure that a prosecuting attorney, as a member of the executive branch of government or an appointee of same, will come before you and argue against holding their boss to the letter of law.

After 30 years of research into law, it is clear to Complainant that Texas has the best corpus juris of any state in the Union. We have all the law we need to maintain a stable republic. The problem is, we have allowed our public officials to ignore the statutory mandates we have put in front of them. We have allowed them to completely indemnify themselves from the consequences of their improper behaviors.

It gets worse.

GA – 07

On the 5<sup>th</sup> day of September, 2019 Governor Abbott issued an executive order [Relating to the prevention of mass attacks](#). This order gave directions to state agencies concerning matters dealing with their responses to security of schools in the State of Texas and appears to be well within the authority of the governor.

## **G. Disaster Declaration**

On the 13<sup>th</sup> day of March, 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 which reads in pertinent part as follows:

*TO ALL TO WHOM THESE PRESENTS SHALL COME:*

*WHEREAS, the novel coronavirus (COVID-19) has been recognized globally as a contagious respiratory virus; and*

*WHEREAS, as of March 13, 2020, there are more than 30 confirmed cases of COVID-19 located in multiple Texas counties; and*

*WHEREAS, there are more than 50 Texans with pending tests for COVID-19 in Texas; and*

*WHEREAS, some schools, universities, and other governmental entities are beginning to alter their schedules, and some venues are beginning to temporarily close, as precautionary responses to the increasing presence of COVID-19 in Texas; and*

*WHEREAS, costs incurred to prepare for and respond to COVID-19 are beginning to mount at the state and local levels; and*

*WHEREAS, the State of Texas has already taken numerous steps to prepare for COVID-19, such as increasing laboratory testing capacity, coordinating preparedness efforts across state agencies, and working with local partners to promote appropriate mitigation efforts; and*

*WHEREAS, it is critical to take additional steps to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of Texans; and*

*WHEREAS, declaring a state of disaster will facilitate and expedite the use and deployment of resources to enhance preparedness and response.*

*NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that COVID-19 poses an imminent threat of disaster. In accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I hereby declare a state of disaster for all counties in Texas.*

*Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.*

*Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor.*

*However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.*

*In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.*

**In paragraph's 11 and 12 of the Governor's disaster declaration the Governor orders the suspension of laws as follows:**

*Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor.*

*However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.*

As authority, the governor cites [Texas Government Code 418.016](#) which reads as follows:

**Sec. 418.016. SUSPENSION OF CERTAIN LAWS AND RULES.** (a) *The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.*

(b) *Upon declaration of a state of disaster, enforcement of the regulation of on-premise outdoor signs under Subchapter A, Chapter [216](#), Local Government Code, by a municipality that is located in a county within, or that is located in a county adjacent to a county within, the disaster area specified by the declaration is suspended to allow licensed or admitted insurance carriers or licensed agents acting on behalf of insurance carriers to erect temporary claims service signage for not more than 30 days or until the end of the declaration of disaster, whichever is earlier.*

(c) *A temporary claims service sign shall not:*

- (1) be larger than forty square feet in size;*
- (2) be more than five feet in height; and*
- (3) be placed in the right of way.*

(d) *At the end of the 30 days or the end of the declaration of disaster, whichever is earlier, the insurance carrier or its licensed agents must remove the temporary claims service signage that was erected.*

(e) *On request of a political subdivision, the governor may waive or suspend a deadline imposed by a statute or the orders or rules of a state agency on the political subdivision, including a deadline relating to a budget or ad valorem tax, if the waiver or suspension is reasonably necessary to cope with a disaster.*

(f) *The governor may suspend any of the following requirements in response to an emergency or disaster declaration of another jurisdiction if strict compliance with the requirement would prevent, hinder, or delay necessary action in assisting another state with coping with an emergency or disaster:*

- (1) a registration requirement in an agreement entered into under the International Registration Plan under Section [502.091](#), Transportation Code, to the extent authorized by federal law;*
- (2) a temporary registration permit requirement under Section [502.094](#), Transportation Code;*
- (3) a provision of Subtitle E, Title 7, Transportation Code, to the extent authorized by federal law;*
- (4) a motor carrier registration requirement under Chapter [643](#), Transportation Code;*
- (5) a registration requirement under Chapter [645](#), Transportation Code, to the extent authorized by federal law; or*

(6) a fuel tax requirement under the International Fuel Tax Agreement described by 49 U.S.C. Section 31701 et seq., to the extent authorized by federal law.

(g) For the purposes of Subsection (f), "emergency or disaster declaration of another jurisdiction" means an emergency declaration, a major disaster declaration, a state of emergency declaration, a state of disaster declaration, or a similar declaration made by:

(1) the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.); or

(2) the governor of another state.

(h) To the extent federal law requires this state to issue a special permit under 23 U.S.C. Section 127 or an executive order, a suspension issued under Subsection (f) is a special permit or an executive order.

Notwithstanding [Section 418.016](#) above, the Texas Constitution at Article 1 Section 28 mandates the following:

[Sec. 28. SUSPENSION OF LAWS.](#) No power of suspending laws in this State shall be exercised except by the Legislature.

The governor is learned counsel, was the Attorney General of the State of Texas. It cannot be construed that he was not aware of the wrongful and unconstitutional nature of his acts. This was addressed by the courts under the Screws Doctrine. In [Screws v. United States, 325 U.S. 91 at 109 \(1945\)](#), where a sheriff and two deputies in Mississippi were drinking in a bar and were upset at a black person and decided to arrest him. The bar tender tried to reason with them but they would not be dissuaded. They subsequently arrested him then beat him to death on the courthouse steps. After being tried in the state then sued in the federal courts they complained that they did not have adequate notice. The court opined as follows:

*It is said, however, that this construction of the Act will not save it from the infirmity of vagueness since neither a law enforcement official nor a trial judge can know with sufficient definiteness the range of rights that are constitutional. But that criticism is wide of the mark. For the specific intent required by the Act is an intent to deprive a person of a right which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them. Take the case of a local officer who persists in enforcing a type of ordinance which the Court has held invalid as violative of the guarantees of free speech or freedom of worship. Or a local official continues to select juries in manner which flies in the teeth of decisions of the Court. If those acts are done willfully, how can the officer possibly claim that he had no fair warning that his acts were prohibited by the statute? He violates the statute not merely because he has a bad purpose but because he acts in defiance of announced rules of law. He who defies a decision interpreting the Constitution knows precisely what he is doing. If sane, he hardly may be heard to say that he knew not what he did.*

This speaks to the greatest fear of our founders. They feared the very instruments we created would wind up our undoing. The ultimate responsibility for preserving the republic is in the

hands of the people. When the people loose the will to protect their rights our government officials, acting in the best of faith, will gladly take them from us as Governor Abbott has so aptly demonstrated.

## H. GA – 08

On the 19<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order [Relating to COVID-19 preparedness and mitigation \(coronavirus\)](#).

Executive Order GA-08 expired on April 3, 2020. (Tab "C"). On March 31, 2020, Governor Abbott issued GA-14 which reads as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective 11:59 p.m. on March 20, 2020, and continuing until 11:59 p.m. on April 3, 2020, subject to extension thereafter based on the status of COVID-19 in Texas and the recommendations of the CDC:*

*Order No. 1: Executive Order GA-08 Page 2 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.*

*Order No. 2: 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.*

*Order No. 3: 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.*

*Order No. 4: 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, including grocery stores, gas stations, parks, and banks, so long as the necessary precautions are maintained to reduce the transmission of COVID-19. This executive order does not mandate sheltering in place. All critical infrastructure will remain operational, domestic travel will remain unrestricted, and government entities and businesses will continue providing essential services. For offices and workplaces that remain open, employees should practice good hygiene and, where feasible, work from home in order to achieve optimum isolation from COVID-19. The more that people reduce their public contact, the sooner COVID-19 will be contained and the sooner this executive order will expire. This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms, and this order shall remain in effect and in full force until 11:59 p.m. on April 3, 2020, subject to being extended, modified, amended, rescinded, or superseded by me or by a succeeding governor.*

### 1. Powers of Governor

Below are the powers of the governor as specified in Article 4 of the Texas Constitution:

SEC. 7.

*He shall be commander-in-chief of the military forces of the State, except when they are called into actual service of the United States. He shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, repel invasions, and protect the frontier from hostile incursions by Indians or other predatory bands.*

SEC. 8.

*The governor may, on extraordinary occasions, convene the Legislature at the seat of government, or at a different place in case that should be in possession of the public enemy or in case of the prevalence of disease thereat. His proclamation therefor shall state specifically the purpose for which the Legislature is convened.*

SEC. 9.

*The governor shall at the commencement of each session of the Legislature, and at the close of his term of office, give to the Legislature information, by message, of the condition of the State; and he shall recommend to the Legislature such measures as he may deem expedient. He shall account to the Legislature for all public moneys received, and paid out by him for any funds subject to his order, with vouchers; and shall accompany his message with a statement of the same. And at the commencement of each regular session he shall present estimates of the amount of money required to be raised by taxation for all purposes.*

SEC. 10.

*He shall cause the laws to be faithfully executed; and shall conduct, in person, or in such manner as shall be prescribed by law, all intercourse and business of the State with other States and with the United States.*

SEC. 11.

*In all criminal cases, except treason and impeachment, he shall have power, after conviction, to grant reprieves, commutations of punishment and pardons; and under such rules as the Legislature may prescribe he shall have power to remit fines and forfeitures. With the advice and consent of the senate, he may grant pardons in cases of treason, and to this end he may respite a sentence therefor, until the close of the succeeding session of the Legislature; provided, that in all cases of remissions of fines and forfeitures, or grants of reprieve, commutation of punishment or pardon, he shall file in the office of the secretary of state his reasons therefor.*

SEC. 12.

*All vacancies in State or district offices, except members of the Legislature, shall be filled, unless otherwise provided by law, by appointment of the governor, which appointment, if made during its session, shall be with the advice and consent of two-thirds of the senate present. If made during the recess of the senate, the said appointee, or some other person to fill such vacancy, shall be nominated to the senate during the first ten days of its session. If rejected, said office shall immediately become vacant, and the governor shall, without delay, make further nominations, until a confirmation takes place. But should there be no confirmation during the session of the senate, the governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the senate; but may appoint some other person to fill the vacancy until the next session of the senate or until the regular election to said office, should it sooner occur. Appointments to vacancies in offices elective by the people shall only continue until the first general election thereafter.*

SEC. 13.

*During the session of the Legislature the governor shall reside where its sessions are held, and at all other times at the seat of government, except when by act of the Legislature, he may be required or authorized to reside elsewhere.*

SEC. 14.

*Every bill which shall have passed both houses of the Legislature shall be presented to the governor for his approval. If he approve he shall sign it; but if he disapprove it, he shall return it with his objections, to the house in which it originated, which house shall enter the objections at large upon its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present agree to pass the bill, it shall be sent, with the objections, in the other house, by which likewise it shall be reconsidered; and, if approved by two-thirds of the members of that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor with his objections within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislature, by its adjournment, prevent its return; in which case it shall be a law, unless he shall file the same, with his objections, in the office of the secretary of state, and give notice thereof by public proclamation within twenty days after such adjournment. If any bill presented to the governor contains several items of appropriation he may object to one or more of such items, and approve the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and no item so objected to shall take effect. If the Legislature be in session he shall transmit to the house in which the bill originated a copy of such statement and the times objected to shall be separately considered. If, on reconsideration, one or more of such items be approved by two-thirds of the members present of each house, the same shall be part of the law, notwithstanding the objections of the governor. If any such bill, containing several items of appropriation, not having been presented to the governor ten days (Sundays excepted) prior to adjournment, be in the hands of the governor at the time of adjournment, he shall have twenty days from such adjournment within which to file objections to any items thereof and make proclamation of the same, and such item or items shall not take effect.*

SEC. 15.

*Every order, resolution or vote to which the concurrence of both houses of the Legislature may be necessary, except on questions of adjournment, shall be presented to the governor, and before it shall take effect, shall be approved by him; or, being disapproved, shall be re-passed by both houses; and all the rules, provisions and limitations shall apply thereto as prescribed in the last preceding section in the case of a bill.*

## **2. Limits On Powers**

There is nothing in the above that would give a reasonable person of ordinary prudence reason to believe that our founders contemplated a situation where the Governor had power directly over the people of this republic. Certainly, there is nothing to indicate that the founders contemplated the governor, by edict, canceling Article 1, the Bill of Rights. On point of fact, the founders certainly held concern for governmental overreach and dilution of the prohibitions laid down by

the Texas Constitution. Their concern were so grave that they forbid even the Legislature from diluting those right by passage of [Article 1 Section 29](#) which bears repeating:

*Sec. 29. BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT AND INVIOULATE.*

*To guard against transgressions of the high powers herein delegated, we declare that 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 the following provisions, shall be void.*

### **3. Sedition Against The Constitution**

The Governor, by his capricious proclamation is warring against the Constitution of the State of Texas. When considering the death tool from this pandemic, you should also consider the death tool of those who gave their lives for the preservation of the rights the governor would so cavalierly flush down the political toilet.

Every person who signed the United States Declaration of Independence considered that they were signing their death warrants. Ben Franklin on addressing the fear of reprisal stated:

*"Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety."*

**Governor Abbott**, by issuing executive order GA – 08 exert or purported to exert an authority he does not have and in the process denied the citizens of the State of Texas in the full and free access to or enjoyment of Constitutionally protected rights in an act of **Official Oppression**, in violation of **Texas Penal Code 39.03**.

#### **I. GA – 09**

On the 22<sup>nd</sup> day of March, 2020 Governor Abbot issued an executive order [Relating to hospital capacity during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

*WHEREAS, under Section 4 18.173, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable by a fine not to exceed \$1,000, confinement in jail for a term not to exceed 180 days, or both fine and confinement.*

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order that, beginning now and continuing until 11:59 p.m. on April 21, 2020, all licensed health care professionals and all licensed health care facilities shall postpone all surgeries and procedures that are not immediately medically necessary to correct a serious medical condition of, or to preserve the life of, a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician;*

*PROVIDED, however, that this prohibition shall not apply to any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the*

*hospital capacity or the personal protective equipment needed to cope with the COVID- 19 disaster.*

*At the request of the Texas Health and Human Services Commission, I hereby suspend the following provisions to the extent necessary to implement increased occupancy in the event of surge needs for hospital capacity due to COVID-19:*

*25 TAC Sec. 133.1 62(d)(4)(A)(iii)(I);*

*25 TAC Sec. 133. 163(O( 1)(A)(i)(fl)—(ffl);*

*25 TAC Sec. 133.1 63(fl( 1)(B)(i)(ffl)—(W);*

*25 TAC Sec. 133.163(m)(1)(B)(ii);*

*25 TAC Sec. 133. 163(t)(1)(B)(iii)—(iv);*

*25 TAC Sec. 133.163(t)(1)(C);*

*25 TAC Sec. 133.163(t)(5)(B)—(C); and*

*any other pertinent regulations or statutes, upon written approval of the Office of the Governor.*

*This executive order shall remain in effect and in full force until 11:59 p.m. on April 21, 2020, unless it is modified, amended, rescinded, or superseded by me or by a succeeding governor.*

Here, the governor purports to create criminal legislation by edict. Now, anyone who is accused of violating any provision of this act is subject to criminal penalties. However, on reading the orders you will find that they are complex and convoluted. On one day a provision is instituted only to be repealed and replaced with another the next day. Provisions are moved from one section of an order to another leaving even experienced lawyers dazed and confused.

Governor Abbot, being an experienced lawyer is surely aware of the [Section 311 Texas Government Code, Statutory Construction Act](#). Texas is one of the only states that formally legislated statutory construction. The code dictates practices and procedures to insure that statutes in Texas can be read and understood by the average citizen. The Legislature struggles with every word and phrase in a statute to insure it meets the requirements of the act. The edicts of Governor Abbot give no indication of any consideration toward the statutory construction requirements.

It is not intended that the people be able to understand the edicts of the Governor. This keeps the public distracted trying to figure out what is prohibited and what is not and arguing about 73%

open or 75% instead of asking the right question. Does the Governor have the power to create law by edict then arrest members of the public for violating his edicts?

## **J. GA – 10**

On the 24<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order [Relating to daily reporting during the COVID-19 disaster \(coronavirus, hospital reporting\)](#) which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective 11:59 p.m. on March 24, 2020: All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to DSHS daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the CDC. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID- 19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.*

*This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding governor.*

## **K. GA – 11**

On the 26<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order [Relating to airport screening and self-quarantine during the COVID-19 disaster \(New York Tri-State Area, New Orleans, coronavirus\)](#) which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective at noon on March 28, 2020: Every person who enters the State of Texas as the final destination through an airport, from a point of origin or point of last departure in New York, New Jersey, Connecticut, or the City of New Orleans, or in any other state or city as may be proclaimed hereafter, shall be subject to mandatory self-quarantine for a period of 14 days from the time of entry into Texas or the duration of the person's presence in Texas, whichever is shorter. This order to self-quarantine shall not apply to people traveling in connection with military service, emergency response, health response, or critical-infrastructure functions, as may be determined by the Texas Division of Emergency Management. Each person covered under this order to self-quarantine shall be responsible for all associated costs, including transportation, lodging, food, and medical care.*

*A covered person shall use a form prescribed by the Texas Department of Public Safety (DPS) to designate a quarantine location in Texas, such as a residence or a hotel, and provide a full name, date of birth, home address, telephone number, and driver license or passport information. DPS*

*Troopers, or other approved peace officers, shall collect a completed form from each covered person immediately upon disembarking and verify it against the person's driver license or passport. Providing false information on this form is a criminal offense under Section 37.10 of the Texas Penal Code. Questions about this form should be directed to DPS at (800) 525-5555.*

*A covered person shall proceed directly from the airport to the designated quarantine location entered on the DPS form. Any covered person exhibiting symptoms of COVID- 19 shall be escorted to the designated quarantine location by a DPS Trooper.*

*A covered person shall remain in the designated quarantine location for a period of 14 days or the duration of the person's presence in Texas, whichever is shorter, leaving only to seek medical care or to depart from Texas. During that period, a covered person shall not allow visitors into or out of the designated quarantine location, other than a health department employee, physician, or healthcare provider, and shall not visit any public spaces. DPS Special Agents will conduct unannounced visits to designated quarantine locations to verify compliance by confirming the physical presence of covered persons. Any failure to comply with this order to self-quarantine shall be a criminal offense punishable by a fine not to exceed \$1,000, confinement in jail for a term not to exceed 180 days, or both. Executive Order GA-li Page 3*

*This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.*

## **L. GA – 12**

On the 29<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order

[Relating to roadway screening and self-quarantine during the COVID-19 disaster \(coronavirus\)](#)

which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective at noon on March 30, 2020:*

*Every person who enters the State of Texas through roadways from Louisiana, or from any other state as may be proclaimed hereafter, shall be subject to mandatory self-quarantine for a period of 14 days from the time of entry into Texas or the duration of the person's presence in Texas, whichever is shorter. This order to self-quarantine shall not apply to people traveling in connection with commercial activity, military service, emergency response, health response, or critical-infrastructure functions, as may be determined by the Texas Division of Emergency Management. Each person covered by this order to self-quarantine shall be responsible for all associated costs, including transportation, lodging, food, and medical care.*

*The Texas Department of Public Safety (DPS) shall enforce this executive order along the Texas-Louisiana border. Using a form to be prescribed by DPS, each covered person shall designate a quarantine location in Texas, such as a residence or a hotel, and provide a full name, date of birth, home address, telephone number, and driver license or passport information. DPS Troopers, or other approved peace officers, will collect a completed form from a covered person and verify it against the person's driver license or passport. Providing false information on this form is a criminal offense under Section 37.10 of the Texas Penal Code. Questions about this form should be directed to DPS by calling (800) 525-5555. A covered person shall proceed directly to the designated*

*quarantine location entered on the DPS form. Any covered person exhibiting symptoms of COVID-19 shall be escorted to the designated quarantine location by a DPS Trooper.*

*A covered person shall remain in the designated quarantine location for a period of 14 days or the duration of the person's presence in Texas, whichever is shorter, leaving only to seek medical care or to depart from Texas. During that period, a covered person shall not allow visitors into or out of the designated quarantine location, other than a health department employee, physician, or health care provider, and shall not visit any public spaces.*

*DPS Special Agents will conduct unannounced visits to designated quarantine locations to verify compliance by confirming the physical presence of covered persons. Any failure to comply with this order to self-quarantine shall be a criminal offense punishable by a fine not to exceed \$1,000, confinement in jail for a term not to exceed 180 days, or both.*

*This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.*

### **M. GA – 13**

On the 29<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order

[Relating to detention in county and municipal jails during the COVID-19 disaster \(coronavirus\)](#)

which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:*

*Article 17.03 of the Texas Code of Criminal Procedure, and all other relevant statutes and rules relating to personal bonds, are hereby suspended to the extent necessary to preclude the release on personal bond of any person previously convicted of a crime that involves physical violence or the threat of physical violence, or of any person currently arrested for such a crime that is supported by probable cause. I hereby order that no authority should release on personal bond any person previously convicted of a crime that involves physical violence or the threat of physical violence, or any person currently arrested for such a crime that is supported by probable cause.*

*Article 17.15 1 of the Texas Code of Criminal Procedure is hereby suspended to the extent necessary to prevent any person's automatic release on personal bond because the State is not ready for trial.*

*Article 15.21 of the Texas Code of Criminal Procedure is hereby suspended to the extent necessary to prevent any person's automatic release on personal bond because the jail of the county where the offense is alleged to have been committed does not take charge of the arrested person before the 11th day after the date the person is committed to the jail of the county in which the person is arrested.*

*Article 42.032 of the Texas Code of Criminal Procedure, and all other relevant statutes and rules, are hereby suspended to the extent necessary to preclude the grant of commutation of time for good conduct, industry, and obedience to achieve the release of any person who has previously been convicted of or is currently serving a sentence for a crime that involves physical violence or the threat of physical violence. I hereby order*

*that no authority should grant the commutation of time for good conduct, industry, and obedience to achieve the release of any person who has previously been convicted of or is currently serving a sentence for a crime that involves physical violence or the threat of physical violence. This provision does not preclude the accumulation of credit for good conduct, industry, and obedience during the pendency of this executive order.*

*Article 42.035 of the Texas Code of Criminal Procedure is hereby suspended to the extent necessary to preclude any release of a person to an electronic monitoring program, rather than being confined in the jail, if the person has previously been convicted of or is currently serving a sentence for a crime that involves physical violence or the threat of physical violence.*

*Sections 418.1015(b) and 418.108 of the Texas Government Code are hereby suspended to the extent necessary to preclude any county judge or mayor of a municipality, or any emergency management director, from releasing persons under any circumstances inconsistent with this order.*

*Provided, however, that nothing herein shall prevent the lawful exercise of authority by a county criminal court judge, district judge, or appellate judge in considering release on an individualized basis for health or medical reasons, provided that proper notice is given to the district attorney and an opportunity for hearing is given.*

*This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.*

## **N. GA – 14**

On the 31<sup>st</sup> day of March, 2020 Governor Abbot issued an executive order

[Relating to statewide continuity of essential services and activities during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective 12:01 a.m. on April 2, 2020, and continuing through April 30, 2020, subject to extension based on the status of COVLD-19 in Texas and the recommendations of the CDC and the White House Coronavirus Task Force:*

*In accordance with guidance from DSHS Commissioner Dr. Hellerstedt, and to achieve the goals established by the President to reduce the spread of COVID-19, every person in Texas shall, except where necessary to provide or obtain essential services, minimize social gatherings and minimize in-person contact with people who are not in the same household.*

*“Essential services” shall consist of everything listed by the U.S. Department of Homeland Security in its Guidance on the Essential Critical Infrastructure Workforce, Version 2.0, plus religious services conducted in churches, congregations, and houses of worship. Other essential services may be added to this list with the approval of the Texas Division of Emergency Management (TDEM). TDEM shall maintain an online list of essential services, as specified in this executive order and in any approved additions. Requests for additions should be directed to TDEM at [EssentialServices@tdem.texas.gov](mailto:EssentialServices@tdem.texas.gov) or by visiting [www.tdem.texas.gov/essentialservices](http://www.tdem.texas.gov/essentialservices).*

*In providing or obtaining essential services, people and businesses should follow the Guidelines from the President and the CDC by practicing good hygiene, environmental cleanliness, and sanitation, implementing social distancing, and working from home if possible. In particular, all services should be provided through remote telework from home unless they are essential services that cannot be provided through remote telework. 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.*

*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, massage establishments, tattoo studios, piercing studios, or cosmetology salons; provided, however, that the use of drive-thru, pickup, or delivery options for food and drinks is allowed and highly encouraged throughout the limited duration of this executive order.*

*This executive order does not prohibit people from accessing essential services or engaging in essential daily activities, such as going to the grocery store or gas station, providing or obtaining other essential services, visiting parks, hunting or fishing, or engaging in physical activity like jogging or bicycling, so long as the necessary precautions are maintained to reduce the transmission of COVID-19 and to minimize in person contact with people who are not in the same household.*

*In accordance with the Guidelines from the President and the CDC, people shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless to provide critical assistance as determined through guidance from the Texas Health and Human Services Commission.*

*In accordance with the Guidelines from the President and the CDC, schools shall remain temporarily closed to in-person classroom attendance and shall not recommence before May 4, 2020.*

*This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services allowed by this executive order or allows gatherings prohibited by this executive order. 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, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order. Given under my hand this the 31st day of March, 2020.*

*This executive order supersedes Executive Order GA-08, but not Executive Orders GA-09, GA10, GA-11, GA-12, or GA-13, and shall remain in effect and in full force until April 30, 2020, unless it is modified, amended, rescinded, or superseded by the governor.*

## **A. GA – 15**

*On the 17<sup>th</sup> day of April, 2020 Governor Abbot issued an executive order [Relating to hospital capacity during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:*

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis beginning at 11:59 p.m. on April 21, 2020, and continuing until 11:59 p.m. on May 8, 2020:*

*All licensed health care professionals and all licensed health care facilities shall postpone all surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician; provided, however, that this prohibition shall not apply to either of the following:*

- any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster; or*
- any surgery or procedure performed in a licensed health care facility that has certified in writing to the Texas Health and Human Services Commission both: (1) that it will reserve at least 25% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients; and (2) that it will not request any personal protective equipment from any public source, whether federal, state, or local, for the duration of the COVID 19 disaster.*

*I hereby continue the suspension of the following provisions to the extent necessary to implement increased occupancy in the event of surge needs for hospital capacity due to COVID-19: 25 TAC Sec. 133.162(d)(4)(A)(iii)(I);*

*25 TAC Sec. 133.163(f)(1)(A)(i)(U)—(ffl);*

*25 TAC Sec. 133.163(O)(1)(B)(i)(ffl)—(W); 25 TAC Sec. 133.163(m)(1)(B)(ii);*

*25 TAC Sec. 133.163(t)(1)(B)(iii)—(iv);*

*25 TAC Sec. 133.163(t)(1)(C);*

*25 TAC Sec. 133.163(t)(5)(B)—(C); and*

*Any other pertinent regulations or statutes, upon written approval of the Office of the Governor.*

*This executive order shall remain in effect and in full force until 11:59 p.m. on May 8, 2020, unless it is modified, amended, rescinded, or superseded by the governor.*

## **B. GA – 16**

On the 29<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order

[Relating to the safe, strategic reopening of select services as the first step to Open Texas in response to the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately, and continuing through April 30, 2020, subject to extension based on the status of COVID-19 in Texas and the recommendations of the CDC and the White House Coronavirus Task Force:*

*In accordance with guidance from DSHS Commissioner Dr. Hellerstedt, and to achieve the goals established by the President to reduce the spread of COVID-19, every person in Texas shall, except where necessary to provide or obtain essential services or reopened services, minimize social gatherings and minimize in-person contact with people who are not in the same household.*

*“Essential services” shall consist of everything listed by the U.S. Department of Homeland Security (DHS) in its Guidance on the Essential Critical Infrastructure Workforce, Version 2.0 or any subsequent version, plus religious services conducted in churches, congregations, and houses of worship. Other essential services may be added to this list with the approval of the Texas Division of Emergency Management (TDEM). TDEM shall maintain an online list of essential services, as specified in this executive order and any approved additions. Requests for additions should be directed to TDEM at [EssentialServices@tdem.texas.gov](mailto:EssentialServices@tdem.texas.gov) or by visiting [www.tdem.texas.gov/essentialservices](http://www.tdem.texas.gov/essentialservices). “Reopened services” shall consist of:*

- *Starting at 12:01 a.m. on Friday, April 24, 2020, retail services that are not “essential services,” but that may be provided through pickup, delivery by mail, or delivery to the customer’s doorstep in strict compliance with the terms required by DSHS. The DSHS requirements may be found at [www.dshs.texas.gov/coronavirus](http://www.dshs.texas.gov/coronavirus).*

- *Such additional services as may be enumerated by future executive orders or proclamations by the governor. In providing or obtaining essential services or reopened services, people and businesses should follow the Guidelines from the President and the CDC by practicing good hygiene, environmental cleanliness, and sanitation, implementing social distancing, and working from home if possible. In particular, all such services should be provided through remote telework from home unless they cannot be provided through remote telework. Religious services should be conducted in accordance with the Guidelines for Houses of Worship During the COVID-19 Crisis, as promulgated by the attorney general and governor.*

*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, massage establishments, tattoo studios, piercing studios, or cosmetology salons; provided, however, that the use of drive-thru, pickup, or delivery options for food and drinks is allowed and highly encouraged throughout the limited duration of this executive order. This executive order does not prohibit people from accessing essential or reopened services or engaging in essential daily activities, such as going to the grocery store or gas station, providing or obtaining other essential or reopened services, visiting parks, hunting or fishing, or engaging in physical activity like jogging or bicycling, so long as the necessary precautions are maintained to reduce the transmission of COVID-19 and to minimize in-person contact with people who are not in the same household.*

*In accordance with the Guidelines from the President and the CDC, people shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless to provide critical assistance as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by the HHSC, including minimizing the movement of staff between facilities whenever possible.*

*In accordance with the Guidelines from the President and the CDC, schools shall remain temporarily closed to in-person classroom attendance by students and shall not recommence before the end of the 2019-2020 school year. Public education teachers and staff are encouraged to continue to work remotely from home if possible, but may return to schools to conduct remote video instruction, as well as perform administrative duties, under the strict terms required by the Texas Education Agency. Private schools and institutions of higher education should establish similar terms to allow teachers and staff to return to schools to conduct remote video instruction and perform administrative duties when it is not possible to do so remotely from home.*

*This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order or allows gatherings prohibited by this executive order. I hereby suspend Sections 418.10 15(b) and 418.10\$ of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.*

*This executive order supersedes Executive Order GA- 14, but does not supersede Executive Orders GA-09, GA-b, GA-li, GA-12, GA-13, or GA-15. This executive order shall remain in effect and in full force until 11:59 p.m. on April 30, 2020, unless it is modified, amended, rescinded, or superseded by the governor.*

### **C. GA – 17**

On the 29<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order [Relating to the establishment of the Governor's Strike Force to Open Texas \(coronavirus/COVID-19\)](#) which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:*

*Creation and Duties. The Governor's Strike Force to Open Texas, hereafter referred to as the Strike Force, is hereby created to advise the governor on safely and strategically restarting and revitalizing all aspects of the Lone Star State—work, school, entertainment, and culture. The Strike Force will represent a collaboration among medical professionals and public and private leaders, and shall have as its principal charges the following advisory duties, as well as any other advisory tasks assigned by the governor:*

- 1. Study and make recommendations, in consultation with state health officials, for revitalizing the Texas economy during our recovery from the COVID-19 disaster, including without limitation on the following topics:*
  - a. Safely reopening Texas businesses across a variety of sectors in a strategic, healthy, and productive manner that protects workers and consumers, especially our most vulnerable populations, while also spurring economic recovery and growth;*
  - b. Providing the necessary training and resources, based on White House and Centers for Disease Control and Prevention best practices, to position Texas workers and businesses to recover from and thrive after the COVID- 19 disaster;*
  - c. Re-stabilizing individuals and families who have been economically affected by the COVID-19 disaster;*
  - d. Safely and responsibly revitalizing key Texas institutions, including without limitation those focused on workforce and economic development, education, health care, energy, infrastructure, and arts, culture, and entertainment;*
  - e. Maximizing the use of federal funding and other available resources to recharge the Texas economy;*

- f. Restoring health care services for Texans as soon as reasonably practicable for each type of service in light of the health and safety concerns and in consultation with each applicable state regulatory agency;
- g. Spurring the recovery and growth of small businesses in Texas;
- h. Advancing economic growth in rural communities in Texas;
- i. Ensuring fiscal responsibility and accountability in the coming phases of economic revitalization, including the expeditious and efficient deployment of resources provided by the federal government through stimulus programs; and
- j. Keeping Texas the top destination for businesses looking to move or reopen.

2. Study and make recommendations, in consultation with state health officials, to safely ease restrictions on Texas businesses in the aftermath of the spread of COVID-19, including without limitation the restrictions imposed by my executive orders and those imposed by local officials; and

3. In coordination with the Office of the Governor, collaborate with key partners, including state leaders, state regulatory agencies, local governments and entities, and private-sector professionals, in studying and making recommendations of strategies and best practices for economic revitalization.

**Immediate Deadlines.** With Executive Order GA-16 set to expire on April 30, 2020, and given my expectation that it will not be extended in its current form, the Strike Force must provide immediate and ongoing recommendations consistent with the advisory duties outlined above, including advice regarding the safe reopening of Texas businesses in a strategic, healthy, and productive manner. This shall include recommendations about any prudent reopening measures that can be implemented between now and May 1, 2020. This advice should include the types of businesses and services to reopen, the extent to which the providers of those services may function, and any restrictions that should be placed upon those services and service providers.

**Chief Operating Officer.** The governor will designate a chief operating officer of the Strike Force, who will be employed by the Office of the Governor and perform all Strike Force duties as a state employee. The chief operating officer will coordinate Strike Force duties consistent with the provisions of this executive order, and act solely in an advisory capacity as it relates to Strike Force duties. Chief Medical Advisors Working Group. The Strike Force shall include a working group consisting of chief medical advisors to advise the chief operating officer and other parts of the Strike Force concerning the health and medical evidence relevant to the Strike Force's duties. The chief medical advisors will be invited to serve by the governor. The working group and its members will assist in fulfilling the Strike Force duties, and act solely in an advisory capacity.

**Working Groups.** The chief operating officer may create such additional working groups, consisting of state, local, and other officials providing their advice and assistance, as the chief operating officer deems appropriate. The additional working groups should address at least the following topics: Workforce, Economic Development, and International Trade; Education; Fiscal Accountability; Energy; Arts, Culture, and Entertainment; Health Care Systems; Infrastructure; and Emergency Management and Supply Chain. These working group members will be invited to serve by the chief operating officer, and each working group will be led by one or more leaders. These working groups and their members will assist in fulfilling the Strike Force duties, and act solely in an advisory capacity.

**State Officials.** The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, and the Comptroller have agreed to serve as consulting members of the Strike Force. The

governor will consult with the elected state officials as necessary and appropriate concerning advice and recommendations. The elected state officials will act solely in an advisory capacity as it relates to all Strike Force duties. Meetings.

The Strike Force may meet, by telephone or videoconference, at the call of the governor or the chief operating officer. No quorum requirements or meeting formalities shall be required for this advisory body or any of its subparts. Vacancies and Additions. The governor may invite people to fill any vacancies that occur, may invite additional members, and may create and fill additional Strike Force positions as needed.

**Administrative Support.** The Office of the Governor shall provide administrative support for the Strike Force. All state agencies are hereby directed to cooperate with and assist the Strike Force in the performance of its duties.

**Other Provisions.** Any state or local government employees serving on the Strike Force do so in addition to the regular duties of their respective positions. Members of the Strike Force, other than the chief operating officer and any other employees within the Office of the Governor assigned to support the chief operating officer or the Strike Force, shall serve without salary or compensatory per diem. All Strike Force members who are providing their advice and assistance on a volunteer basis are doing so at the request and invitation of the governor and the Office of the Governor. All Strike Force members shall act solely in an advisory capacity. The criminal penalty provisions set forth in any emergency management plan under Section 418.173 of the Texas Government Code do not apply to this executive order.

This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.

## D. GA – 18

On the 27<sup>th</sup> day of April, 2020 Governor Abbot issued an executive order [Relating to the expanded reopening of services as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately, and continuing through May 15, 2020, subject to extension based on the status of COVID-19 in Texas and the recommendations of the Governor's Strike Force to Open Texas, the White House Coronavirus Task Force, and the CDC:*

*In accordance with **guidance from DSHS Commissioner Dr. Hellerstedt**, and to achieve the goals established by the President to reduce the spread of COVID-19, every person in Texas shall, except where necessary to provide or obtain essential services or reopened services, minimize social gatherings and minimize in-person contact with people who are not in the same household. People over the age of 65, however, are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation.*

*“**Essential services**” shall consist of everything listed by the U.S. Department of Homeland Security (DHS) in its *Guidance on the Essential Critical Infrastructure Workforce, Version 3.0* or any subsequent version, plus religious services conducted in churches, congregations, and houses of worship. Other essential services may be added to this list with the approval of*

the Texas Division of Emergency Management (TDEM). TDEM shall maintain an online list of essential services, as specified in this executive order and any approved additions. Requests for additions should be directed to TDEM at [EssentialServices@tdem.texas.gov](mailto:EssentialServices@tdem.texas.gov) or by visiting the TDEM website at [www.tdem.texas.gov/essentialservices](http://www.tdem.texas.gov/essentialservices).

**“Reopened services”** shall consist of the following to the extent they are not already “essential services:”

1. Retail services that **may be provided through pickup, delivery by mail, or delivery to the customer’s doorstep.**

2. Starting at 12:01 a.m. on Friday, May 1, 2020: a) In-store retail services, for retail establishments that operate at **up to 25 percent of the total listed occupancy** of the retail establishment. b) Dine-in restaurant services, for restaurants that operate at up to 25 percent of the total listed occupancy of the restaurant; provided, however, that

(a) this applies only to **restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages** and are therefore not required to post the 51 percent sign required by Texas law as determined by the Texas Alcoholic Beverage Commission, and

(b) **valet services are prohibited** except for vehicles with placards or plates for disabled parking. c) Movie theaters that operate at up to 25 percent of the total listed occupancy of any individual theater for any screening. d) Shopping malls that operate at up to 25 percent of the total listed occupancy of the shopping mall; provided, however, that within shopping malls, the foodcourt dining areas, play areas, and interactive displays and settings must remain closed.

e) **Museums and libraries that operate at up to 25 percent** of the total listed occupancy; provided, however, that

(a) **local public museums and local public libraries** may so operate only if permitted by the local government, and

(b) **any components of museums or libraries that have interactive functions or exhibits, including child play areas, must remain closed.**

f) **For Texas counties that have filed with DSHS, and are in compliance with, the requisite attestation form promulgated by DSHS regarding five or fewer cases of COVID- 19, those in-store retail services, dine-in restaurant services, movie theaters, shopping malls, and museums and libraries, as otherwise defined and limited above, may operate at up to 50 percent (as opposed to 25 percent) of the total listed occupancy.**

g) **Services provided by an individual working alone in an office.**

h) **Golf course operations.**

i) **Local government operations, including county and municipal governmental operations relating to permitting, recordation, and document-filing services, as determined by the local government.**

j) **Such additional services as may be enumerated** by future executive orders or proclamations by the governor.

***The conditions and limitations set forth above for reopened services shall not apply to essential services.*** Notwithstanding anything herein to the contrary, the governor may by proclamation identify any county or counties in which reopened services are thereafter prohibited, in the governor's sole discretion, based on the governor's determination in consultation with medical professionals that only essential services should be permitted in the county, including based on factors such as an increase in the transmission of COVID-19 or in the amount of COVID-19-related hospitalizations or fatalities.

*In providing or obtaining essential services or reopened services, people and businesses should follow the minimum standard health protocols recommended by DSHS, found at [www.dshs.texas.gov/coronavirus](http://www.dshs.texas.gov/coronavirus), and should implement social distancing, work from home if possible, and practice good hygiene, environmental cleanliness, and sanitation. This includes also following, to the extent not inconsistent with the DSHS minimum standards, the Guidelines from the President and the CDC, as well as other CDC recommendations. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering. Religious services should be conducted in accordance with the joint guidance issued and updated by the attorney general and governor.*

***People shall avoid visiting bars, gyms, public swimming pools, interactive amusement venues such as bowling alleys and video arcades, massage establishments, tattoo studios, piercing studios, or cosmetology salons. The use of drive-thru, pickup, or delivery options for food and drinks remains allowed and highly encouraged throughout the limited duration of this executive order.***

*This executive order does not prohibit people from accessing essential or reopened services or engaging in essential daily activities, such as going to the grocery store or gas station, providing or obtaining other essential or reopened services, visiting parks, hunting or fishing, or engaging in physical activity like jogging, bicycling, or other outdoor sports, so long as the necessary precautions are maintained to reduce the transmission of COVID-19 and to minimize in-person contact with people who are not in the same household. In accordance with the Guidelines from the President and the CDC, people shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless to provide critical assistance as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by the HHSC, including minimizing the movement of staff between facilities whenever possible.*

*In accordance with the Guidelines from the President and the CDC, schools shall remain temporarily closed to in-person classroom attendance by students and shall not recommence before the end of the 2019-2020 school year. Public education teachers and staff are encouraged to continue to work remotely from home if possible, but may return to schools to conduct remote video instruction, as well as perform administrative duties, under the strict terms required by the Texas Education Agency. Private schools and institutions of higher education should establish similar terms to allow teachers and staff to return to schools to conduct remote video instruction and perform administrative duties when it is not possible to do so remotely from home.*

*This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list of essential services or the list or scope of reopened services as set forth in this executive order. I hereby suspend Sections 418.1015(b) and 418.10\$ of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.*

*This executive order supersedes Executive Order GA-16, but does not supersede Executive Orders GA-b, GA-il, GA-12, GA-13, GA-15, or GA-17. This executive order shall remain in effect and in full force until 11:59 p.m. on May 15, 2020, unless it is modified, amended, rescinded, or superseded by the governor.*

## **E. GA – 19**

On the 27<sup>th</sup> day of April, 2020 Governor Abbot issued an executive order [Relating to hospital capacity during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis beginning at 12:01 a.m. on May 1, 2020:*

*All licensed health care professionals shall be limited in their practice by, and must comply with, any emergency rules promulgated by their respective licensing agencies dictating minimum standards for safe practice during the COVID-19 disaster.*

*Every hospital licensed under Chapter 241 of the Texas Health and Safety Code shall reserve at least 15 percent of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients, as determined by the Texas Health and Human Services Commission.*

*I hereby continue the suspension of the following provisions to the extent necessary to implement increased occupancy in the event of surge needs for hospital capacity due to COVID-19: 25 TAC Sec. 133.163(d)(4)(A)(iii)(I);*

*25 TAC Sec. 133.163(O(1)(A)(i)(II)—(ffl); 25 TAC Sec. 133.163(O(1)(B)(i)(ffl)—(W);*

*25 TAC Sec. 133.163(m)(1)(B)(ii); 25 TAC Sec. 133.163(t)(1)(B)(iii)—(iv);*

*25 TAC Sec. 133.163(t)(1)(C); 25 TAC Sec. 133.163(t)(5)(B)—(C); and*

*Any other pertinent regulations or statutes, upon written approval of the Office of the Governor. This executive order will supersede Executive Order GA-15 as of 12:01 a.m. on May 1, 2020, but will not supersede Executive Orders GA-10, GA-11, GA-12, GA-13, GA-17, or GA-18.*

*This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.*

## **F. GA – 20**

On the 27<sup>th</sup> day of April, 2020 Governor Abbot issued an executive order [Relating to expanding travel without restrictions as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective at 12:01 a.m. on Friday, May 1, 2020: Executive Order GA-12 is hereby rescinded and terminated in its entirety. Executive Order GA-il and the March 29, 2020 proclamation are hereby rescinded and terminated to the extent applicable to travelers from the*

*City of New Orleans or the State of Louisiana. Any mandatory self-quarantine already in effect as a result of these executive orders, to the extent applicable to travelers from the City of New Orleans or the State of Louisiana, is terminated immediately as of the effective date of this executive order.*

*Executive Order GA- 1 1 and the March 29, 2020, **proclamation are otherwise superseded** by this executive order, except that any mandatory self-quarantine already in effect thereunder, as of the effective date of this executive order, shall continue until its expiration as set forth in Executive Order GA- 1 1.*

*The following restrictions shall remain in place:*

***Every person who enters the State of Texas** as the final destination through an airport, from a point of origin or point of last departure in the following—State of California; State of Connecticut; State of New York; State of New Jersey; State of Washington; City of Atlanta, Georgia; City of Chicago, Illinois; City of Detroit, Michigan; or City of Miami, Florida— shall be subject to mandatory self-quarantine for a period of 14 days from the time of entry into Texas or the duration of the person’s presence in Texas, whichever is shorter. The governor may by proclamation add to or subtract from the list of states and cities covered by this executive order. This order to self-quarantine shall not apply to people traveling in connection with military service, emergency response, health response, or critical-infrastructure functions, as may be determined by the Texas Division of Emergency Management. Each person covered under this order to self-quarantine shall be responsible for all associated costs, including transportation, lodging, food, and medical care.*

*A covered person shall use a form prescribed by the Texas Department of Public Safety (DPS) to designate a quarantine location in Texas, such as a residence or a hotel, and provide a full name, date of birth, home address, telephone number, and driver license or passport information. DPS Troopers, or other approved peace officers, shall collect a completed form from each covered person immediately upon disembarking and verify it against the person’s driver license or passport. Providing false information on this form is a criminal offense under Section 37.10 of the Texas Penal Code. Questions about this form should be directed to DPS at (800) 525-5555.*

*A covered person shall proceed directly from the airport to the designated quarantine location entered on the DPS form. Any covered person exhibiting symptoms of COVID-19 shall be escorted to the designated quarantine location by a DPS Trooper.*

*A covered person shall remain in the designated quarantine location for a period of 14 days or the duration of the person’s presence in Texas, whichever is shorter, leaving only to seek medical care or to depart from Texas. During that period, a covered person shall not allow visitors into or out of the designated quarantine location, other than a health department employee, physician, or health care provider, and shall not visit any public spaces.*

*DPS Special Agents will conduct unannounced visits to designated quarantine locations to verify compliance by confirming the physical presence of covered persons. Any failure to comply with this order to self-quarantine shall be a criminal offense punishable by a fine not to exceed \$1,000, confinement in jail for a term not to exceed 180 days, or both.*

*This executive order **supersedes Executive Order GA-11 and Executive Order GA- 12** as set forth above, but **does not supersede** Executive Orders GA-b, GA-13, GA-17, GA-18, or GA-19.*

*This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.*

## G. GA – 21

On the 5<sup>th</sup> day of May, 2020 Governor Abbot issued an executive order

[Relating to the expanded reopening of services as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately, and continuing through May 19, 2020, subject to extension based on the status of COVID-19 in Texas and the recommendations of the Governor's Strike Force to Open Texas, the White House Coronavirus Task Force, and the CDC:*

*In accordance with guidance from DSHS Commissioner Dr. Hellerstedt, and to achieve the goals established by the President to reduce the spread of COVID-19, **every person in Texas shall**, except where necessary to provide or obtain essential services or reopened services, **minimize social gatherings and minimize in-person contact with** people who are not in the same household. **People over the age of 65**, however, are strongly encouraged to stay at home as much as possible; to maintain appropriate **distance from any member of the household** who has been out of the residence in the previous 14 days; and, if leaving the home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation.*

*“Essential services” shall consist of everything listed by the [U.S. Department of Homeland Security \(DHS\) in its Guidance on the Essential Critical Infrastructure Workforce, Version 3.0](#) or any subsequent version, plus **religious services** conducted in churches, congregations, and houses of worship. Other essential services may be added to this list with the approval of the [Texas Division of Emergency Management \(TDEM\)](#). TDEM shall maintain an online list of essential services, as specified in this executive order and any approved additions. Requests for additions should be directed to TDEM at <mailto:EssentialServices@tdem.texas.gov> or by visiting the TDEM website at <http://www.tdem.texas.gov/essentialservices>. **“Reopened services” shall consist of the following** to the extent they are not already “essential services:”*

- 1. **Retail services that may be provided through** pick-up, delivery by mail, or delivery to the customer's doorstep.*
- 2. EssentialServices@tdem.texas.gov of the total listed occupancy of the retail establishment.*
- 3. EssentialServices@tdem.texas.gov of the total listed occupancy of the restaurant; provided, however, that*
  - a. this applies only to **restaurants that have less than 51 percent** of their gross receipts from the sale of alcoholic beverages;*
  - b. the **occupancy limits do not apply** to customers seated in outdoor areas of the restaurant; and*
  - c. valet services are prohibited except for vehicles with placards or plates for disabled parking.*
- 4. **Movie theaters** that operate at up to 25 percent of the total listed occupancy of any individual theater for any screening.*

5. **Shopping malls** that operate at up to 25 percent of the total listed occupancy of the shopping mall; provided, however, that within shopping malls, the food-court dining areas, play areas, and interactive displays and settings must remain closed.
6. **Museums and libraries** that operate at up to 25 percent of the total listed occupancy; provided, however, that
- a. local public museums and local public libraries may so operate **only if permitted by the local government**, and
  - b. any components of museums or libraries that have interactive functions or exhibits, including child play areas, **must remain closed**.
7. Services provided by an individual working alone in an office, effective until 12:01 a.m. on Monday, May 18, 2020, when this single-person office provision is superseded by the expanded office-based services provision set forth below.
8. **Golf course operations**.
9. **Local government operations**, including county and municipal governmental operations relating to permitting, recordation, and document-filing services, as determined by the local government.
10. **Wedding venues** and the services required to conduct weddings; provided, however, that for weddings held indoors other than at a church, congregation, or house of worship, the facility may operate at up to 25 percent of the total listed occupancy of the facility.
11. **Wedding reception services**, for facilities that operate at up to 25 percent of the total listed occupancy of the facility; provided, however, that the occupancy limits do not apply to the outdoor areas of a wedding reception or to outdoor wedding receptions.
12. Starting at 12:01 a.m. on Friday, May 8, 2020:
- a. **Cosmetology salons**, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade; provided, however, that all such salons, shops, and establishments must ensure at least six feet of social distancing between operating work stations.
  - b. **Tanning salons**; provided, however, that all such salons must ensure at least six feet of social distancing between operating work stations.
  - c. **Swimming pools**; provided, however, that
    - (i) **indoor** swimming pools may operate at up to 25 percent of the total listed occupancy of the pool facility;
    - (ii) **outdoor** swimming pools may operate at up to 25 percent of normal operating limits as determined by the pool operator; and
    - (iii) **local public swimming pools** may so operate only if permitted by the local government.
13. Starting at 12:01 a.m. on Monday, May 18, 2020:

a. **Services provided by office workers** in offices that operate at up to the greater of (i) five individuals, or (ii) 25 percent of the total office workforce; provided, however, that the individuals maintain appropriate social distancing.

b. **Manufacturing services**, for facilities that operate at up to 25 percent of the total listed occupancy of the facility.

c. **Gyms and exercise facilities** and classes that operate at up to 25 percent of the total listed occupancy of the gym or exercise facility; provided, however, that locker rooms and shower facilities must remain closed, but restrooms may open.

14. For **Texas counties that have filed with DSHS**, and are in compliance with, the requisite attestation form promulgated by DSHS regarding five or fewer cases of COVID-19, those in-store retail services, dine-in restaurant services, movie theaters, shopping malls, museums and libraries, indoor wedding venues, wedding reception services, swimming pools, services provided by office workers in offices of more than five individuals, manufacturing services, and gyms and exercise facilities and classes, as otherwise defined and limited above, may operate at up to 50 percent (as opposed to 25 percent).

15. Such **additional services** as may be enumerated by future executive orders or proclamations by the governor.

*The conditions and limitations set forth above for reopened services shall not apply to essential services. The total listed occupancy limits described above refer to the maximum occupant load set by local or state law, but for purposes of this executive order, staff members are not included in determining operating levels except for nonessential manufacturing service providers and services provided by office workers. Notwithstanding anything herein to the contrary, **the governor may by proclamation** identify any county or counties in which reopened services are thereafter prohibited, in the governor's sole discretion, based on the governor's determination in consultation with medical professionals that **only essential services should be permitted** in the county, including based on factors such as an increase in the transmission of COVID-19 or in the amount of COVID-19-related hospitalizations or fatalities.*

*In providing or obtaining essential services or reopened services, **all persons** (including individuals, businesses and other organizations, and any other legal entity) **should use good-faith efforts and available resources** to follow the minimum standard health protocols recommended by DSHS, found at [www.dshs.texas.gov/coronavirus](http://www.dshs.texas.gov/coronavirus). **All persons should also follow**, to the extent not inconsistent with the DSHS minimum standards, the **Guidelines from the President and the CDC**, as well as other CDC recommendations. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering. **Nothing in this executive order or the DSHS minimum standards precludes requiring a customer wishing to obtain services to follow additional hygiene measures.***

***Religious services** should be conducted in accordance with the joint guidance issued and updated by the attorney general and governor.*

***People shall avoid visiting** bars, massage establishments, tattoo studios, piercing studios, sexually oriented businesses, or interactive amusement venues such as bowling alleys, video arcades, amusement parks, water parks, or splash pads, **unless these enumerated establishments or venues are specifically added as a reopened** service by proclamation or future executive order of the governor. Notwithstanding anything herein to the contrary, **the governor may by proclamation** add to this list of establishments or venues that people shall*

avoid visiting. To the extent any of the establishments or venues that people shall avoid visiting also offer reopened services permitted above, such as restaurant services, these establishments or venues **can offer only the reopened services and may not offer any other services**. The use of drive thru, pickup, or delivery options for food and drinks remains allowed and highly encouraged throughout the limited duration of this executive order.

This executive order **does not prohibit people from** accessing essential or reopened services or engaging in essential daily activities, such as going to the grocery store or gas station; providing or obtaining other essential or reopened services; visiting swimming pools, parks, beaches, rivers, or lakes; hunting or fishing; or engaging in physical activity like jogging, bicycling, or other outdoor sports, **so long as the necessary precautions are maintained** to reduce the transmission of COVID- 19 and to **minimize in-person contact with people** who are not in the same household. In accordance with the Guidelines from the President and the CDC, **people shall not visit** nursing homes, state supported living centers, assisted living facilities, or long term care facilities **unless to provide critical assistance** as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by the HHSC, including minimizing the movement of staff between facilities whenever possible.

In accordance with the Guidelines from the President and the CDC, **schools shall remain temporarily closed** to in-person classroom attendance by students and shall not recommence before the end of the 2019-2020 school year, except that a student (accompanied by an adult if needed) may, as allowed by the school consistent with the minimum standard health protocols found in guidance issued by the Texas Education Agency (TEA), visit his or her school campus

(a) for limited non-instructional administrative tasks such as **cleaning out lockers, collecting personal belongings**, and returning school items like band instruments and books; or

(b) for graduating seniors, to **complete post-secondary requirements** that cannot be accomplished absent access to the school facility and its resources, excluding any activity or assessment which can be done virtually.

Public education **teachers and staff** are encouraged to continue to work remotely from home if possible, but may return to schools to conduct remote video instruction, as well as perform administrative duties, under the minimum standard health protocols found in guidance issued by the TEA. **Private schools and institutions** of higher education should establish similar standards to allow teachers and staff to return to schools to conduct remote video instruction and perform administrative duties when it is not possible to do so remotely from home. Notwithstanding anything herein to the contrary, schools may conduct graduation ceremonies consistent with the minimum standard health protocols found in guidance issued by the TEA. **Nothing in this executive order, the DSHS minimum standards, or the joint guidance issued and updated by the attorney general and governor precludes** churches, congregations, and houses of worship from using school campuses for their religious services or other allowed services.

This executive order **shall supersede any conflicting order** issued by **local officials** in response to the COVID-19 disaster, **but only to the extent** that such a local order restricts essential services or reopened services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list of essential services or the list or scope of reopened services as set forth in this executive order. **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, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster

*that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.*

*This executive order **supersedes Executive Order GA-18**, but does **not supersede** Executive Orders GA-b, GA-13, GA-17, GA-19, or GA-20. This executive order shall remain in effect and in full force until 11:59 p.m. on May 19, 2020, **unless it is modified, amended, rescinded, or superseded by the governor.***

## **H. GA – 22**

On the 7<sup>th</sup> day of May, 2020 Governor Abbot issued an executive order [Relating to confinement during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:*

*Executive **Order GA-2 1**, as it pertains to cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade, is **hereby amended to immediately reopen, retroactive to April 2, 2020**, such salons, shops, and establishments to the extent necessary to supersede and nullify the existence of any prior or existing state or local executive order, the violation of which could form the basis for **confinement in jail**. To the extent any order issued by local officials in response to COVID-19 would allow confinement in jail of a person inconsistent with Executive Order GA-2 1 or this executive order, that order is hereby superseded retroactive to April 2, 2020. All existing executive orders relating to COVID-19 are hereby amended to eliminate confinement in jail as an available penalty for any violation of the executive orders. No jurisdiction can confine a person in jail as a penalty for violating any executive order, or any order issued by local officials, in response to the COVID-19 disaster. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail, that order is hereby superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any order issued in response to the COVID-19 disaster. This amendment and suspension operates retroactively to April 2, 2020, and supersedes any contrary local or state order.*

*This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.*

## **I. GA – 23**

On the 18<sup>th</sup> day of May, 2020 Governor Abbot issued an executive order [Relating to the expanded opening of Texas in response to the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

*NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately, and continuing through June 3, 2020, subject to extension*

based on the status of COVID-19 in Texas and the recommendations of the Governor's Strike Force to Open Texas, the White House Coronavirus Task Force, and the CDC:

*In accordance with guidance from DSHS Commissioner Dr. Hellerstedt, and to achieve the goals established by the President to reduce the spread of COVID-19, **every person in Texas shall**, except where necessary to provide or obtain Covered Services, **minimize social gatherings and minimize in-person contact with people who are not in the same household**. People over the age of 65, however, are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation.*

*“Covered Services” shall consist of everything listed by the [U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency \(CISA\) in its Guidance on the Essential Critical Infrastructure Workforce, Version 3.0](#) or any subsequent version, plus religious services conducted in churches, congregations, and houses of worship. These covered services are not subject to the conditions and limitations, including occupancy or operating limits, set forth below for other covered services.*

*“Covered Services” shall also consist of the following to the extent they are not already CISA services or religious services, subject to the conditions and limitations set forth below:*

*1. **Retail services** that may be provided through pick-up, delivery by mail, or delivery to the customer's doorstep.*

*2. **In-store, non-CISA retail services**, for retail establishments that operate at up to 25 percent of the total listed occupancy of the retail establishment.*

*3. **Dine-in restaurant services**, for restaurants that operate at up to 25 percent of the total listed occupancy of the restaurant, effective until 12:01 a.m. on Friday, May 22, 2020, when this provision is superseded by the provision set forth below for expanded dine-in restaurant services; provided, however, that*

*a. this applies only to restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages; and*

*b. any components of the restaurants that have interactive functions or exhibits, including child play areas, interactive games, and video arcades, must remain closed.*

*4. **Movie theaters** that operate at up to 25 percent of the total listed occupancy of any individual theater for any screening; provided, however, that components of the movie theaters that have video arcades or interactive games must remain closed.*

*5. **Shopping malls** that operate at up to 25 percent of the total listed occupancy of the shopping mall; provided, however, that within shopping malls, the food-court dining areas, play areas, video arcades, and interactive displays and settings must remain closed.*

*6. **Museums and libraries** that operate at up to 25 percent of the total listed occupancy; provided, however, that a. local public museums and local public libraries may so operate only if permitted by the local government; and b. any components of museums or libraries that have interactive functions or exhibits, including child play areas, must remain closed.*

**7. Golf course operations.**

**8. Local government operations**, including county and municipal governmental operations relating to licensing (including marriage licenses), permitting, recordation, and document-filing services, as determined by the local government.

**9. Wedding venues** and the services required to conduct weddings; provided, however, that for weddings held indoors other than at a church, congregation, or house of worship, the facility may operate at up to 25 percent of the total listed occupancy of the facility.

**10. Wedding reception services**, for facilities that operate at up to 25 percent of the total listed occupancy of the facility.

**11. Cosmetology salons**, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade; provided, however, that all such salons, shops, and establishments must ensure at least six feet of social distancing between operating work stations.

**12. Tanning salons**; provided, however, that all such salons must ensure at least six feet of social distancing between operating work stations.

**13. Swimming pools**, as determined by each pool owner; provided, however, that a. indoor swimming pools may operate at up to 25 percent of the total listed occupancy of the pool facility; and b. outdoor swimming pools may operate at up to 25 percent of normal operating limits as determined by the pool owner.

**14. Non-CISA services provided by office workers** in offices that operate at up to the greater of (i) ten individuals, or (ii) 25 percent of the total office workforce; provided, however, that the individuals maintain appropriate social distancing.

**15. Non-CISA manufacturing services**, for facilities that operate at up to 25 percent of the total listed occupancy of the facility.

**16. Gyms and exercise facilities** and classes that operate at up to 25 percent of the total listed occupancy of the gym or exercise facility; provided, however, that locker rooms and shower facilities must remain closed, but restrooms may open.

**17. Starting immediately for all Texas counties except Deaf Smith, El Paso, Moore, Potter, and Randall counties:**

**a. Massage establishments** and other facilities where licensed massage therapists or other persons licensed or otherwise authorized to practice under Chapter 455 of the Texas Occupations Code practice their trade; provided, however, that all such facilities must ensure at least six feet of social distancing between operating work stations.

**b. Personal-care and beauty services** that have not already been reopened, such as tattoo studios, piercing studios, hair removal services, and hair loss treatment and growth services; provided, however, that

(i) all such facilities must ensure at least six feet of social distancing between operating work stations; and

(ii) to the extent such services are licensed or otherwise regulated by Texas law, such services may operate only as permitted by Texas law. c. Child-care services other than youth camps as described below; provided, however, that to the extent such services are licensed or otherwise regulated by Texas law, such services may operate only as permitted by Texas law.

18. Starting at 12:01 a.m. on Friday, May 22, 2020, for all Texas counties except Deaf Smith, El Paso, Moore, Potter, and Randall counties:

a. **Dine-in restaurant services**, for restaurants that operate at up to 50 percent of the total listed occupancy of the restaurant; provided, however that

(i) this applies only to restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages; and

(ii) any components of the restaurants that have interactive functions or exhibits, including child play areas, interactive games, and video arcades, must remain closed.

b. **Bars and similar establishments** that are not restaurants as defined above, that hold a permit from the Texas Alcoholic Beverage Commission, and that are not otherwise expressly prohibited in this executive order, for such establishments that operate at up to 25 percent of the total listed occupancy of the establishment; provided, however, that any components of the establishments that have interactive functions or exhibits, including child play areas, interactive games, and video arcades, must remain closed.

c. **Aquariums, natural caverns, and similar facilities** (excluding zoos) that operate at up to 25 percent of the total listed occupancy or, for outdoor areas, at up to 25 percent of the normal operating limits as determined by the facility owner; provided, however, that

(i) **local public facilities** may so operate only if permitted by the local government; and

(ii) any components of the facilities that have interactive functions or exhibits, including child play areas, must remain closed.

d. **Bowling alleys**, bingo halls, simulcast racing to the extent authorized by state law, and skating rinks that operate at up to 25 percent of the total listed occupancy of the establishment; provided, however, that

(i) bowling alleys must ensure at least six feet of social distancing between operating lanes; and

(ii) components of the establishments that have video arcades must remain closed.

e. **Rodeos and equestrian events** that operate at up to 25 percent of the total listed occupancy or, for outdoor areas, at up to 25 percent of the normal operating limits as determined by the facility owner; provided, however, that this authorizes only the rodeo or equestrian event and not larger gatherings, such as county fairs, in which such an event may be held.

f. **Drive-in concerts**, under guidelines that facilitate appropriate social distancing, that generally require spectators to remain in their vehicles, and that minimize in-person contact between people who are not in the same household or vehicle.

*g. Amateur sporting events*

*(i) at which there is no access to the general public allowed; and*

*(ii) for which all participants have tested negative for COVID-19 prior to the event, are quarantined for the duration of the event, are temperature-checked and monitored for symptoms daily, and are tested again for COVID-19 at the end of the event.*

**19. Starting at 12:01 a.m. on Friday, May 29, 2020, for Deaf Smith, El Paso, Moore, Potter, and Randall counties:**

*a. All services that were restored for other Texas counties on Monday, May 18 and Friday, May 22, 2020, in numbers 17 and 18 above.*

**20. Starting at 12:01 a.m. on Friday, May 29, 2020, for all Texas counties:**

*a. Outdoor areas of zoos that operate at up to 25 percent of the normal operating limits as determined by the zoo owner; provided, however, that*

*(i) indoor areas of zoos, other than restrooms, must remain closed;*

*(ii) any components of the zoos that have interactive functions or exhibits, including child play areas, must remain closed; and (iii) local public zoos may so operate only if permitted by the local government.*

**21. Starting at 12:01 a.m. on Sunday, May 31, 2020, for all Texas counties:**

*a. **Professional basketball**, baseball, softball, golf, tennis, football, and car racing events, with no spectators physically present on the premises of the venue, as approved on a league-by-league basis by DSHS, in consultation with the Office of the Governor and any recommendations by the advisory Strike Force to Open Texas, based on whether the league has submitted a plan that applies to all events and that meets the minimum health and safety standards; provided, however, that each league must submit, along with a request for approval in the manner prescribed by DSHS, a plan that incorporates applicable minimum standard health protocols recommended by DSHS, as applicable, and such additional measures as are needed to ensure a safe plan for conducting the event.*

*b. **Youth camps**, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths.*

*c. **Youth sports programs**; provided, however, that practices may begin, but games and similar competitions may not begin until June 15, 2020.*

**22. For Texas counties that have filed with DSHS, and are in compliance with, the requisite attestation form promulgated by DSHS regarding five or fewer cases of COVID-19, those services, establishments, and facilities listed above with 25 percent occupancy or operating limits may, as otherwise defined and limited above, operate at up to 50 percent.**

**23. Such additional services as may be enumerated by future executive orders or proclamations by the governor.**

*For the **Covered Services listed above** with limits based on “total listed occupancy,” the total listed occupancy limits refer to the maximum occupant load set by local or state law, but for purposes of this executive order, staff members are not included in determining operating levels except for non-CISA manufacturing service providers and non-CISA services provided by office workers. The “total listed occupancy” limits do not apply to outdoor areas, events, facilities, or establishments.*

*Additionally, **valet services are prohibited** except for vehicles with placards or plates for disabled parking.*

*Notwithstanding anything herein to the contrary, **the governor may by proclamation** identify any county or counties in which Covered Services other than CISA services and religious services are thereafter prohibited, **in the governor’s sole discretion**, based on the governor’s determination in consultation with medical professionals that only CISA services and religious services should be permitted in the county, including based on factors such as an increase in the transmission of COVID-19 or in the amount of COVID-19-related hospitalizations or fatalities. In providing or obtaining Covered Services, **all persons** (including individuals, businesses and other organizations, and any other legal entity) **should use good-faith** efforts and available resources to follow the minimum standard health protocols recommended by DSHS, found at <https://www.dshs.texas.gov/coronavirus/>. All persons should also follow, to the extent not inconsistent with the DSHS minimum standards, the Guidelines from the President and the CDC, as well as other CDC recommendations. Individuals are encouraged to wear appropriate face coverings, **but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering**. Nothing in this executive order or the DSHS minimum standards precludes requiring a customer wishing to obtain services to follow additional hygiene measures.*

***Religious services should be conducted** in accordance with the joint guidance issued and updated by the attorney general and governor. Nothing in this executive order, the DSHS minimum standards, or the joint guidance issued and updated by the attorney general and governor precludes churches, congregations, and houses of worship from using school campuses for their religious services or other allowed services.*

*Except as specifically allowed above, **people shall avoid visiting** interactive amusement venues such as video arcades, amusement parks, or water parks, unless these enumerated establishments or venues are specifically added as a Covered Service by proclamation or future executive order of the governor. Notwithstanding anything herein to the contrary, **the governor may by proclamation** add to this list of establishments or venues that people shall avoid visiting. To the extent any of the establishments or venues that people shall avoid visiting also offer Covered Services permitted above, such as restaurant services, **these establishments or venues can offer only the Covered Services** and may not offer any other services. **This executive order does not prohibit people from** accessing Covered Services or engaging in safe daily activities, such as going to the grocery store or gas station; providing or obtaining other Covered Services; visiting swimming pools, parks, beaches, rivers, or lakes; hunting or fishing; attending youth club meetings or events; or engaging in physical activity like jogging, bicycling, or other outdoor sports, **so long as the necessary precautions are maintained to reduce the transmission of COVID-19** and to minimize in-person contact with people who are not in the same household.*

*In accordance with the Guidelines from the President and the CDC, **people shall not visit** nursing homes, state supported living centers, assisted living facilities, or long term care facilities unless to provide critical assistance as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by the HHSC, including minimizing the movement of staff between facilities whenever possible.*

*In accordance with the Guidelines from the President and the CDC, schools shall remain temporarily closed to in-person classroom attendance by students for the 2019-2020 school year, except for the following:*

**1. Public education students (accompanied by an adult if needed) may, as allowed by the school consistent with the minimum standard health protocols found in guidance issued by the Texas Education Agency (TEA), visit his or her school campus**

*(a) for limited non-instructional administrative tasks such as cleaning out lockers, collecting personal belongings, and returning school items like band instruments and books; or*

*(b) for graduating seniors, to complete post-secondary requirements that cannot be accomplished absent access to the school facility and its resources, excluding any activity or assessment which can be done virtually.*

**2. Beginning June 1, 2020, public school districts may offer, and public education students may accordingly visit school campuses for, in-person classroom instructional activities and learning options, such as summer school programs, special education evaluations, specialized assessments, and individualized tutoring, under the minimum standard health protocols found in guidance issued by the TEA.**

**3. Public education teachers and staff are encouraged to continue to work remotely from home if possible, but may return to schools to conduct remote video instruction, to perform administrative duties, and, beginning June 1, 2020, to provide in-person classroom instructional activities and learning options as permitted and offered by school districts, under the minimum standard health protocols found in guidance issued by the TEA.**

**4. <https://www.dshs.texas.gov/coronavirus/> reopen campuses and are encouraged to establish similar standards to allow students, teachers, and staff to return to schools for the limited purposes set forth above.**

**5. Notwithstanding anything herein to the contrary, schools may conduct graduation ceremonies consistent with the minimum standard health protocols found in guidance issued by the TEA.**

***This executive order, as it pertains to cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade, is retroactive to April 2, 2020, to the extent necessary to supersede and nullify the existence of any prior or existing state or local executive order, the violation of which could form the basis for confinement in jail. To the extent any order issued by local officials in response to COVID-19 would allow confinement in jail of a person inconsistent with this executive order or any prior state executive order, that order is superseded retroactive to April 2, 2020.***

***All existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for any violation of the executive orders. No jurisdiction can confine a person in jail as a penalty for violating any executive order, or any order issued by local officials, in response to the COVID-19 disaster. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail, that order is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any order issued in***

*response to the COVID-19 disaster. This amendment and suspension operates retroactively to April 2, 2020, and supersedes any contrary local or state order.*

*This executive order shall supersede any conflicting order issued by local officials in response to the COVID- 19 disaster, but only to the extent that such a local order restricts Covered Services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list or scope of Covered Services as set forth in this executive order. 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, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.*

*This executive order supersedes Executive Orders GA-21 and GA-22, but does not supersede Executive Orders GA-b, GA-13, GA-17, GA-19, or GA-20.*

*This executive order shall remain in effect and in full force until 11:59 p.m. on June 3, 2020, unless it is modified, amended, rescinded, or superseded by the governor.*

**A. GA – 24**

On the 29<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order

[Relating to statewide continuity of essential services and activities during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

**A. GA – 25**

On the 29<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order

[Relating to statewide continuity of essential services and activities during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

**A. GA – 26**

On the 29<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order

[Relating to statewide continuity of essential services and activities during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

**A. GA – 27**

On the 29<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order [Relating to statewide continuity of essential services and activities during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

**A. GA – 28**

On the 29<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order [Relating to statewide continuity of essential services and activities during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

**A. GA – 29**

On the 29<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order [Relating to statewide continuity of essential services and activities during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

**A. GA – 30**

On the 29<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order [Relating to statewide continuity of essential services and activities during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

**A. GA – 31**

On the 29<sup>th</sup> day of March, 2020 Governor Abbot issued an executive order [Relating to statewide continuity of essential services and activities during the COVID-19 disaster \(coronavirus\)](#) which reads in pertinent part as follows:

April 27, 2020: Governor Abbott Issues Executive Order GA-18

GA-14 expired on April 30, 2020. On April 27, 2020, Governor Abbott issued GA-18 which reads as follows:

allowing for so-called “reopened services”. (Tab "E"). GA-18 states, among other things, that people “shall avoid” certain types of businesses, including, “bars, gyms, public swimming pools, interactive amusement venues such as bowling alleys and video arcades, massage establishments, tattoo studios, piercing studios, or cosmetology salons.” GA-18 also closed public schools for the rest of the 2019-20 school year and small sections of libraries, malls, and museums that have interactive exhibits and play areas. GA-18 defines some business operating at 25% capacity as “reopened services” with no real explanation for what that means or why 25% is anything other than a completely arbitrary number. GA-18 leaves open so-called “essential services” including grocery stores, pharmacies, and dozens of other businesses, without imposing mandated restrictions, and without demonstrating or even mentioning why some businesses are considered “essential” and others are not.

**B. May 7, 2020: Governor Abbott Issues GA-22**

On Tuesday, May 5, 2020, Shelly Luther was sentenced to seven (7) days in jail and fined \$7,000.00 for violating Governor Abbott’s Order GA-18. Soon thereafter, on May 7, 2020, Governor Abbott issued GA-22. (Tab “F”) GA-22 which reads as follows:

among other things, opened “cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade. . .” (Tab “F”). While opening these businesses, GA-22 further ordered people “shall avoid visiting” certain businesses, including but not limited to, bars, amusement parks, tattoo parlors” and many more. (Tab “F”). GA-22 also eliminated confinement in jail as an available penalty for violations

of Governor Abbott’s executive orders. (Tab “F”). In GA-22, Governor Abbott further ordered that the amendment “operates retroactively to April 1, 2020.” (Tab “F”).

**C. May 18, 2020: Governor Abbott Issues GA-23**

On May 18, 2020, Governor Abbott issued GA-23 which reads as follows:

the second phase of the State of Texas' ongoing plan to reopen, among other things, allowing restaurants to increase their occupancy to 50% . (Tab “G”).

Defendant, in his capacity as Governor of the State of Texas, has the power to issue executive orders. (find statutory authority).

Acting in that capacity he has issues numerous orders as evidenced by the following list.

<u>Date</u>	<u>Title</u>	<u>Document number</u>
09/17/2020	<u>Relating to hospital capacity during the COVID-19 disaster</u>	GA-31
09/17/2020	<u>Relating to the continued response to the COVID-19 disaster as Texas reopens</u>	GA-30
07/02/2020	<u>Relating to the use of face coverings during the COVID-19 disaster (coronavirus/masks)</u>	GA-29
06/26/2020	<u>Relating to the targeted response to the COVID-19 disaster as part of the reopening of Texas (coronavirus)</u>	GA-28
06/25/2020	<u>Relating to the need for increased hospital capacity during the COVID-19 disaster (coronavirus)</u>	GA-27
06/03/2020	<u>Relating to the expanded opening of Texas in response to the COVID-19 disaster (coronavirus)</u>	GA-26
05/22/2020	<u>Relating to in-person visitation at county and municipal jails during the COVID-19 disaster (coronavirus)</u>	GA-25

05/21/2020	<a href="#"><u>Relating to the termination of air travel restrictions as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster (coronavirus)</u></a>	GA-24
05/18/2020	<a href="#"><u>Relating to the expanded opening of Texas in response to the COVID-19 disaster (coronavirus)</u></a>	GA-23
05/07/2020	<a href="#"><u>Relating to confinement during the COVID-19 disaster (coronavirus)</u></a>	GA-22
05/05/2020	<a href="#"><u>Relating to the expanded reopening of services as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster (coronavirus)</u></a>	GA-21
04/27/2020	<a href="#"><u>Relating to expanding travel without restrictions as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster (coronavirus)</u></a>	GA-20
04/27/2020	<a href="#"><u>Relating to hospital capacity during the COVID-19 disaster (coronavirus)</u></a>	GA-19
04/27/2020	<a href="#"><u>Relating to the expanded reopening of services as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster (coronavirus)</u></a>	GA-18
04/17/2020	<a href="#"><u>Relating to the establishment of the Governor's Strike Force to Open Texas (coronavirus/COVID-19)</u></a>	GA-17
04/17/2020	<a href="#"><u>Relating to the safe, strategic reopening of select services as the first step to Open Texas in response to the COVID-19 disaster (coronavirus)</u></a>	GA-16
04/17/2020	<a href="#"><u>Relating to hospital capacity during the COVID-19 disaster (coronavirus)</u></a>	GA-15
03/31/2020	<a href="#"><u>Relating to statewide continuity of essential services and activities during the COVID-19 disaster (coronavirus)</u></a>	GA-14
03/29/2020	<a href="#"><u>Relating to detention in county and municipal jails during the COVID-19 disaster (coronavirus)</u></a>	GA-13

03/29/2020	<a href="#"><u>Relating to roadway screening and self-quarantine during the COVID-19 disaster (coronavirus)</u></a>	GA-12
03/26/2020	<a href="#"><u>Relating to airport screening and self-quarantine during the COVID-19 disaster (New York Tri-State Area, New Orleans, coronavirus)</u></a>	GA-11
03/24/2020	<a href="#"><u>Relating to daily reporting during the COVID-19 disaster (coronavirus, hospital reporting)</u></a>	GA-10
03/22/2020	<a href="#"><u>Relating to hospital capacity during the COVID-19 disaster (coronavirus)</u></a>	GA-09
03/19/2020	<a href="#"><u>Relating to COVID-19 preparedness and mitigation (coronavirus)</u></a>	GA-08
09/05/2019	<a href="#"><u>Relating to the prevention of mass attacks</u></a>	GA-07
06/13/2019	<a href="#"><u>Relating to necessary assistance from qualified plumbers with disaster recovery and preparedness, suspending Section 1301.003 of the Texas Occupations Code to prevent the imminent abolition of the Texas State Board of Plumbing Examiners and expiration of the Plumbing License Law on September 1, 2019, and delaying that abolition and expiration until disaster needs subside or the 87th legislature addresses the matter</u></a>	GA-06
12/13/2018	<a href="#"><u>Relating to emergency management of natural and human-caused events, emergencies, and disasters</u></a>	GA-05
12/03/2018	<a href="#"><u>Honoring the memory of the forty-first President of the United States of America, George Herbert Walker Bush</u></a>	GA-04
09/05/2018	<a href="#"><u>Relating to the establishment of the Governor's Committee to Support the Military</u></a>	GA-03
09/13/2017	<a href="#"><u>Relating to the suspension of the seven-day waiting period for certain state unemployment insurance claimants who have become unemployed as a direct result of the disaster created by Hurricane Harvey</u></a>	GA-02
03/30/2016	<a href="#"><u>Relating to the continuation of the Governor's Commission for Women</u></a>	

In an emergency, the Texas Legislature purported to grant extraordinary powers to the Governor by the passage of Texas Disaster Act of 1975. Said statute purports to give the Governor the power to suspend certain laws during an emergency as follows:

Sec. 418.0155. SUSPENSION LIST. (a) *The governor's office, using existing resources, shall compile and maintain a comprehensive list of regulatory statutes and rules that may require suspension during a disaster.*

(b) *On request by the governor's office, a state agency that would be impacted by the suspension of a statute or rule on the list compiled under Subsection (a) shall review the list for accuracy and shall advise the governor's office regarding any statutes or rules that should be added to the list.*

Sec. 418.016. SUSPENSION OF CERTAIN LAWS AND RULES. (a) *The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.*

(b) *Upon declaration of a state of disaster, enforcement of the regulation of on-premise outdoor signs under Subchapter A, Chapter 216, Local Government Code, by a municipality that is located in a county within, or that is located in a county adjacent to a county within, the disaster area specified by the declaration is suspended to allow licensed or admitted insurance carriers or licensed agents acting on behalf of insurance carriers to erect temporary claims service signage for not more than 30 days or until the end of the declaration of disaster, whichever is earlier.*

(c) *A temporary claims service sign shall not:*

(1) *be larger than forty square feet in size;*

(2) *be more than five feet in height; and*

(3) *be placed in the right of way.*

(d) *At the end of the 30 days or the end of the declaration of disaster, whichever is earlier, the insurance carrier or its licensed agents must remove the temporary claims service signage that was erected.*

(e) *On request of a political subdivision, the governor may waive or suspend a deadline imposed by a statute or the orders or rules of a state agency on the political subdivision, including a deadline relating to a budget or ad valorem tax, if the waiver or suspension is reasonably necessary to cope with a disaster.*

(f) *The governor may suspend any of the following requirements in response to an emergency or disaster declaration of another jurisdiction if strict compliance with the requirement would prevent, hinder, or delay necessary action in assisting another state with coping with an emergency or disaster:*

(1) *a registration requirement in an agreement entered into under the International Registration Plan under Section 502.091, Transportation Code, to the extent authorized by federal law;*

(2) *a temporary registration permit requirement under Section 502.094, Transportation Code;*

- (3) a provision of Subtitle E, Title 7, Transportation Code, to the extent authorized by federal law;
- (4) a motor carrier registration requirement under Chapter [643](#), Transportation Code;
- (5) a registration requirement under Chapter [645](#), Transportation Code, to the extent authorized by federal law; or
- (6) a fuel tax requirement under the International Fuel Tax Agreement described by 49 U.S.C. Section 31701 et seq., to the extent authorized by federal law.
- (g) For the purposes of Subsection (f), "emergency or disaster declaration of another jurisdiction" means an emergency declaration, a major disaster declaration, a state of emergency declaration, a state of disaster declaration, or a similar declaration made by:
- (1) the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.); or
- (2) the governor of another state.
- (h) To the extent federal law requires this state to issue a special permit under 23 U.S.C. Section 127 or an executive order, a suspension issued under Subsection (f) is a special permit or an executive order.

While it may be theoretically possible to suspend some law, rule or regulation in such a way that it did not impinge upon Constitutionally protected right, the consideration is irrelevant as, the [Texas Constitution at Article 1 Section 28](#) reads as follows:

*[Sec. 28. SUSPENSION OF LAWS.](#) No power of suspending laws in this State shall be exercised except by the Legislature.*

It was the clear intent of the our founders that no power to suspend laws was to be exercised by any person or entity other than the Texas Legislature.

As if to emphasize the finality of Article 1, the Texas Bill of Rights, our founders included a prohibition found in no other state by the mandate contained in Section which reads as follows:

*[Sec. 29. BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT AND INVIOLETE.](#) To guard against transgressions of the high powers herein delegated, we declare that 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 the following provisions, shall be void.*

forbids what the above statute appears to authorize.

Defendant, in the instant case is a lawyer, therefore, it cannot be lost on Defendant that [Texas Government Code §418](#) is unconstitutional on its face because, it is an improper delegation of

legislative authority expressly prohibited by [Texas Constitution, Art. II, §1](#) which reads as follows:

*Division of Powers; Three Separate Departments; Exercise of Power Properly Attached to Other Departments*

*The powers of the Government of the State of Texas shall be divided 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; and 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.*

### **III. DENIAL OF CONSTITUTIONAL RIGHTS**

“The Constitution is not suspended when the government declares a state of disaster.” In re Abbott, No. 20-0291, 2020 WL 1943226 at \*1 (Tex. Apr. 23, 2020).

*“All government power in this country, no matter how well intentioned, derives only from the state and federal constitutions.” In re Salon A La Mode, et al., No. 20-0340 (Tex. May 5, 2020).  
Government power cannot be exercised in conflict with these constitutions, even in a pandemic.”*

The Texas Constitution limits Governor Abbott’s authority even in times of crisis or “extraordinary occasions.”

The Constitution of the State of Texas does not grant rights to the people. The Constitution is a restrictive document. You, as a citizen in this republic, have the right to do anything you want unless you, in conjunction with all the other citizens of this republic, through our Legislature, agreed to limit our rights enough to maintain an ordered society. The Constitution is not needed to grant you rights you already have. The Constitution was enacted to create an efficient and ordered government by assigning specific duties to public officials and by specifically forbidding those officials from infringing on certain specified rights.

### **IV. RITE TO PEACEABLY ASSEMBLE**

*[Texas Constitution, Article 1, Sec. 27.](#) The citizens shall have the right, in a peaceable manner, to assemble together for their common good, and apply to those invested with the power of government for redress of grievances or other purposes, by petition, address or remonstrance.*

The original Magna Carter, first signed into law in 1216 A.D. The provision of the people to peacefully assemble was included and has been carried down in law ever sense. At the first sign of an emergency Defendant took it upon himself to act by edict and deny the citizens of Texas in the right to freely assemble. This provision has stood the people in good stead for over 800 years

and it was the Governor of Texas who, at the first sign of difficulty, decided it should be abridged.

Complainant does not allege that Defendant acted in anything other than the best of faith. Complainant understands the reason and rational behind the act. Neither does complainant alleged that the Defendant acted in anything other than the best of faith. Complainant alleges that Defendant acted with a lack of faith. Complainant acted with a lack of faith in the laws and the Constitution of the State of Texas.

Prior to being allowed to take on the responsibility of the highest office in the State of Texas, Defendant was required to swear on his oath as follows:

*IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS, I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of Governor of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.*

*Signature of Officer \_\_\_\_\_*

What part of “*preserve, protect, and defend the Constitution and laws o the United States and of this State*” is hard to understand?

Our founders were well aware of the potential hazards of such a situation and included Constitutional provisions in place that absolutely forbad the very behavior Defendant engaged in.

## **V. ARBITRARY AND CAPRICIOUS ORDERS**

The Governor set the tone for the rest of the state. After declaring a disaster, he demonstrated to all 254 County Commissioner’s court judges that they could start issuing orders with on constitution limitations.

If not limited, and if Constitutional rights may be suspended or infringed, unilaterally and for unlimited duration, whenever the Governor “declares” an emergency, then such rights are wholly illusory.

By suspending provisions of the Texas Constitution, failing to convene the legislature for almost three months on an “extraordinary occasion,” arbitrarily picking and choosing winners and losers, and unilaterally suspending the laws of the state of Texas, Abbott’s numerous executive orders are unconstitutional and undercut the authority of the Texas Legislature.

## VI. EXECUTIVE ORDERS ARE UNCONSTITUTIONAL

### A. Governor Abbott's Executive Orders Violate Article I, Section 28 of the Texas Constitution

“The Constitution is not suspended when the government declares a state of disaster.” In re Abbott, No. 20-0291, 2020 WL 1943226, at \*1 (Tex. Apr. 23, 2020). “All government power in this country, no matter how well-intentioned, derives only from the state and federal constitutions.” In re Salon A La Mode et al., No. 20-0340 (concurring opinion, J Blacklock) (Tex. May 5, 2020). During a pandemic “the judiciary, the other branches of government, and our fellow citizens—must insist that every action our governments take complies with the Constitution, especially now. If we tolerate unconstitutional government orders during an emergency, whether out of expediency or fear, we abandon the Constitution at the moment we need it most.” Id.

Government power cannot be exercised in conflict with the constitution, even in a pandemic. In re Abbott, 2020 WL 1943226 at \*1 (Tex. Apr. 23, 2020). Texas law does not and cannot empower the Governor to suspend the laws of the State of Texas.

While the Texas Legislature can pass and repeal law, 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’” (emphasis added). Arroyo, 69 S.W. at 504. This constitutional provision was then specifically amended to remove the provision allowing the Legislature to delegate its suspension power by “its authority.” Id. This was expressly done 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, § 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).

Texas Government Code §418 is therefore unconstitutional on its face because it purports to delegate legislative power to suspend laws to the Governor in contravention of Texas Constitution, Art. I, §28 and Art. II, §1.

As the subject Executive Orders endeavor to suspend several provisions of the Texas Constitution, and on their face admit that Abbott is suspending laws in accordance with Texas Gov't Code §418, the Orders are themselves an unconstitutional suspension of the laws and, therefore, violate Article I, §28 of the Texas Constitution and are “null and void.” See Arroyo, 69 S.W. at 504. Additionally, to the extent the Disaster Act of 1975 allows for the suspension of laws by the Governor or any local official, it is unconstitutional and void.

### **B. Executive Orders Violate Article IV, Section 8 of the Texas Constitution**

Since 1845, the Texas Constitution has allowed the Governor to convene the Legislature “*on extraordinary circumstances.*” *TEX. CONST. art. V, § 8 (1845)*. In 1866, Article V, § 8 of the Texas Constitution was amended to include language that allowed the Governor to convene the Legislature “at a different place, if that should be dangerous by reason of disease....” *TEX. CONST. art. V, §VIII (1866)*. In 1869, the Texas Constitution was amended, moving former Article V, §VIII, to Article IV, §8.

Article IV, §8 (a) of the Texas Constitution currently states:

*“The governor may, on extraordinary occasions, convene the Legislature at the seat of government, or at a different place in case that should be in possession of the public enemy or in case of the prevalence of disease threat. His proclamation therefor shall state specifically the purpose for which the Legislature is convened.” (emphasis added).*

For well over 150 years, the Texas Constitution has contemplated convening the legislature on “extraordinary occasions” and that “the prevalence of a disease threat” like COVID-19 may require the legislature to meet at a “different place” other than the “seat of government.” *TEX. CONST. art. IV, §8*.

This provision allows our duly elected representative and not one individual, i.e., the Governor, to deal with the “extraordinary occasion.” Additionally, article IV, §8 respects the long-standing doctrine of separation of powers between co-equal branches of government.

Shockingly, after almost three months, Abbott has not convened the legislature to address legislation related to “extraordinary occasions” surrounding the COVID-19 pandemic. Instead,

Abbott continues to issue executive orders that suspend laws and infringe on the Constitutional liberties of Texans and further destroy the Texas economy.

Article IV, §8 is consistent with Article I, §28 in that if it is necessary to suspend laws “on extraordinary occasions,” Governor Abbott can convene the legislature to do so. Additionally, Article IV, §8 is consistent with our strong separation of powers tradition identified in Article II, §1 of the Texas Constitution.

### **C. Executive Orders Are An Impermissible Violation of Separation of Powers Doctrine**

The Texas Constitution vests law-making power in the legislature. TEX. CONST. art. II, §1. *Boykin v State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991); *Copeland v. State*, 92 Tex. Crim. 554, 244 S.W. 818, 819 (Tex. Crim. App. 1922. See also *Russell v. Farquhar*, 55 Tex. 355., 359 (1881).

Only the legislature can exercise that power, subject to restrictions imposed by the constitution. TEX. CONST. art. II, §1. These restrictions must be express or clearly implied. *Jones v. State*, 803 S.W.2d 712, 716 (Tex. Crim. App. 1991) (citing *Gov’t Servs. Ins. 15 Underwriters v. Jones*, 368 S.W.2d 560, 563 (Tex. 1963)).

The Texas Court of Criminal Appeals in *Ex parte Granviel*, 561 S.W.2d 503 (Tex. Crim. App 1978), stated that sufficient standards are necessary to keep the degree of delegated discretion below the level of legislating. The existence of an area for exercise of discretion by the executive branch requires that standards are formulated for guidance and there is limited discretion. *Ex parte Granviel*, 561 S.W.2d at 514.

The statute must be sufficiently complete to accomplish the regulation of the particular matters falling within the legislature's jurisdiction, the matters of detail that are reasonably necessary for the ultimate application, operation and enforcement of the law may be expressly delegated to the authority charged with the administration of the statute. *Ex parte Granviel*, 561 S.W.2d at 514.

Therefore, if the legislature has not provided sufficient standards to guide the executive’s discretion and the delegated power is legislative, that executive has been granted a power that is more properly attached to the legislature and the delegation is an unconstitutional violation of separation of powers. *State v. Rhine*, 297 S.W.3d 306 (Tex. Crim. App. 2019).

Here, Texas Government Code §418 et seq. does not provide any standards to guide the Governor's discretion when identifying penalties, including fines and incarceration. With respect to the COVID-19 related orders, Governor Abbott has chosen to fine violators up to \$1,000 and incarcerate them up to 180 days, without any direction from the legislature as to when and how that may be accomplished.

## **VII. D. ORDERS VIOLATE TEXAS GOVERNMENT CODE §418.173**

Texas Health and Safety Code, Chapter 81 is designed to deal with pandemics. Instead, Governor Abbott, counties, and cities have chosen to utilize the Texas Disaster Act of 1975. TEX. GOV'T CODE, Chapter 418.

All of the executive orders issued by Real Party in Interest Abbott include penalties. (Tabs "C" – "G"). Section 418.041 of the Texas Disaster Act creates the Division of Emergency Management which is tasked with preparing "a comprehensive emergency management plan." TEX. GOV'T CODE, sec. 418.042. It allows "[a]ll or part of the state emergency management plan may be incorporated into regulations of the division or executive orders that have the force and effect of law." Id at 418.042(c). The Texas Disaster Act allows the plan to contain a penalty for violations of the Emergency Management Plan, stating:

*"PENALTY FOR VIOLATION OF EMERGENCY MANAGEMENT PLAN. (a) A state, local, or interjurisdictional emergency management plan may provide that failure to comply with the plan or with a rule, order, or ordinance adopted under the plan is an offense. (b) The plan may prescribe a punishment for the offense but may not prescribe a fine that exceeds \$1,000 or confinement in jail for a term that exceeds 180 days."*

TEX. GOV'T CODE, sec. 418.173.

With respect to penalties, the Disaster Act—even if it is Constitutional, which is it not—limits Abbott's Executive Orders to the language of the emergency management plan. Specifically, Abbott's Executive Orders are limited to penalties, if any, identified in the "emergency management plan" developed by the TDEM. TEX. GOV'T CODE, sec. 418.173. The same would apply to any local plan.

Real Party in Interest Abbott's Executive Orders unlawfully conflate his authority to issue executive orders with the criminal penalties for violating the plan. Specifically, his Executive Orders state:

*“Under Section 418.173, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable by a fine not to exceed \$1,000, confinement in jail for a term not to exceed 180 days, or both fine and confinement.” (Tabs “C” – “E”).*

The Emergency Management Plan does not define an act to which criminal penalties accrue. The Texas Emergency Management Plan is located at <https://tdem.texas.gov/state-of-texas-emergency-management-plan>. The statutory authority identified in section 418.012 does not delegate to Governor Abbott the ability to create criminal penalties for those violating his Executive Orders.

Relator Gabbie Ellison, the owner Big Daddy Zanes, was jailed for violating Abbott’s GA-18. Abbott then issued GA-22, eliminating jail as a penalty for any violation of his executive orders and making it retroactive to April 2, 2020. However, GA-22 did not eliminate fines.

On May 18, 2020, Abbott issued Executive Order, GA-23, including language stating that “failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed \$1,000....”.

It is clear that Ellison was jailed and fined under Governor Abbott’s Executive Orders. Like most Texans, Ellison was simply trying to support her family in spite of Governor Abbott’s “lock-down” orders.

Abbott’s unlawful use of governmental force against all Texans, has not only destroyed the Texas economy and violated the constitutional principles that are deeply rooted in our state’s rich history, including the long standing doctrine of separation of powers between co-equal branches government.

### **A. Orders Violate The Due Process Clause**

Under Governor Abbott’s Executive Orders, Relators’ businesses are assumed to be virus incubators despite a lack of evidence demonstrating so and without providing those businesses with any due process to contest that assumption. (Tabs “C” – “G”). Article I, § 19 of the Texas Constitution provides that “No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due process of the law of the land.” TEX. CONST. art. I, sec. 19. Article 1.04 of the Texas Code of Criminal Procedure parrots the language of the due course of law provision identified in article I, section 19 of the Texas Constitution. TEX. CODE OF CRIM. PROC. art. 1.04. Moreover, Texas Code of

Criminal Procedure art. 38.03 provides that “[a]ll persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt.” TEX. CODE OF CRIM. PROC. art. 38.03. By implementing Abbott’s Executive Orders, he has deprived citizens of opportunity to contest their alleged criminal status, and thus violated the due course of law provision of the Texas Bill of Rights; the criminal penalties associated with the COVID-19 executive orders violate the due process clause of Article I, sec. 19 of the Texas Constitution and Texas Code of Criminal Procedure art. 38.03.

The rationale behind Abbott’s mass “lock-down” includes an assumption that each citizen is a threat to their fellow Texan. The only governmental interest in a pandemic is to prohibit individuals who are a contagious threat from spreading the disease. To presume in the definition of a crime that the essential element of the crime already exists, is a fundamental contradiction of the presumption of innocence. The law regarding communicable disease is to stop the spread by those who have the disease. The legitimate purpose of pandemic law is to stop those who actually are a threat.

Article I, section 19, prevents a governmental action that has the effect of concluding that the lack of evidence indicating one is a threat, i.e., no proof of COVID-19 or the symptoms related thereto, is not a defense to an Order designed to prevent a pandemic. Under Governor Abbott’s arbitrary and capricious COVID-19 Executive Orders, health—which by definition is a defense to any charge that a person is not healthy and is thus a danger to others—is not a defense to the criminal penalties and has no impact on what businesses are shuttered and on Texan’s ingress and egress.

The Due Process Clause of the Texas Constitution warrants this Court issuing mandamus to prevent Abbott’s Executive Orders that assume guilt and provide no opportunity to contest that guilt.

## **B. Orders Violate Separation of Powers Doctrine**

Relators Hon. William Zedler and Hon. Kyle Biedermann are current members of the Texas Legislature. Abbott’s Executive Orders unconstitutionally 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. The Texas separation of powers doctrine “prohibits one branch of government from exercising a power belonging inherently to another.” *In re Dean*, 393 S.W.3d 741, 747 (Tex. 2012).

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). Here, the Texas Constitution, Article I, §28, expressly delegates to the Legislature the sole authority to “suspend law” and there is no provision of Texas law in which the legislature has clearly, expressly, and unequivocally ceded that authority to the executive. The Texas Legislature, not Governor Abbott, is responsible for creating laws under Article II, §1.

Abbott’s Orders infringe upon the Legislature’s powers by suspending laws enacted by the Legislature, in the absence of constitutional authority to do so. The Texas Constitution vest all lawmaking power in the Legislature, including the power to make, alter, suspend, and repeal laws. *Walker v. Baker*, 196 S.W.2d 324, 328 (1946).

### **C. Orders Violate the Equal Protection Clause of the Texas Constitution.**

Abbott, assumes that preventing the spread of COVID-19 represents a compelling government interest. However, the means sought to fulfill that interest in the subject executive orders are not the least restrictive possible, and thus those means do not pass strict scrutiny. Article I, § 3 of the Texas Constitution provides:

*“All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.”*

Abbott’s Executive Orders seek to determine which people, services, and groups are essential and which are non-essential based on vague or arbitrary criteria, that have no rational relationship to the governmental interest of stopping the spread of COVID-19. Such authority to

make or alter constitutional rights and/or create legislation is the province of the legislature and the people, not a unilateral decision by one person, Abbott.

Through his numerous executive orders, Abbott, not the legislature, has created (or mimicked) classes of people, business, and services he defines as “essential services,” “non-essential services,” “reopened services,” and “closed” businesses. Through his executive orders, Abbott has picked winners and losers, allowing some business to stay open, some to partially reopen, and ordering others closed. Starting on March 19, 2020, GA-08 ordered: “[E]very person in Texas shall avoid social gatherings in groups of more than 10 people,” “people shall avoid eating or drinking at bars, restaurants, and food courts, or visiting gyms or massage parlors,” “people shall not visit nursing homes or retirement or long-term care facilities,” and “schools shall temporarily close.” (Tab “C”). The number of ten people bears no reasonable relationship to the stated goal of limiting the spread of COVID-19; it is purely arbitrary. Why not 9 people? Or 11? Because the number ten has no reasonable or rational relationship to the purported goal of the executive orders, this limitation is arbitrary and void.

The executive orders also arbitrarily select certain businesses to remain fully open while ordering other similarly situated businesses to remain closed. For instance, liquor stores, bicycle shops, big-box retail stores such as Walmart and Target, lawn care services, pool cleaners, and maid services have never been shut down. However, clothing stores, gyms, restaurants, bars, and massage studios were closed. Restaurants were only recently allowed to open at 25% capacity on April 27, 2020 (Tab “C”). They are now limited to 50% capacity. There is no rational difference between the open and closed businesses as to proximity between staff and customers, so closing some of these similarly-situated businesses are arbitrary and capricious.

Shelly Luther owns a hair salon. She was cited for violation of the executive orders requiring her salon to remain closed, and a temporary restraining order was issued by the 14th Judicial District Court in Dallas County to compel her to remain closed. When she opened her salon in violation of that TRO, she was brought into court and found guilty of contempt for the TRO violation and sentenced to serve 7 days in confinement. She then petitioned for a writ of habeas corpus to this Honorable Court, and a writ issued from this Court ordering her freed from confinement without bond on Thursday, May 6, 2020.

Soon thereafter, on May 7, 2020, Governor Abbott issued GA-22. Unfortunately, Relator Gabriella Ellison was not so fortunate. During the same week Ms. Luther was found in violation of the TRO, Relator Ellison was arrested for opening up her bar, Big Daddy Zanes in West Odessa, Texas, purportedly because her opening of her bar violated GA-18. During the same period Shelly Luther was being prosecuted, Governor Abbott continued his order that “people shall avoid going to bars....” (Tab “E”).

Cosmetologist, barbers, bartenders, manicurists, tattoo artists, restaurant wait staff, and their clients/customers are typically within inches of each other for thirty minutes to numerous hours depending on the services being performed. If the plan it so prevent people from being in close proximity to each other so the spread of COVID-19 is limited, then preventing these types of services is probably understandable.

However, other businesses also have proximity issues, including retail stores, because staff and customers are also in close proximity to each other for extended periods of time. But in an arbitrary manner, the executive orders closed beauty salons, bars, and restaurants while allowing other businesses like grocery stores and big box retailers to remain fully operational. This indicates that “limiting proximity to avoid spread of COVID-19” either was never the true goal of the restrictions (calling into question the purported “compelling governmental interest” prong of the strict scrutiny analysis), or if it was, it was exercised in a completely arbitrary manner, allowing one business with proximity issues to stay open while another business with similar or even identical proximity issues was ordered completely closed (calling into question the second prong of strict scrutiny: least restrictive means).

Additionally, even now restaurants, bars, and numerous other services have their capacity limited to 25% or 50% while bicycle shops, liquor stores, pool cleaning services and numerous others have been 100% opened at all times since Abbott declared his emergency disaster. Wal-Mart, HEB, Home Depot, Amazon and other businesses have experienced record increases in sales during the COVID-19 pandemic, while small business owners have been forever closed due to Governor Abbott’s COVID-19 lottery.

*"[E]qual protection challenges under the Texas Constitution are reviewed under a multi-tiered system. Richards v. LULAC, 868 S.W.2d 306, 310-11 (Tex. 1993)(citations omitted). Generally, the classification under challenge must be rationally related to a legitimate state purpose. Id. The general rule becomes more strident, however, when the classification impinges on the exercise of a fundamental right, or when the classification distinguishes between people, in terms of any right,*

*on a 'suspect' basis such as race or national origin. In those instances, the state action is subjected to strict scrutiny, requiring that the classification be narrowly tailored to serve a compelling government interest."*

Here, Governor Abbott's conduct infringes on fundamental rights found in Article I, § 19.

I charge that heretofore, and before the making and filing of this complaint, on or before the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in the County of Travis and State of Texas, **Gregory Abbott**, did then and there unlawfully and willfully deny Complainant et al in the full and free exercise or enjoyment of rights protected by the Constitution while acting under the color of his official capacity in violation of **Article 39.03 Texas Penal Code**, against the peace and dignity of the State.

\_\_\_\_\_

Randall Kelton

## **Acknowledgement**

**STATE OF \$state County of \$county**

Before me, (insert the name and character of the officer), on this day personally appeared \$plaintiff\_first \$ plaintiff\_Last, known to me (or proved to me on the oath of \_\_\_\_\_ or through (description of identity card or other document) \_\_\_\_\_ to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, (year).

(Personalized Seal)

\_\_\_\_\_

Notary Public's Signature

## CERTIFICATE OF SERVICE

I, \$plaintiff\_first \$ plaintiff\_Last, hereby certify that a true and correct copy of above and foregoing has been delivered to \$defendant\_name, \$defendant\_address, on this the \_\_\_\_ day of \_\_\_\_\_ \$year, by certified mail (Certified Mail Receipt # \_\_\_\_\_), in accordance with the rules governing same.

\_\_\_\_\_  
\$plaintiff\_first \$ plaintiff\_Last

\$ plaintiff\_address

\$ plaintiff\_city, \$ plaintiff\_stabr \$ plaintiff\_zip

\$ plaintiff\_email