No. 20-0430

In the Supreme Court of Texas

In re Steven Hotze, M.D., *et al.*,

Relators

Original Proceeding

Amicus Curiae Brief of James C. Harrington

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Statement of the Case

Nature of the Case	Petition for writ of habeas corpus challenging governor's "stay-at-home" orders.
Respondents	Hon. Greg Abbott, Governor of Texas.
Respondents' Action	Declared a state of disaster for all Texas counties relating to the COVID-19 pandemic, and imposed a series of executive orders (commonly known as "stay-at-home" orders) temporarily closing certain businesses.

Issues Presented

1. Have Relators shown that the orders violate article I, section 28 of the Texas Constitution?

2. Have Relators shown that the orders violate article IV, section 8 of the Texas Constitution?

3. Have Relators shown that the orders—or the disaster-powers provisions of the government code—are unconstitutional delegations of legislative authority?

4. Have Relators shown that the orders violate the constitutional guarantee of due process?

5. Have Relators shown that the orders violate the constitutional guarantee of equal rights?

Interest of Amicus Curiae

James C. Harrington is a leading authority on the Texas Bill of Rights. Harrington founded the Texas Civil Rights Project—a nonprofit foundation that promotes civil rights and economic and racial justice for low-income Texans—and served as its director for two decades. He also taught constitutional law at the University of Texas Law School for 27 years and wrote *The Texas Bill of Rights: A Commentary and Litigation Manual*.

The undersigned counsel have not received, and will not receive, any fee for preparing this brief.

Reasons to Deny the Petition

Six days ago, the United States Supreme Court denied injunctive relief in a First Amendment challenge to executive orders temporarily restricting places of worship as a result of the COVID-19 pandemic. As Chief Justice Roberts noted, the restrictions "appear consistent with the Free Exercise Clause of the First Amendment." *S. Bay United Pentecostal Church v. Newsom,* No. 19A1044, ___ U.S. ___, 2020 WL 2813056, at *1 (May 29, 2020) (Roberts, C.J., concurring in denial for application of injunctive relief).

The same result should obtain here. Relators characterize this case as a battle over the constitutional limits of executive power—can the governor

close businesses to address a public health crisis? The answer is yes.

Relators ask this Court to nullify executive orders designed to abate the worst epidemic to hit Texas in more than a century. But the orders easily pass rational-basis review as efforts to inhibit the rapid spread of a deadly disease. Indeed, statistics suggest the orders succeeded in slowing the rate of infection and protecting vital healthcare resources.

Relators also argue that the statutes authorizing the orders unconstitutionally delegate legislative power to executive officials. But courts apply the nondelegation doctrine sparingly, and only when a statute lacks any guidance to executive officials in carrying out the tasks delegated to them. That isn't the situation here, where officials are exercising typical executive discretion over how, when, and where to employ the state's powers to preserve public safety and health—just as they have done in past crises.

The United States Supreme Court reiterated these broad executive powers last week—noting that the Constitution entrusts protecting public health to the political branches and, when executive officials act to do so, "their latitude must be especially broad." *Id.* (citation and internal quotation marks omitted).

Public health orders remain subject to constitutional constraints. But

the ones here easily pass constitutional muster—at least as to Relators' challenges. This Court should deny the petition.

Statement of Facts

"[O]ur nation faces a public health emergency caused by the exponential spread of COVID-19, the respiratory disease caused by the novel coronavirus SARS-CoV-2 … In Texas, the virus has spread rapidly over the past two weeks and is predicted to continue spreading exponentially in the coming days and weeks." *In re Abbott*, 954 F.3d 772, 779 (5th Cir. 2020) (orig. proceeding) (internal quotation marks and citations omitted).

"At this time, there is no known cure, no effective treatment, and no vaccine. Because many people may be infected but asymptomatic, they may unwittingly infect others." *S. Bay United*, 2020 WL at *1 (Roberts, C.J. concurring). COVID-19 "threatens to overwhelm the Texas healthcare system, causing "critical shortages of doctors, nurses, hospital beds, medical equipment, and personal protective equipment . . . ." *In re Abbott*, 954 F.3d at 779 (citation omitted).

To protect Texans from this pandemic, Governor Abbott declared a state of disaster and issued executive orders closing most Texas businesses. He since has permitted businesses to reopen subject to certain restrictions.

Summary of the Argument

The petition should be denied because—

- no suspension of the Texas Constitution is threatened here;
- Relators have failed to establish any violation of article I, § 28 or article IV, § 8 of the Texas Constitution;
- the disaster-powers provisions of the government code are permissible delegations of legislative authority; and
- Relators have failed to establish any violation of their rights to equal treatment or due process., as the orders are rationally related to limiting the spread of a deadly disease.

Argument[1]

This Court's resolution of Relators' petition should turn solely on their specific challenges. Others may exist. Some may have merit. But Relators have not raised them. As this Court recently reiterated, courts "do not, or should not, sally forth each day looking for wrongs to right" but instead "wait for the cases to come to" them, and then "decide only questions presented by the parties." *In re Abbott*, No. 20-0291, 2020 WL 1943226, at *4 (Tex. Apr. 23, 2020) (orig. proceeding) (per curiam) (citations omitted).

[1] This brief does not address Relators' complaint that Governor Abbott exceeded his statutory authority, as it does not raise any constitutional issue.

1. This case does not threaten suspension of the Texas Constitution.

Relators argue the Texas Constitution cannot be suspended even in times of pandemic. And that is true. "The Constitution is not suspended when the government declares a state of disaster." *Id.* at *1.

But this case does not threaten any suspension of the Constitution. It involves the authority of executive officials to exercise their discretion under the disaster-powers provisions of Texas law. That is all.

American law long has recognized the authority of executive officials to address extreme emergencies relating to public health. As the United States Supreme Court explained more than a century ago, the authority to respond to public health crises must be "lodged somewhere," and it is "not an unusual, nor an unreasonable or arbitrary, requirement," to vest it in officials "appointed, presumably, because of their fitness to determine such questions." *Jacobson v. Massachusetts*, 197 U.S. 11, 27 (1905).

In its decision last week, citing *Jacobson*, the Supreme Court reiterated that the "Constitution principally entrusts '[t]he safety and the health of the people' to the politically accountable officials of the States 'to guard and protect.'" *S. Bay United*, 2020 WL at *1 (Roberts, C.J., concurring) (quoting *Jacobson*, 197 U.S. at 38). "When those officials "act in areas fraught with

medical and scientific uncertainties, their latitude must be especially broad." *Id.* (internal quotation marks and citation omitted). These decisions "should not be subject to second-guessing" by the judicial branch—especially in an emergency proceeding. *See id.* at *2.

2. Governor's Abbott's orders do not violate article I, section 28 of the Texas Constitution.

Article I, section 28 of the Texas Constitution states that "[n]o power of suspending laws in this State shall be exercised except by the Legislature." Tex. Const. art. I, § 28. Article II, section 1 of the Texas Constitution provides for the separation of powers between the three branches of government and states that no branch "shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted." Tex. Const. art. II, § 1.

Initially, Relators fail to identify any suspension of law that caused them harm. They have no justiciable injury and therefore lack standing—even if this Court were to determine that the suspension of laws under section 418.016 violated the Constitution.

Anyway, Texas courts have long recognized the Legislature's authority to delegate powers to the executive branch when "the Legislature cannot itself practically and efficiently exercise" those powers. *Trimmier v. Carlton*, 296

S.W. 1070, 1082 (Tex. 1927). After all, "the Constitution itself does not require the impracticable or the impossible." *Id.* (citation omitted).

These cases do not squarely address the Constitution's explicit statement that only the Legislature has the power to suspend laws. And the cases decided over a century ago—including those cited by the Relators—prohibit the Legislature from delegating that power. But a careful analysis of chapter 418 of the government code and more recent case law should lead this Court to conclude that the Governor did not usurp and was not delegated the Legislature's power to suspend law; he merely carried out the Legislature's directives codified in chapter 418.

When the Legislature enacted chapter 418 of the government code, it provided a detailed legislative framework to guide the executive branch in the event of a disaster. The Legislature recognized the need to "clarify and strengthen the roles of the governor, state agencies, the judicial branch …, and local governments" and to provide for appropriate cooperation among them in preventing, preparing for, responding to, and recovering from disasters. Tex. Gov't Code § 418.002(4)–(6).

The Legislature recognized that it could not efficiently respond to a potential disaster and provide timely emergency management. Indeed, as a

legislative body that meets for only six months every other year, it would be ill-suited to manage a pandemic. Instead, it designated the Governor as the person responsible for managing "the dangers to the state and people presented by disasters" and bestowed upon the Governor the power to "issue executive orders, proclamations, and regulations" that "have the force and effect of law." Tex. Gov't Code § 418.011 & 418.012. The Governor can declare a state of disaster—but must comply with the procedure and factual analysis codified by the Legislature. Tex. Gov't Code § 418.014.

The Legislature also set forth specific laws and deadlines that can be suspended during the state of disaster and provided that 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." Tex. Gov't Code § 418.016.

The Governor complied with this statute, stating that, "upon written approval of the Office of the Governor," "regulatory statute[s] 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" could be suspended. The subsequent executive orders all contain similar language.

The Legislature determined which laws "would be suspended, and did so in a manner narrowly tailored" to chapter 418's purposes. *See FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 904 (Tex. 2000). "The legislature, after declaring a standard, may delegate to an administrative agency or officer power to establish rules, regulations, or minimum standards necessary to implement the express purpose of the act." *Rodriguez v. State*, No. 12-16-00238-CR, 2017 WL 1534044, at *3–4 (Tex. App.—Tyler Apr. 28, 2017, no pet.). "The legislature cannot delegate its power to make law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. To deny this would be to stop the wheels of government." *Id.* (internal quotations omitted).

By enacting chapter 418, the Legislature did exactly that—it made a law whereby it delegated to the Governor the power to determine which of the described laws would interfere with the necessary disaster response. Upon the Governor's determination, the law enacted by the Legislature suspended those laws.

The Relators allege that the "Executive Orders endeavor to suspend several provisions of the Texas Constitution" but do not specify a single constitutional provision suspended by the orders. Petition at 12. And the Governor's proclamation and executive orders demonstrate that no one suspended any constitutional rights.

3. Governor Abbott's orders do not violate article IV, section 8 of the Texas Constitution.

The Constitution provides that "[t]he Governor may, on extraordinary occasions, convene the Legislature" and may do so outside Austin when necessitated by enemy occupation or disease. Tex. Const., art. IV, § 8.

But nothing in the provision ***requires*** Governor Abbott to convene the Legislature; the power is vested "exclusively in his judgment and discretion." *Walker v. Baker*, 196 S.W.2d 324, 328 (Tex. 1946) (citation omitted). As a result, Governor Abbott's failure to convene the Legislature—in Austin or elsewhere—does not violate the Texas Constitution.

4. The disaster-powers provisions of the government code are permissible delegations of legislative authority.

Relators contend that chapter 418 of the government code—positing various disaster powers—constitute an unconstitutional delegation of legislative power. But a century of American law says otherwise.

By enacting chapter 418, the Legislature granted executive officials pandemic-response powers that easily encompass the orders at issue. The statutory language explicitly includes the power to issue orders in response to an epidemic.

The orders aimed to mitigate a pandemic that has killed nearly 100,000 Americans since February. Yet, at a moment of deep uncertainty about the risk of a resurgence, Relators demand that this Court gut these orders by striking down the statutory provisions authorizing them. Nothing in the law supports this demand.

"Although the Constitution vests legislative power in the Legislature, courts have recognized that in a complex society like ours, delegation of legislative power is both necessary and proper in certain circumstances." *FM Operating Co.*, 22 S.W.3d at 873 (citation omitted). "Thus, the Legislature may delegate legislative power to local governments, administrative agencies, and even private entities under certain conditions." *Id.* (citation omitted).

This type of delegation remains permissible "as long as the Legislature establishes reasonable standards to guide the agency in exercising those powers." *Id.* (citations omitted). This standard is not onerous. As this Court has noted, "[t]he nondelegation doctrine should be used sparingly," and

"courts should, when possible, read delegations narrowly to uphold their validity." *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 22 (Tex. 2016) (citation omitted).

This Court's reluctance to apply the nondelegation doctrine tracks federal law. As Justice Scalia has observed:

> Since Congress is no less endowed with common sense than we are, and better equipped to inform itself of the "necessities" of government; and since the factors bearing upon those necessities are both multifarious and (in the nonpartisan sense) highly political … it is small wonder that we have almost never felt qualified to second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law. As the Court points out, we have invoked the doctrine of unconstitutional delegation to invalidate a law only twice in our history, over half a century ago.

Mistretta v. United States, 488 U.S. 361, 416 (1989) (Scalia, J., dissenting) (citations and internal citations omitted).

The United States Supreme Court recently declined to apply the nondelegation doctrine in *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019). The Court reiterated that "Congress simply cannot do its job absent an ability to delegate power under broad general directives." *Id.* (citation omitted). Thus, "a statutory delegation is constitutional as long as Congress lay[s] down by legislative act an intelligible principle to which the person or body

authorized to [exercise the delegated authority] is directed to conform." *Id.* (citations omitted). In other words, the statute must inform the executive official of "the general policy he must pursue and the boundaries of [his] authority." *Id.* at 2129 (citation and internal quotation marks omitted). These standards "are not demanding." *Id.* Indeed, the Court has affirmed a delegation to an agency to issue whatever air quality standards are "requisite to protect the public health." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001).

Here, the Legislature's delegations of authority are bounded in a number of ways. The code provides executive officials with a series of clearly-stated purposes to guide their discretion. Tex. Gov't Code § 418.002. Moreover, section 418.108 applies only following the declaration of a local state of disaster, and is limited to a period of seven days except with the consent of the locality's governing body. Tex. Gov't Code § 418.108(a), (b). None of this is less clear than the legislative delegation of power to set any air standard necessary to protect public health. *Whitman*, 531 U.S. at 472.

Perhaps most important, the Legislature reserved to itself the power to terminate a declared state of disaster "at any time." Tex. Gov't Code § 418.014(c). If the Legislature disapproves of how executive officials exercise

the discretion granted to them, the Legislature may wield its most fundamental power: it may terminate the orders.

The statutes at issue are functionally no different than state statutes vesting executive agencies with powers to mitigate pandemics or otherwise prevent disease and protect public health. *See* Lawrence O. Gostin & Lindsay F. Wiley, Public Health Law 426 (3d ed. 2016) (explaining that states "broadly authoriz[e] action where necessary to protect" the public "in the face of a novel infectious disease"). That explains why, in virtually every state across the country, executive officials—not legislatures—are the ones issuing anti-pandemic orders.[2]

These enactments reflect the recognition by state legislatures that they are not equipped institutionally to formulate and enact lightning-fast responses to fast-changing patterns of contagion and centers of infection. Legislation takes time. And "[e]pidemics don't always give you a two-week heads up on their next move." *Wisconsin Legislature v. Palm*, No. 2020AP765-OA, 2020 WL 2465677, at *54 (Wis. May 13, 2020) (Hagedorn, J., dissenting).

[2] *See, e.g.*, Kaiser Family Foundation, State Data and Policy Actions to Address Coronavirus (Apr. 28, 2020), available at https://bit.ly/2xYzKBc.

Just last month, the Pennsylvania Supreme Court rejected a claim that the state's governor usurped legislative authority by restricting business operations and imposing social distancing requirements. *See Friends of DeVito v. Wolf*, No. 68 MM 2020, 2020 WL 1847100, at *14–15 (Pa. Apr. 13, 2020). And, as a federal court noted two weeks ago, federal courts across the country have rejected various constitutional challenges to Covid-19 restrictions in other states during the past month. *See Open Our Oregon v. Brown*, No. 6:20-cv-773-MC, 2020 WL 2542861, at *2 (D. Ore. May 19, 2020) (gathering cases).[3] At least one of those decisions rejected challenges based on the rights to equal protection, due process, and freedom of association. *Henry v. DeSantis*, No. 20-cv-80729-SINGHAL, 2020 WL 2479447, at *6–7 (S.D. Fla. May 14, 2020).

When executive officials use their delegated powers to mitigate a deadly pandemic, they do not trench on legislative power. Instead—as courts have recognized for a century—separation-of-powers principles are advanced, not subverted, when public health statutes are construed to enable the executive "to meet the exigencies of the occasion." *Bd. of Trustees of Highland Park Graded Common Sch. Dist. No. 46 v. McMurtry*, 184 S.W. 390, 394 (Ky. 1916).

[3] *But see Wisconsin Legislature*, 2020 WL 2465677, at *1.

5. Governor Abbott's orders do not violate due process.

Relators contend their due process rights have been violated because their "businesses are assumed to be virus incubators . . . ." Because this challenge does not implicate any suspect classification or fundamental right, the rational-basis standard of review applies.

Without actually saying so, Relators apparently assume that the claims related to their businesses involve the constitutional right to freedom of assembly. But the United States Supreme Court rejected such a notion in *City of Dallas v. Stanglin*, 490 U.S. 19 (1989).

Stanglin involved a challenge to the Dallas ordinance restricting admission to certain dance halls to patrons between the ages of 14 and 18. *Id.* at 20. The Court held that rational-basis scrutiny applied because these business patrons were not members of an organized association, generally were strangers to each other, the dance halls admitted all who paid the admission fee, and the patrons did not gather to take positions on public questions. *Id.* at 24–25. The same is true of the patrons of Relators' businesses.[4] This type of "activity qualifies neither as a form of 'intimate

[4] The Court applies identical analysis to constitutional claims of assembly and association. *See Legacy Church, Inc. v. Kunkel*, No. CIV 20-0327 JB/SCY, 2020 WL 1905586, at *25 (D.N.M. Apr. 17, 2020) (citations omitted) ("[T]he Supreme Court has applied the

association' nor as a form of 'expressive association'" and the First Amendment does not "recognize[ ] a generalized right of 'social association.'" *Id.* at 25.

Because Relators' claim does not involve any suspect classification or fundamental right, rational-basis scrutiny applies—meaning the orders survive constitutional scrutiny if they are rationally related to a legitimate governmental purpose. *See Romer v. Evans*, 517 U.S. 620, 631 (1996) (citation omitted) ("if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end").

Courts applying this standard must determine (1) whether the challenged legislation has a legitimate purpose, and (2) whether it was reasonable for lawmakers to believe that the use of the challenged classification would promote that purpose. *First Am. Title Ins. Co. v. Combs*, 258 S.W.3d 627, 639 (Tex. 2008). A government action satisfies this test if it is at least fairly debatable that the action was rationally related to a legitimate

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freedom-of-association standard to freedom of assemblies cases, rendering them one and the same.").

government interest. *City of San Antonio v. TPLP Office Park Props.*, 218 S.W.3d 60, 65 (Tex. 2007).

Relators appear to suggest that the orders cannot survive even this deferential level of review because they are not rationally related to protecting citizens from the pandemic. But the stay-at-home orders advance the legitimate governmental interest of limiting the pandemic's spread and ensuring the viability of the Texas healthcare system. Epidemiological modeling shows that stay-at-home orders, when largely observed by the public, mitigate the spread of the virus and resulting deaths by flattening the curve of infection.[5] But the threat is not over.

The orders address these legitimate purposes. There is nothing irrational or unreasonable in the determination that non-essential businesses must close temporarily to slow spread of the virus; it is "at least fairly debatable." *See City of San Antonio*, 218 S.W.3d at 65. And Texas courts do not "second guess" these types of policy choices. *See id.* at 67. Governmental entities enjoy "large leeway in making classifications and drawing lines . . . ." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973). Relators

[5] Lindsay Huth and Yan Wu, *Some Forecasts See Virus Upswing for States That Resisted Shutdown Measures*, Wall St. J., April 24, 2020, *available at* https://www.wsj.com/graphics/coronavirus-projections-for-shutdown-reopening-states/.

simply cannot negate any rational or reasonable basis for the orders, which vitiates their due process challenge.

Finally, Relators suggest that Governor Abbott's presumed failure to perform a personalized examination of the hygienic practices in each of their businesses violates the Texas Constitution. But they offer no legal authority or analysis to support this contention—nor do they explain how any governmental official possibly could meet such an onerous burden. Imposing such a requirement would render government officials unable to draw lines or make classifications at all.

6. Governor Abbott's orders do not violate equal rights.

The Equal Rights Amendment to the Texas Constitution provides that "[e]quality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin." Tex. Const. art. I, § 3a.

In deciding an equal-rights challenge, this Court first decides whether equality has been denied. *In re McLean*, 725 S.W.2d 696, 697 (Tex. 1987) (orig. proceeding) (plurality opinion). If it has, the Court next determines "whether equality was denied *because of* a person's membership in a protected class of sex, race, color, creed, or national origin." *Id.* (emphasis in original). If so, the Court applies strict scrutiny—meaning the challenged action cannot stand

unless it is narrowly tailored to serve a compelling governmental interest. *See id.* at 698 (citation omitted).

But if equality was not denied based on membership in a protected class, the Court uses the more deferential rational-basis standard of review. *Sullivan v. Univ. Interscholastic League*, 616 S.W.2d 170, 172 (Tex. 1981). Again, under this standard, the government need only show that a classification is "rationally related to a legitimate state purpose." *Richards v. League of Latin Am. Citizens*, 868 S.W.2d 306, 310–11 (Tex. 1993) (citation omitted).

Just as with their due process challenge, Relators base their equal protection argument exclusively on the closing of businesses, and the decision to categorize some businesses as essential and others as non-essential. Relators do not allege a lack of equality based on membership in a protected class. Instead, they contend that strict scrutiny applies because the orders trench on fundamental rights. But they never identify what fundamental rights are implicated by business closures. As previously noted, these closures do not implicate the constitutional rights of assembly or association. As a result, the rational-basis test applies.

Relators complain about various lines drawn in the orders—why is it nine people in a particular business instead of ten? Why are liquor stores

essential? And the like. But these are precisely the type of policy-choice nit-picking that the rational-basis standard is designed to prevent. And, in any event, a rational basis exists for these distinctions. For example, the governor might have concluded that a failure to exempt liquor stores would result in widespread disobedience of the orders and thus destroy their effectiveness. That may be right or it may be wrong. But it isn't irrational.

Governor Abbott could have made different decisions about the classifications in his respective orders. Perhaps some of those other classifications would have made more sense than the ones he made. But under entrenched precedent, if the choice is between two reasonable responses to a public crisis, the choice must be left to the governing authorities. "It is no part of the function of a court or a jury to determine which one of two modes [i]s likely to be the most effective for the protection of the public against disease." *Jacobson*, 197 U.S. at 30.

To the contrary, this choice belongs to the political branches. In light of the threat posed by the COVID-19 pandemic, this Court "would usurp the functions of another branch of government if it adjudged, as matter of law, that the mode adopted under the sanction of the State, to protect the people at

large, was arbitrary and not justified by the necessities of the case." *Id*. at 28; *see also S. Bay United*, 2020 WL 2813056, at *1.

Because the regulation is rationally related to legitimate governmental purposes, it does not violate the Equal Rights Amendment. And though strict scrutiny does not apply to this challenge concerning business closures, the result would remain the same even if it did. The exercise of authority during a pandemic can support reasonable restrictions even where they impinge on constitutional rights. *In re Abbott*, 954 F.3d at 778 (citations omitted). That explains the United States Supreme Court's rejection of emergency relief in a challenge based on the Free Exercise Clause. *See S. Bay United*, 2020 WL 2813056, at *1. If restrictions on churches can pass constitutional muster, so must restrictions on salons, gyms, and similar businesses.[6]

Conclusion

Relators fail to establish any constitutional infirmity. The petition should be denied.

[6] Indeed, a decision for Relators would result in a bizarre dichotomy with the Fifth Circuit holding that executive officials may restrict access to healthcare services during a pandemic, and this Court holding that the same officials cannot temporarily close a hair salon or other business for the same reason.

Respectfully submitted,

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Certificate of Compliance

This brief was prepared using Microsoft Word. Relying on the word count function in that software, I certify that this response contains 4,498 words (excluding the cover, tables, signature block, and certificates).

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Certificate of Service

The undersigned certifies that a true and correct copy of this instrument was served this 4th day of June, 2020 by efiling and by email upon the following counsel of record:

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