

CAUSE NO. 2020-DCV-3515

PIZZA PROPERTIES, INC., M&S	§	IN THE DISTRICT COURT OF
GROUP, INC., d/b/a WING	§	
DADDY'S, RUN BULL RUN, LLC	§	
d/b/a/ TORO BURGER BAR,	§	
CHARCOALER, LLC, TRIPLE A	§	
RESTAURANT INC., CC	§	
RESTAURANT LP, FD MONTANA,	§	
LLC, WT CHOPHOUSE, LLC,	§	
VERLANDER ENTERPRISES, LLC,	§	
and BAKERY VENTURES I, LTD.,	§	
<i>Plaintiffs,</i>	§	
	§	
STATE OF TEXAS,	§	
	§	
<i>Intervenor-Plaintiff,</i>	§	
	§	
v.	§	EL PASO COUNTY, TEXAS
	§	
EL PASO COUNTY, TEXAS and	§	
RICARDO A. SAMANIEGO, in his	§	
official capacity as County Judge, El	§	
Paso County, Texas,	§	
<i>Defendants.</i>	§	34TH JUDICIAL DISTRICT

---

INTERVENOR-PLAINTIFF STATE OF TEXAS'S  
MOTION FOR A TEMPORARY INJUNCTION

---

INTRODUCTION

1. Judge Ricardo Samaniego's recent emergency order ("EO-13"): (1) conflicts with Governor Greg Abbott's COVID-19-related executive order GA-32; (2) undermines the State's need for a clear and consistent response to this pandemic; and (3) disrupts the Texas Legislature's division of emergency powers as reflected in the Texas Disaster Act ("TDA"). EO-13 is patently unlawful and reflects a clear abuse of

power by Judge Samaniego. El Paso authorities have begun citing businesses consistent with Judge Samaniego’s unlawful order. This order should be immediately enjoined.

## FACTUAL BACKGROUND

### **I. An Overview of the Texas Disaster Act.**

2. TDA is designed to mitigate the “damage, injury, and loss of life and property” resulting from a disaster and to “provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters.”<sup>1</sup>

3. TDA strengthens the role of both state and local governments in preparing for, responding to, and recovering from disasters.<sup>2</sup>

4. TDA makes the sitting Texas Governor the leader and focal point of the State’s emergency response.<sup>3</sup>

5. Under TDA, the Governor is “responsible for meeting . . . the dangers to the state and people presented by disasters”<sup>4</sup> and is the “commander in chief” of the State’s response to a disaster, including the State’s response to rehabilitating persons and reopening businesses that have suffered from a disaster.<sup>5</sup>

6. TDA gives the Governor broad powers necessary to accomplish this weighty task.<sup>6</sup> Relevant here, the Governor is given the powers to: (1) control the

---

<sup>1</sup> TEX. GOV’T CODE § 418.002(1), (3).

<sup>2</sup> *Id.* at § 418.002(4).

<sup>3</sup> *See id.* at §§ 418.011–.026.

<sup>4</sup> *Id.* at § 418.011.

<sup>5</sup> *Id.* at § 418.015(c).

<sup>6</sup> *See id.* at §§ 418.011–.026.

movement of persons and occupancy of premises in a disaster area;<sup>7</sup> (2) issue executive orders that “have the force and effect of law”<sup>8</sup>; and (3) suspend statutes, orders, or rules that “would in any way prevent, hinder, or delay necessary action in coping with a disaster.”<sup>9</sup>

7. TDA gives local officials far more limited powers than those afforded to the Governor. Per Defendants, local officials generally derive their power from two sources under TDA.

8. First, section 418.1015(b) provides: “An emergency management director may exercise the powers granted to the governor under this chapter on an appropriate local scale.”<sup>10</sup> Under this section, an emergency management director “serves as the governor’s designated agent” and thus is subject to the Governor’s control.<sup>11</sup>

9. Second, section 418.108 authorizes “the presiding officer of the governing body of a political subdivision [to] declare a local state of disaster.”<sup>12</sup> This section continues: “The county judge or the mayor of a municipality may control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge or mayor and control the movement of persons and the occupancy of premises in that area.”<sup>13</sup>

---

<sup>7</sup> *Id.* at § 418.018(c).

<sup>8</sup> *Id.* at § 418.012.

<sup>9</sup> *Id.* at § 418.016(a).

<sup>10</sup> *Id.* § 418.1015(b).

<sup>11</sup> *Id.* at § 418.1015(b); *see also id.* at § 418.015(c) (“[T]he governor is the commander in chief of state agencies, boards, and commissions having emergency responsibilities.”).

<sup>12</sup> *Id.* at § 418.108(g).

<sup>13</sup> *Id.*

10. County judges and mayors do not have independent authority to issue emergency orders carrying the force and effect of law, as this is not one of the powers granted to such local officials under section 418.108.

11. Rather, a local official's power to issue emergency orders is derivative of and subservient to the Governor's power. TDA grants local officials derivative use of a Governor's powers only when they are acting in their capacities as local "emergency management director[s.]"<sup>14</sup> When acting in this capacity, the local official is a "designated agent" of the Governor and thus is subject to the Governor's control.<sup>15</sup>

## **II. An Overview of Governor Abbott's Executive Order GA-32.**

12. On October 7, 2020, Governor Abbott issued Executive Order GA-32 to respond to the COVID-19 pandemic.<sup>16</sup> This order has "the force and effect of law," just like any other state law.<sup>17</sup>

13. GA-32 states: "Every business establishment in Texas shall operate at no more than 75 percent of the total listed occupancy of the establishment."<sup>18</sup>

14. However, the order specifies that "[t]here is no occupancy limit" for certain services and businesses, such as: (1) religious services; (2) local government operations; (3) child-care services; (4) youth camps; (5) recreational sports programs; (6) public and private schools; (7) drive-in concerts, movies, and similar events; (8)

---

<sup>14</sup> *Id.* at § 418.1015(b).

<sup>15</sup> *Id.*

<sup>16</sup> Ex. A.

<sup>17</sup> TEX. GOV'T CODE § 418.012.

<sup>18</sup> Ex. A at 2.

personal-care and beauty services, such as hair salons and barber shops; and (9) outdoor areas, events, and establishments (with a few enumerated exceptions).<sup>19</sup>

15. GA-32 provides additional rules governing what services and businesses can remain open.

16. For instance, the order states that indoor and outdoor sporting events “shall remain limited to 50 percent of the normal operating limits.”<sup>20</sup>

17. Per GA-32: “Restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages, and whose customers eat or drink only while seated, may offer dine-in services.”<sup>21</sup> Bars and similar establishments may also “offer on-premises services” under certain listed circumstances.<sup>22</sup>

18. The order states that “[p]eople may visit nursing homes” and similar establishments “as determined through guidance from the Texas Health and Human Services Commission.”<sup>23</sup>

19. GA-32 does not require persons to “stay at home.” Quite the opposite. The order “strongly encourage[s]” people over 65 “to stay at home as much as possible,” but it leaves Texans free to make this decision for themselves.<sup>24</sup>

20. GA-32 expressly preempts and supersedes “any conflicting order issued by local officials in response to the COVID-19 disaster” whenever that local order “restricts services allowed by this executive order, allows gatherings prohibited by

---

<sup>19</sup> *Id.* at 2–3.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Id.* at 4.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.* at 4.

this executive order, or expands the list or scope of services as set forth in this executive order.”<sup>25</sup>

21. GA-32 further “suspends Sections 418.1015(b) and 418.108 of the Texas Government 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 . . . .”<sup>26</sup>

22. The Governor has therefore suspended Judge Samaniego’s powers under TDA.

23. GA-32 is a crucial part of the State’s continuing efforts to reopen safely.<sup>27</sup> It aims to fulfill one of TDA’s core purposes: “[T]he rapid and orderly restoration and rehabilitation of persons and property affected by disasters.”<sup>28</sup> However, EO-13 impermissibly and unconstitutionally undercuts these reopening efforts.

### **III. Judge Samaniego’s Recent Order Unlawfully Conflicts With, And Is Therefore Preempted By, GA-32.**

24. On October 29, 2020, Judge Samaniego issued EO-13 that purports to nullify GA-32 and undermine the State’s reopening efforts.

25. At the outset of EO-13, Judge Samaniego notes that sections 418.1015(b) and 418.018 of the Government Code provide the bases for his authority to issue emergency orders.<sup>29</sup> Judge Samaniego acknowledges that, under section 418.1015, he

---

<sup>25</sup> *Id.* at 5.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> *See id.* at 2.

<sup>28</sup> TEX. GOV’T CODE § 418.002(3).

<sup>29</sup> Ex. B at 1–2.

“serv[es] as the Governor’s designated agent.”<sup>30</sup> Judge Samaniego then proceeds to undercut Governor Abbott’s response to this pandemic in a manner conflicting with, and expressly prohibited by, GA-32.

26. EO-13 purports to order El Paso County residents “to temporarily stay at home or at their place of residence.”<sup>31</sup> GA-32 expressly rejected the idea of such a stay at home order.<sup>32</sup>

27. EO-13 imposes a curfew on El Paso County residents “from 10:00 PM to 5:00 AM.”<sup>33</sup> Such a curfew is not contemplated by, and cannot be reconciled with, GA-32.<sup>34</sup>

28. EO-13 provides limited exceptions for people and businesses engaged in “essential services” or “essential activities,”<sup>35</sup> and closes all other businesses and facilities deemed “non-essential.”<sup>36</sup> EO-13’s list of essential services and activities cannot be reconciled with the services and activities authorized under GA-32.<sup>37</sup>

29. Per EO-13: “All public or private gatherings **of any number of people** occurring outside a single household or living unit are prohibited, except as otherwise provided in this Order.”<sup>38</sup> This conflicts with GA-32, which, for instance, allows gatherings of up to 10 people.<sup>39</sup>

---

<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Id.* at 5.

<sup>32</sup> *See* Ex. A at 4.

<sup>33</sup> Ex. B at 6.

<sup>34</sup> *See* Ex. A.

<sup>35</sup> Ex. B at 5–12.

<sup>36</sup> *Id.* at 6.

<sup>37</sup> *Compare* Ex. A at 2–5, *with* Ex. B at 5–12.

<sup>38</sup> Ex. B at 6.

<sup>39</sup> Ex. A at 4.

30. EO-13 generally restricts all outdoor travel, except for “essential” travel.<sup>40</sup> GA-32 contains no such restriction.<sup>41</sup>

31. EO-13 allows individuals to engage in certain “essential retail.”<sup>42</sup> But the services deemed “essential retail” cannot be squared with the services GA-32 allows.<sup>43</sup> And EO-13 limits “essential services” to only “one member of the household.”<sup>44</sup> GA-32 does not.<sup>45</sup>

32. These are just a few of the many ways EO-13 is more restrictive than, and thus preempted by, GA-32.

33. EO-13 further creates confusion and injures the State’s need for a clear and consistent response to COVID-19.

34. For example, GA-32 states that it supersedes more restrictive local emergency orders.<sup>46</sup> Yet EO-13 provides: “To the extent that there is a conflict between this Order and any executive order of the Governor, the strictest order shall prevail.”<sup>47</sup>

35. Judge Samaniego has no authority under TDA to contradict or supersede Governor Abbott’s executive orders.

36. In any event, Governor Abbott has suspended Judge Samaniego’s powers under the TDA, including the power to issue orders.

---

<sup>40</sup> Ex. B at 6.

<sup>41</sup> See Ex. A.

<sup>42</sup> Ex. B at 9.

<sup>43</sup> See Ex. A.

<sup>44</sup> Ex. B at 9.

<sup>45</sup> See Ex. A.

<sup>46</sup> Ex. A at 5.

<sup>47</sup> Ex. B at 16.



37. It is a Class C misdemeanor, punishable by a fine of up to \$500, if a person violates EO-13's provisions. This leaves El Paso County residents with little choice but to ignore GA-32 and comply with the stricter EO-13. TDA does not authorize local officials to nullify a Governor's emergency orders in such a manner.

#### PROCEDURAL BACKGROUND

38. Plaintiffs consist of 10 El Paso County-based businesses.<sup>48</sup> Defendants are El Paso County, a political subdivision of the State of Texas, and Judge Samaniego, the County Judge of El Paso County.<sup>49</sup>

39. Plaintiffs filed this action against Defendants on October 30, 2020 and sought to have EO-13 declared invalid and illegal as an invalid act on behalf of Judge Samaniego.<sup>50</sup>

40. The State intervened that same day and also asserted claims against Defendants.<sup>51</sup> As described in the plea, EO-13 is invalid and unconstitutional under TEX. CIV. PRAC. & REM. CODE § 37.006(b) and constitutes an *ultra vires* act. This is because: (1) GA-32 expressly preempts EO-13; (2) Governor Abbott suspended the only statutes that would have allowed Judge Samaniego to issue binding emergency orders; and (3) Judge Samaniego exceeded the scope of his authority as Governor Abbott's "designated agent" when he issued an emergency order expressly conflicting with GA-32.<sup>52</sup>

---

<sup>48</sup> Plaintiffs' Original Petition, ¶¶ 2–11.

<sup>49</sup> *Id.* at ¶¶ 12–13.

<sup>50</sup> *Id.* at ¶¶ 21–23.

<sup>51</sup> *See generally* State of Texas' Plea in Intervention ("State's Plea").

<sup>52</sup> *See id.* at ¶¶ 41–47.

41. The State’s *ultra vires* and declaratory judgment claims are not barred by governmental immunity.<sup>53</sup>

### ARGUMENT

42. “A temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits.”<sup>54</sup> The applicant must prove three elements to obtain a temporary injunction: (1) a cause of action against the adverse party; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.<sup>55</sup> These requirements are readily met here.

#### **I. The State is Likely to Succeed on the Merits.**

##### **A. GA-32 Expressly Preempts EO-13.**

43. A local “ordinance which conflicts or is inconsistent with state legislation is impermissible.”<sup>56</sup> As shown above, GA-32 expressly preempts more restrictive local emergency orders, and EO-13 is far more restrictive than GA-32. Thus, the only open issue is whether GA-32 should be considered a “state law.”

44. GA-32 carries the same preemptive effect as any other state law, as will be shown below.

45. TDA makes the Governor “responsible for meeting . . . the dangers *to the state*” presented by disasters.<sup>57</sup>

---

<sup>53</sup> See, e.g., *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017); *City of Dallas v. Albert*, 354 S.W.3d 368, 378 (Tex. 2011).

<sup>54</sup> *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

<sup>55</sup> *Id.*

<sup>56</sup> *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 18–19 (Tex. 2016) (quotation marks omitted); see also *City of Laredo v. Laredo Merchants Ass’n*, 550 S.W.3d 586, 593 (Tex. 2018); *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013).

<sup>57</sup> TEX. GOV’T CODE § 418.011(1) (emphasis added).

46. TDA authorizes the Governor to declare a “state of disaster” for the entire State.<sup>58</sup> Governor Abbott did that when he declared that COVID-19 “poses an imminent threat of disaster *for all counties in the State of Texas.*”<sup>59</sup>

47. TDA gives the Governor the power to issue emergency orders that have “the force and effect of law.”<sup>60</sup> Governor Abbott used this power to issue GA-32, which was effective “on a statewide basis.”<sup>61</sup>

48. A statewide order, issued using statewide power, having a statewide effect, is a “state law.”

49. GA-32 expressly preempts EO-13, rendering it invalid from the outset. Therefore, EO-13 should be enjoined.

**B. Governor Abbott Suspended the Only Statutes that Would have Allowed Judge Samaniego to Issue Binding Emergency Orders.**

50. Judge Samaniego identifies sections 418.1015(b) and 418.018 of the Government Code as the bases for his authority to issue local emergency orders.<sup>62</sup> Governor Abbott, using his TDA-granted suspension power,<sup>63</sup> suspended these two 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 [GA-32].”<sup>64</sup> Judge Samaniego had no authority to issue the more restrictive EO-13—or any other order—under these circumstances.

---

<sup>58</sup> Compare *id.* at § 418.014, with *id.* at § 418.018 (stating that local official can only declare “a *local* state of disaster”) (emphasis added).

<sup>59</sup> Ex. A at 1 (emphasis added).

<sup>60</sup> TEX. GOV'T CODE § 418.012.

<sup>61</sup> Ex. A at 2.

<sup>62</sup> Ex. B at 1–2.

<sup>63</sup> TEX. GOV'T CODE § 418.016(a).

<sup>64</sup> Ex. A at 5.

51. Defendants argue TDA “does not give the Governor the authority to suspend the power of the County Judge in times of emergency.”<sup>65</sup> Section 418.016(a) of TDA authorizes Governor Abbott’s suspension power. This statute reads:

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.<sup>66</sup>

52. Defendants claim sections 418.1015(b) and 418.018 are not “regulatory statute[s] that prescribe[] the conduct of state business . . . .”<sup>67</sup> They do not argue the term “regulatory” imposes any meaningful limits here.<sup>68</sup> Thus, the focus is on whether sections 418.1015(b) and 418.018 “prescribe[] the conduct of state business or the orders of rules of a state agency.”<sup>69</sup>

53. Indeed, this analysis *must* focus on TDA. Texas counties, as subdivisions of the State, have only those powers specifically conferred on them by statute or constitution.<sup>70</sup> There is no constitutional basis for any powers Defendants assert here, leaving them with only what was granted under the TDA.

54. TDA makes *all* levels of an emergency response matters of “state business.” A look at how TDA distributes power to local officials, and specifically at Subchapter E of TDA,<sup>71</sup> confirms this point.

---

<sup>65</sup> Defendants’ Answer and Plea to the Jurisdiction to Plaintiffs’ Original Petition (“Defendants’ Plea”) at 6–7.

<sup>66</sup> TEX. GOV’T CODE § 418.016(a).

<sup>67</sup> Defendants’ Plea at 6–7.

<sup>68</sup> *See id.*

<sup>69</sup> *See* TEX. GOV’T CODE § 418.016(a).

<sup>70</sup> *See*, Tex. Const. art. IX, § 1; *Guynes v. Galveston County*, 861 S.W.2d 861, 863 (Tex. 1993); *Avery v. Midland County*, 406 S.W.2d 422, 426 (Tex. 1966), *rev’d on other grounds*, 390 U.S. 474 (1968).

<sup>71</sup> TEX. GOV’T CODE § 418.101 *et seq.*

55. Section 418.1015 is the second statute listed in Subchapter E. This statute governs “emergency management directors.” Per section 418.1015(a), the designated “emergency management directors” are: (1) the “presiding officer” of an incorporated city; (2) the “presiding officer” of a county; and (3) the “chief administrative officer” (“CAO”) of a joint board.

56. Section 418.1015(b) states that an emergency management director (1) “serves as the governor’s designated agent in the administration and supervision of duties under this chapter” and (2) “may exercise the powers granted to the governor under this chapter on an appropriate local scale.”<sup>72</sup>

57. A mayor is a city’s presiding officer,<sup>73</sup> and a county judge is a county’s presiding officer.<sup>74</sup> TDA gives mayors, county judges, and joint board CAOs derivative gubernatorial emergency powers. And when these local officials exercise such powers, they do so only as the Governor’s “designated agent.” This is the plain reading of section 418.1015. It is also supported by TDA as a whole, which reflects the Legislature’s overall intent to make the Governor the leader of the State’s emergency response.<sup>75</sup>

58. Next is section 418.108 (titled “Declaration of Local Disaster”), which is listed near the end of Subchapter E.

---

<sup>72</sup> *Id.* at § 418.1015(b).

<sup>73</sup> TEX. LOC. GOV'T CODE § 22.037.

<sup>74</sup> *See, e.g., County judge*, 36 TEX. PRAC., COUNTY AND SPECIAL DISTRICT LAW § 22.5 (2d ed.) (“The county judge is considered by many the highest ranking county official.”); Ex. B (wherein County Judge Samaniego effectively acknowledges he is El Paso County’s presiding officer).

<sup>75</sup> *See id.* at §§ 418.011–.026.

59. Defendants contend that section 418.108 gives county judges and mayors independent emergency powers. They are mistaken.

60. Section 418.108 distinguishes between, and resolves conflicts among, emergency management directors.<sup>76</sup> Section 418.108 does not use the catchall term “emergency management directors,” instead referring to them by their offices: mayors, county judges, and CAOs. True, section 418.1015 refers to mayors and city judges as city and county “presiding officers.” But this term is synonymous with “mayor” and “county judge,” as explained above.

61. After resolving a conflict about which emergency management director has exclusive authority over an airport (the joint board CAO does),<sup>77</sup> section 418.108(f)–(g) then states:

(f) The county judge or the mayor of a municipality may order the evacuation of all or part of the population from a stricken or threatened area under the jurisdiction and authority of the county judge or mayor if the county judge or mayor considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery.

(g) The county judge or the mayor of a municipality may control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge or mayor and control the movement of persons and the occupancy of premises in that area.<sup>78</sup>

62. Defendants read these provisions as an independent grant of local emergency power. But that interpretation makes these provisions superfluous.

---

<sup>76</sup> *See id.* at § 418.108(e)–(g).

<sup>77</sup> *See id.* at § 418.108(e).

<sup>78</sup> *Id.* at § 418.108(f)–(g).

Mayors and county judges already have these powers under section 418.1015(b).<sup>79</sup> It would be meaningless to give the same officials the same powers a second time.

63. The only plausible reading of section 418.018(f)–(g) is that it distinguishes which executive management directors can use the Governor’s power to restrict movement. Under these sections, mayors, and county judges can derivatively use this power. However, the CAO of a joint board, which is referenced in section 418.018(e) but not in section 418.018(f)–(g), cannot.

64. The powers listed in section 418.018(f)–(g) mirror the “movement” emergency powers granted to the Governor.<sup>80</sup> That only makes sense. *All* local emergency authority is derived from the Governor’s emergency powers, as established in section 418.1015(b).

65. The next subsection (section 418.018(h)) further undermines Defendants’ proposed interpretation. This subsection states that, when a county judge’s and mayor’s “jurisdiction and authority” conflict, “the decision of the county judge prevails.”<sup>81</sup> This subsection does not address conflicts between a local official’s and a Governor’s use of emergency powers. It does not have to because section 418.1015(b) resolves the issue by making local officials “the governor’s designated agent[s]” whenever they exercise their derivative emergency powers. And it is well settled that an agent must “act on the principal’s behalf and [is] subject to the principal’s control.”<sup>82</sup>

---

<sup>79</sup> See also *id.* at § 418.018.

<sup>80</sup> Compare *id.* at § 418.108(g)–(f), with § 418.018.

<sup>81</sup> *Id.* at § 418.108(h).

<sup>82</sup> RESTATEMENT (THIRD) OF AGENCY § 1.01 (2006).

66. Defendants' proposed interpretation would also lead to absurd results.

67. Under Defendants' proposal, mayors and county judges would have two "hats." While wearing the hat of a "mayor" or "county judge" under section 418.018, these officials would have emergency powers independent of the Governor's powers. But if they changed their hat to an "emergency management director" and exercised the same powers, these local officials would become "the governor's designated agent[s]" and thus would be subject to his or her control.<sup>83</sup>

68. To find for Defendants here, this Court would also need to believe that the Legislature intentionally made the Governor the leader of the State's emergency response,<sup>84</sup> while simultaneously creating a loophole leaving mayors and county judges free to undermine the State's emergency response at their whim.

69. The Court would then need to ignore common sense and TDA at large and conclude that, somehow, laws governing the State's response to a disaster do not address matters of "state business."<sup>85</sup>

70. Governor Abbott lawfully suspended sections 418.1015(b) and 418.018. Under the circumstances, Judge Samaniego had no legal authority to issue EO-13, which makes his order invalid, and his conduct *ultra vires*.

---

<sup>83</sup> TEX. GOV'T CODE § 418.1015(b).

<sup>84</sup> See *id.* at §§ 418.011–.026.

<sup>85</sup> See TEX. GOV'T CODE § 418.016(a).



**C. Judge Samaniego Exceeded the Scope of His Authority as Governor Abbott’s “Designated Agent” when He Issued an Emergency Order Expressly Conflicting with GA-32.**

71. As discussed above, Judge Samaniego was using derived gubernatorial powers and acting as Governor Abbott’s agent when he issued EO-13. Judge Samaniego could not lawfully issue an order expressly conflicting with GA-32. Thus, Judge Samaniego exceeded the scope of his authority, making EO-13 unlawful.

**II. The State will be Irreparably Injured Absent an Injunction.**

72. The State’s injuries are irreparable. The Texas Supreme Court recently held as much in *State v. Hollins*.<sup>86</sup>

73. There, the Court explained that a century’s worth of precedent establishes “the State’s ‘justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporation in accordance with law.’”<sup>87</sup> The Court noted that an *ultra vires* suit is a necessary tool to reassert the State’s control over local officials who are misapplying or defying State laws.<sup>88</sup> The Court reasoned: “[This] tool would be useless . . . if the State were required to demonstrate additional, particularized harm arising from a local official’s specific unauthorized actions.”<sup>89</sup>

74. The Court continued that “[t]he [State] would be impotent to enforce its own laws if it could not temporarily enjoin those breaking them pending trial.”<sup>90</sup> The

---

<sup>86</sup> No. 20-0729, 2020 WL 5919729, at \*7 (Tex. Oct. 7, 2020).

<sup>87</sup> *Id.* at \*6 (quoting *Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926)).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at \*7.

Court found that, “[w]hen the State files suit to enjoin *ultra vires* action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction.”<sup>91</sup>

75. Per *Hollins*, the irreparable injury requirement favors the State.<sup>92</sup>

### **III. A Temporary Injunction is Necessary to Preserve the Status Quo.**

76. This factor also favors the State. “The status quo is the last actual, peaceable, noncontested status which preceded the pending controversy.”<sup>93</sup> Here, that would be the parties’ status before Judge Samaniego’s EO-13.

### **CONCLUSION**

77. As shown above, all three temporary injunction factors are strongly in the State’s favor.

78. Thus, the State asks this Court to grant this motion and order Defendants to, during the pendency of this suit: (1) stop, or order stopped, all enforcement efforts of EO-13; (2) rescind EO-13; and (3) refrain from issuing any new emergency orders more restrictive than, or conflicting with, GA-32.

79. The State respectfully requests that it be heard regarding this motion within 24 hours of its filing because of the ongoing irreparable injury and the highly time-sensitive circumstances.

---

<sup>91</sup> *Id.*

<sup>92</sup> See State’s Plea at ¶¶ 38–47 (listing additional ways Defendants’ challenged conduct has irreparably injured the State).

<sup>93</sup> *Sharma v. Vinmar Intern., Ltd.*, 231 S.W.3d 405, 419 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

Respectfully submitted.

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

RYAN L. BANGERT  
Deputy First Assistant Attorney General

DARREN L. MCCARTY  
Deputy Attorney General for Civil Litigation

THOMAS A. ALBRIGHT  
Chief – General Litigation Division

*/s/ Todd Dickerson*  
TODD DICKERSON  
Texas Bar No. 24118368  
Assistant Attorney General  
Office of the Attorney General  
General Litigation Division  
P.O. Box 12548, Capitol Station  
Austin, TX 78711-2548  
(512) 475-4072 PHONE  
(512) 320-0667 FAX  
[Todd.dickerson@oag.texas.gov](mailto:Todd.dickerson@oag.texas.gov)

**ATTORNEYS FOR INTERVENOR-PLAINTIFF STATE  
OF TEXAS**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of November, 2020, a true and correct copy of the foregoing document was served via E-Service by File and Serve Texas to all counsel of record.

/s/ Todd Dickerson  
TODD DICKERSON  
Assistant Attorney General