CAUSE NO. D-1-GN-21-001046

STATE OF TEXAS, Plaintiff,	§	IN THE DISTRICT COURT
v.	§	TRAVIS COUNTY, TEXAS
CITY OF AUSTIN, TEXAS, COUNTY OF TRAVIS, TEXAS, STEVE ADLER, in his official capacity as Mayor, City of Austin, Texas, ANDY BROWN, in his official capacity as County Judge, County of Travis, Texas, and MARK E. ESCOTT, in his official capacity As Interim Medical Director and Health Authority for the City of Austin and County of Travis, Defendants.	§	98th JUDICIAL DISTRICT

DEFENDANTS' JOINT RESPONSE IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR TEMPORARY INJUNCTION

COME NOW, Defendants County of Travis, Texas ("County"), Andy Brown, in his official capacity as the Travis County Judge ("County Judge"), City of Austin ("City"), Steve Adler, in his official capacity as Mayor of the City of Austin ("Mayor"), and Dr. Mark E. Escott, in his official capacity as Interim Medical Director and Health Authority for the City of Austin and County of Travis ("Public Health Authority") (collectively "Defendants") and file this Joint Response to the Plaintiff's Application for Temporary Restraining Order and/or Temporary Injunction as follows:

I. Introduction and Background

Despite the passage of more than a year of working to fight the COVID-19 pandemic, Travis County and the City of Austin still face a grim reality in their coordinated fight against COVID-19. Distinct from other jurisdictions in Texas, Travis County's infection and

hospitalization numbers continue to rise and strain its health care system. Moreover, the transmission of COVID-19, and now its variants, remains a significant threat to the health and safety of our local community as confirmed by the Public Health Authority. Ex. 1 (Affidavit of Dr. Mark Escott, Austin Public Health Authority).

In the face of ongoing threats of asymptomatic spread of the infection, the introduction of the virus' variants, a very low percentage of vaccinations (even among Texas' most vulnerable populations), the lack of "herd immunity" for the foreseeable period of time, and the inevitable "super spreader public events" during upcoming Spring Break weeks throughout Texas, Texas Governor Greg Abbott issued Executive Order GA-34 on March 2, 2021, declaring that as of Wednesday, March 10, 2021, Texas had "reopened for business as usual." Ex. 2 (GA-34). GA-34 removed almost all mandatory COVID-19 precautionary measures such as limitations on the occupancy rates of certain businesses, limits on the size of public gatherings, social distancing, and the wearing of masks. Further, GA-34 acts in the negative, purporting to prohibit the authority of local governments to issue any "conflicting orders" that would include restrictions or limitations that exceed the Governor's orders, specifically suspending certain sections of the Texas Disaster Act that would otherwise authorize Defendants to issue emergency management orders during a declared public disaster. Ex. 2 at ¶ 9.

However, the Public Health Authority has the independent and express statutory authority to make preventative measures in an effort to curb the transmission of infectious disease under Texas Health & Safety Code §121.024. The Travis County Commissioners County and the City of Austin have the express, independent statutory authority under the Health and Safety Code to take action to abate a public nuisance, which includes any "object, place, or condition that is a possible and probable medium of disease transmission to or between humans." *Id.*, § 341.011(12). Neither of these statutory grants of authority from the Texas Legislature to protect public health and safety are derived from the Texas Disaster Act and none

conflict with any action the Governor has taken under the Texas Disaster Act.

II. Argument and Authorities

The central question in this lawsuit is straight forward: Do the City and the County through its Public Health Authority have the authority under Texas Health and Safety Code chapter 121 and 122 to take steps to stop the spread of a communicable disease in his region?

A. The ongoing public health emergency and public nuisance in Austin/Travis County.

The Court should consider the State's request for injunctive relief against the backdrop of the science-backed state of the ongoing public health emergency. While the number of hospital admissions and cases had been declining in the City of Austin and Travis County since mid-January, the numbers have recently begun to plateau and are now oscillating between increasing and decreasing. Ex. 1 (Affidavit of Dr. Mark Escott, Austin Public Health Authority). This is a worrisome trend, made more concerning by lack of widespread access to vaccines and by the increasing spread of COVID-19 variants in the community. *Id.*.. Currently, Travis County and the City have a 7-day rolling average of 229 patients hospitalized in the Austin metropolitan statistical area, with 71 of the patients in an ICU bed, and 50 of those patients on a ventilator. *Id.* Our rolling average over the 7-day period for hospital admissions was 28 hospital admissions per day. *Id.* The City and County are currently in Stage 4 of the Community Risk Guidelines. *Id.*

While the community is extremely lucky to have access to safe and effective vaccines, the area is not yet in the clear to begin over-relaxing mitigation efforts. *Id.* Vaccines are not yet available to the general public. Additionally, essential workers, who are most at risk without mask requirements, are not eligible for the vaccine based on that category alone. Ex. 1 (Affidavit of Dr. Mark Escott, Austin Public Health Authority). Variants of COVID-19 are spreading throughout the community. University of

Texas student data found a variant in one third of its positive COVID-19 results. *Id.* Ending mask requirements while vaccine distribution is just ramping up, in the face of spreading variants and Spring Break is a dangerous situation that could lead to another surge of COVID-19. *Id.*

B. Travis County and the City of Austin exercised their authority to enforce laws protecting health and safety and not any authority under the Texas Disaster Act.

In this case, the State argues GA-34 superseded any other authority to issue Rules under the Texas Disaster Act. However, the challenged Rules very specifically identify their authority as conferred by Texas Health & Safety Code §121.003, among other provisions, and *not* the Texas Disaster Act. The public health authority exercised by Dr. Escott, the City, and the County exist completely outside the existence of a declared disaster, both factually and legally.

The authority to issue the Rules is derived from three sections of the Health and Safety Code applicable to local jurisdictions: Chapters 121, 122, and 341. Working together, these statues provide the framework for jurisdictions to address the local health concerns specific to their individual localities, allowing for narrowly tailored response to threats to health and safety that do not impose undue burdens statewide. This is true even outside of a declared disaster.

The State argues GA-34 uses the Governor's authority under the Texas Disaster Act to preempt certain statutes, including Sections 418.1015(b) and 418.108, that confer authority to issue local disaster orders upon a County Judge or City's Mayor as part of the Texas Disaster Act. Significantly, Defendants did not issue the challenged Rules under these provisions of the Texas Disaster Act. Instead, the Rules are authorized by legislative grants of authority in Chapters 121 and 122 of the Texas Health and Safety Code, as well as other provisions contained in the Texas Government Code, and the Texas Local Government Code. *See* Ex. 34at ¶¶ 11-19 and Sections 2.5, 3, 4, 6 & 8; Exhibit 4, the City of Austin's Ordinance No. 20201203-043, Part 1.

Texas Health and Safety Code, Chapter 121, entitled the "Local Public Health Reorganization

Act", provides the governing bodies of Travis County and/or the City of Austin with authority to "enforce any law that is reasonably necessary to protect the public health," and take any action necessary or expedient to promote health or suppress disease, including actions to prevent the introduction or spread of a communicable disease and to abate a public health nuisance. *See, e.g.,* Tex. Health & Safety Code §§ 121.003(a), 122.005-.006, 341.011-012. A "public nuisance" is defined to include any "object, place, or condition that is a possible and probable medium of disease transmission to or between humans." *Id.*, § 341.011(12).

Under Section 121.003, Defendants are statutorily authorized to adopt Rules that will ensure compliance with a Local Health Authority's rules and regulations that are necessary to protect the public health.[1] Dr. Mark Escott is the interim Local Health Authority given the statutory duty "to administer state and local laws relating to public health within the … jurisdiction" of Travis County and the City of Austin. Tex. Health & Safety Code § 121.021. As such, he is specifically mandated by the Texas Legislature, to "perform each duty that is necessary to implement and enforce a law to protect the public health. *Id.*, §121.024(b).

In short, the Local Health Authority's legislative grant of authority – particularly during, but not entirely dependent upon a public health disaster – is a broad mandate, as necessary to protect public health

[1] In Attorney General Opinion, DM-183 (1992), the Attorney General previously recognized that counties have general authority to provide for the health and welfare of persons within the county, and specific state law authorized a county commissioners court to exercise control over health and sanitation matters concerning the county and its residents. DM-183 at 2 (citing Health & Safety Code § 121.003). Additionally, case law as far back as 1920 supports these sorts of health authority rules: "Health authorities of municipalities are often empowered, and it is made their duty to execute rules, and courts uniformly hold that it is not an improper delegation of legislative authority, to adopt and execute such rules as are expedient to prevent the spread of cholera, smallpox, yellow fever, scarlet fever, diphtheria, and other communicable diseases. Such precautionary measures are sustained in every civilized community. The law of necessity demands that the great majority must be protected even at the expense of some of the rights of the individual." *Hanzal v. City of San Antonio*, 221 S.W. 237, 239 (Tex. Civ. App.—San Antonio, writ ref')

and to prevent the spread of a highly communicable disease such as COVID-19. This grant of authority is not derived from the Texas Disaster Act, but from the broad powers of local governments to protect public health and safety of a localized health threat.

The challenged Rules specifically implement and enforce the Local Health Authority's Rules and further seek to abate the spread of COVID -19, a public health nuisance that is subject to abatement by political subdivisions such as the City of Austin and Travis County. The Local Public Health Reorganization Act specifically provides for enforcement of Defendant County's public health orders through the power to issue a citation "to enforce any law or order of the commissioners court that is reasonably necessary to protect the public health." Tex. Health & Safety Code § 121.003(c). Additionally, Texas law permits a local prosecuting attorney, such as the Travis County Attorney, to file civil suits to abate a public nuisance. *Id.,* § 341.012. Texas Local Government Code states that a home-rule municipality may enforce ordinances necessary to protect public health and may punish violations with a fine. Tex. Loc. Gov't Code §§ 54.001 and 54.004.

C. The Governor's Order GA-34 does not preempt Local Health Authority Rules because the local authority to issue them exists outside of the Texas Disaster Act

Although the Legislature did give the Governor the explicit ability to preempt laws by executive order, it also placed extensive conditions on when the Governor may do so. *See* Tex. Gov't Code § 418.016 (allowing the Governor to suspend laws and regulations under certain circumstances).

The specific subsection of Section 418.016 at issue—subsection (a)—allows the Governor to suspend "regulatory statutes" under certain circumstances; however, that is not the only suspension/preemption power the Legislature gave the Governor in the Act. Subsection (e) allows the Governor to waive or suspend a deadline imposed on a political subdivision by a statute or the orders or rules of a state agency at the political subdivision's request if the waiver or suspension

is reasonably necessary to cope with a disaster. *See* Tex. Gov't Code § 418.016(e). Subsection (f) even allows the governor to suspend certain transportation regulations when there is not a disaster going on in Texas, but a disaster taking place in a neighboring jurisdiction and Texas must come to that jurisdiction's assistance. *See* Tex. Gov't Code § 418.016(f). Elsewhere in the Act, the Governor may suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles. *See* Tex. Gov't Code § 418.019. He may also temporarily suspend or modify laws and regulations if the suspension or modification is essential to provide temporary housing or emergency shelter for disaster. Tex. Gov't Code § 418.020(c).

The Legislature has given the Governor the ability to preempt laws in at least six different parts of the Texas Disaster Act, though each preemption provision has specific limits and conditions triggering use. The Act is silent on any authority to supersede the powers set forth in Chapters 121 or 122 of the Texas Health & Safety Code. That the Legislature has set out broad but reasonable conditions on the Governor's ability to preempt laws in multiple portions of the Texas Disaster Act makes it even more difficult to conclude the silence in the Legislature's grant of general authority to make executive orders bears the weight the State asserts it does. *See In re ReadyOne Industries, Inc.*, 394 S.W.3d 697, 701 (Tex. App.—El Paso 2012, orig. proceeding)(when general and specific words are grouped together in a statute, the meaning of the general words is limited by conditions imposed by specific words).

In summary, Defendants have not issued these Challenged Rules pursuant to their authority under the Texas Disaster Act, but instead under their separate legislative grant of authority to promote public health and to enforce the Local Health Authority's statutorily-authorized emergency health rules and regulations that are necessary to protect public health and to abate a public nuisance. The Texas Legislature has not given the Governor the express authority to supersede or suspend the Defendants'

authority to protect public health and to abate public nuisances, nor should the Court read such broad preemption powers into the law in light of the explicit prohibitions contained in the Texas Constitution.

1. The Governor's Authority under chapter 418, does not grant the Governor unlimited authority, but limits it to suspend laws to "reduce vulnerability, assist in mitigation, and prepare for rescue to respond to a specific disaster."

Moreover, Chapter 418 of the Texas Disaster Act permits the Governor to take certain actions to address a statewide disaster. Chapter 418 authorizes the Governor to take actions that reduce vulnerability, assist in mitigation, and prepare for prompt and efficient rescue, care and treatment. Tex. Health & Safety Code §418.002. In Paragraph 28 of the petition, the State argues the Governor suspended "any other relevant statutes to ensure local officials do not impose inconsistent restrictions." GA-34 cites to 418.016 for the governor's authority to suspends law, rules and orders. However, 418.016 provides the Governor may suspend regulatory statutes, orders… "if strict compliance with the statutory provisions or orders would in any way prevent, hinder or delay necessary action in coping with a disaster". Tex. Health & Safety Code §418.016(a). Accordingly, even if this suspension power were to apply to the Rules the statutory provisions of the Health and Safety Code in Chapters 121 and 122 are not provisions that would "prevent, hinder or delay necessary action in coping with the disaster" that would be subject to the Governor's preemption authority. Rather, the statutory provisions and rules relied upon by the Health Authority are ***preventing*** further transmission of the disease, and are not delaying action but ***taking*** action to stop the spread. GA-34 actually does the opposite, by declaring that such measures are no longer necessary, while simultaneously reasserting the existence of a statewide public health disaster as the basis for the Governor's alleged authority to issue GA-34.

The Governor can certainly choose not to act under his authority under the Texas Disaster Act, as he has now done, but he cannot simultaneously use his power to proactively respond to a disaster by

effectively arguing that there is no longer any disaster in Austin or Travis County, and thereby impose restrictions on the local authorities from declaring that there is a public health disaster or public nuisance in its own jurisdiction. This argument of "negative authority" completely defeats the entire purpose of the Texas Disaster Act to reduce vulnerability, assist in mitigation, and prepare for prompt and efficient rescue, care and treatment in a disaster. Tex. Health & Safety Code §418.002.

In summary, the Challenged Rules cannot arguably hinder or delay the Governor's disaster response actions when the Governor has chosen to take no action at all. Accordingly, his order to other officials not to act cannot be said to "reduce vulnerability, assist in mitigation, and prepare for rescue to respond to a specific disaster." As a result, the State cannot demonstrate that it will likely prevail on the merits upon a final hearing.

D. GA-34's Asserted Preemption of "Any Other Relevant Statutes" is Too Vague and Overbroad to be Enforceable

Even if the Governor had been given such broad preemption powers, the manner in which he has attempted to exercise them in GA-34 is too vague and too broad to be enforceable. Paragraph 9 of GA-34 specifically reads:

> Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418. l O l 5(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. (emphasis added)

The general rule is that a statute, order, or agency rule is unconstitutionally vague when a required course of conduct is stated in terms so vague "that men of common intelligence cannot be sure what is required; that is, when there is substantial risk of miscalculation by those whose acts are subject to regulation." *Texas Liquor Control Board v. Attic Club, Inc.*, 457 S.W.2d 41, 45

(Tex.1970), app. dismd., 400 U.S. 986 (1971); *Browning-Ferris v. Texas Department of Health*, 625 S.W.2d 764 (Tex.Civ.App.1981, writ ref'd n.r.e.). Vagueness and overbreadth are intertwined. *Long v. State*, 931 S.W.2d 285, 288 (Tex. Crim. App. 1996) (citing *Kramer v. Price*, 712 F.2d 174, 176 n.3, 177 (5th Cir.), reh'g en banc granted and prior opinion vacated, 716 F.2d 284 (5th Cir. 1983), aff'g dist ct., 723 F.2d 1164 (5th Cir. 1984) (en banc opinion) (per curiam)).

The primary question is if the language of the questioned law is clear enough to give reasonable notice of what act is required or forbidden. *Texas State Bd. of Barber Examiners v. Beaumont Barber College*, 454 S.W.2d 729 (Tex.1970); *Lloyd A. Fry Roofing Co. v. Stat*e, 541 S.W.2d 639 (Tex.Civ.App.1976, writ ref'd n.r.e.). Addressing vagueness in the context of penal statutes, the United States Supreme Court has emphasized the importance of specificity and clarity so that law enforcement has "minimal guidelines" to prevent "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." *Kolender v. Lawson*, 461 U.S. 352, 358, 103 S. Ct. 1855, 1858–59, 75 L.Ed.2d 903 (1983).

Here, the Governor's order does not contain any level of specificity or clarity as to what laws may have been suspended by GA-34, or what actions or orders may "conflict with" the Governor's pronouncements, leaving local governments and health authorities to guess whether they can or cannot take particular actions to contend with the COVID-19 pandemic in their respective regions. Instead, GA-34 is a standardless sweep that attempts to suspend "any other relevant statutes" that the State may arbitrarily decide to suspend any and all otherwise properly-granted legislative or constitutional authority to prohibit any public health actions by local officials with which the State subsequently does not agree.

E. The Status Quo at the Time of the Governor's Recent "Opening Order" was the Long-Term Existence of Emergency Public Health Rules Issued by the Local Health Authority.

The 2020 Public Heath Rules. In order to save lives and combat rising COVID-19 numbers, Dr. Escott adopted emergency rules for Austin and Travis County, for the purpose of reducing the possibility of exposure to COVID-19 and protecting the public health on July 14, 2020 and July 29, 2020 respectively. These rules were based on his finding that the rules are reasonably necessary to protect public health. Because COVID remains a threat to persons within Austin and Travis County, Dr. Escott continued these emergency rules extending the term for Travis County through February 18, 2021 and for the City Austin through April 15, 2021. Exs. 5 and 6.

On July 9, 2020, the Austin City Council approved Ordinance No. 20200709-003, which authorized the Health Authority to adopt rules reasonably necessary to protect the health of persons within the City, including mitigating and reducing the transmission of COVID-19. Subsequently, Dr. Escott adopted emergency rules that are reasonably necessary to mitigate and reduce the transmission of COVID-19.

On August 4, 2020, the Travis County Commissioners Court approved a Resolution and Order to mandate compliance with the Health Authority's Rules and Orders issued July 29, 2020, for the unincorporated areas of the County, and adopted criteria for declaring a public health nuisance and authorizing enforcement, and on November 10, 2020, approved a subsequent Order continuing compliance with the Health Authority Rules and Order.

The Current Rules Merely Continue and Renew the 2020 Rules into 2021. On December 3, 2020, the Austin City Council approved Ordinance No. 20201203-043, which extended the authority to adopt rules reasonably necessary to protect the health of persons within the City. In light of the ongoing, and continued threat of COVID-19 infections, on December 15, 2020, Dr.

Escott adopted the rules in effect today. Additionally, Dr. Escott issued emergency rules for the unincorporated areas of Travis County effective on March 4, 2021 through April 15, 2021, consistent with the City of Austin and based on the same findings and reasons as previously set forth in the initial notice of emergency rules.

The status quo to be preserved by a temporary restraining order or temporary injunction is the last, actual, peaceable, uncontested status that preceded the controversy resulting in the suit. *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004); *Transp. Co. v. Robertson Transps., Inc.*, 261 S.W.2d 549, 553-54 (Tex. 1953); *Ballenger v. Ballenger*, 688 S.W.2d 467, 469-70 (Tex. App.—Corpus Christi 1984, writ dism'd). The purpose of a temporary injunction is to preserve the status quo until a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). The State's request for a Temporary Restraining Order does not seek to preserve status quo, but requests a substantive finding on the merits. The status quo is the existence of the local rules which are already in effect and have been since July of 2020. Here, granting the relief requested by the State will destroy, rather than preserve, the status quo.

1. There no probable right to relief

In light of the Challenged Rules prima facie validity, all threads of the argument collapse into a single question: in order to preemptively countermand the actions of the Local Health Authority, the County and the City, can the Governor by executive order invoke Section 418.016(a) to lawfully suspend a wide swath of statutes granting those entities explicit and independent authority to protect public health and abate public nuisances? The answer is no, as laid out above.

The State cannot establish a probable right to relief because the Governor's attempted suspension of any and all possible statutes that could potentially authorize actions by other

governmental entities, when he has chosen to take no action at all, is too broad an overreach – it is simply not permitted under the Texas Disaster Act and is specifically prohibited by the Texas Constitution.

2. There is no probable injury because no party to this lawsuit is the subject of any enforcement action.

Additionally, the State has not demonstrated that it will suffer a probable injury. *Butnaru*, 84 S.W.3d at 204. The State lacks an actual injury in this action, and this lack of injury prevents the State from showing irreparable harm necessary for a temporary injunction. Throughout its petition, the State admits it has not been harmed at all by the orders and rules. The State explicitly claims that GA-34 *already* supersedes the Defendants' orders and rules, without any need for relief from this court. See Pet. at ¶¶ 28. The State also quotes language in the Mayor and County Judge's orders that cite to and incorporate the Governor's orders. See Pet. at ¶¶ 33, 38. If the State's argument is to be believed, then it is not suffering any injury whatsoever. If the State has truly superseded the challenged orders of the Mayor and County Judge, then it has suffered no injury and is not facing any irreparable harm.

In essence, the State is asking the Court not to redress any injury or resolve any controversy but to provide a second opinion to the Attorney General's interpretation of the law – in other words, an advisory opinion. There is no jurisdiction for this court to provide such an advisory opinion. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). This Court could weigh in on this legal question if an actual controversy was before it. For example, if a party was facing an enforcement action under one of the Defendants' orders, that party could present the legal question the State brings here.

Such a controversy is not brought before the Court here though. No party to this case is the subject of any enforcement action. The State is merely asking this court to provide an advisory opinion. As the State cannot show any injury, much less an irreparable one, it is not entitled to the injunction it seeks.

To the extent the State is relying on *State v. Hollins* to establish an irreparable injury due to infringement on its sovereign capacity, this argument also fails. The Governor issued GA-34 under his emergency authority under Chapter 418. The Governor claims that this order supersedes and pre-empts any conflicting local orders, but the issue in this case are not local orders issued under Chapter 418 authority. Instead, as described above, the City Council and the Commissioner's Court authorized the local Health Authority to adopt rules under completely separation authority in Sections 121.003 and 122.006 of the Health and Safety Code. Since the legislature gave local authorities in these sections the power to enforce laws necessary to protect the public health, this source of authority does not challenge or infringe on the Governor's orders under Chapter 418. The actions taken by the City Council, Commissioner's Court, and local Health Authority are not conflicting emergency orders under Chapter 418 designed to address the state of disaster due to the COVID-19 pandemic, instead the actions are rooted in a separate grant of authority and are designed to protect the public health locally. As the Governor's emergency powers and ability to enforce its own laws are not infringed by the Defendants' separate actions under a completely different statute, there is no irreparable injury under this theory advanced by the State.

A trial court is "bound to take into account other considerations evident on the face of the pleadings and in the evidence adduced at the temporary-injunction hearing -- for example, the issue of comparative injury or a balancing of the 'equities' and hardships, including a consideration

of the important factor of the public interest." *Methodist Hosps. of Dall. v. Tex. Indus. Accident Bd*., 798 S.W.2d 651, 660 (Tex. App. - Austin 1990, writ dism'd w.o.j.) (superseded by statute on other grounds) (citing *Mitchell v. City of Temple*, 152 S.W.2d 1116, 1117 (Tex. Civ. App. - Austin 1941, writ ref'd w.o.m.) ("It is now well settled that on the issue of a temporary injunction in such cases the trial court is entitled to take into consideration the question of comparative injury or 'balancing of the equities'; and if granting the injunctive relief works a greater hardship and greater injury upon the public than would result to the plaintiff by its denial, he is clearly authorized to deny it.") (emphasis added); *see also Hogue v. Bow*ie, 209 S.W.2d 807, (Tex. Civ. App.- Ft. Worth 1948) ("It seems to be the settled law in this state that courts will deny equitable in- junctive relief to a complaining party, if by balancing the equities between him and the general public more harm and inequities would follow to the many than to the complaining one, if such relief be granted.") (emphasis added).

In this case, the Court must take the public interest in controlling spread of the Covid-19 contagion and the public safety of the citizens of this community into account. While the State may argue irreparable harm, it is not the end of the inquiry. In balancing the State's challenge to Local Health Authority's public health rules against the lives of this community, it is very clear what interest prevails: those of the residents of Austin and Travis County.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants pray this Court deny Plaintiff's Application/Motion for Temporary Injunction and that all Plaintiffs take nothing by this suit and to any further relief, general or special, at law or in equity, to which Defendants may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Defendants Travis County and City of Austin's Joint Response in Opposition to the Plaintiff's Application for Temporary Restraining Order and/or Temporary Injunction** was served in accordance with the Texas Rules of Civil Procedure by electronic service and/or electronic mail on all parties and attorneys of record in this proceeding on this 12th day of March, 2021, including:

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