

**2020CI13576**

CAUSE NO. \_\_\_\_\_

**PASTOR MATTHEW HAGEE;  
PASTOR JOHN HAGEE; GLOBAL  
EVANGELISM INCORPORATED d/b/a  
CORNERSTONE CHRISTIAN  
SCHOOLS; CORNERSTONE  
CHURCH; JOHN HAGEE  
MINISTRIES; RICK RITCHIE;  
EILEEN RITCHIE; DAVID  
SCHMALTZ; and BRAD FREEMAN,**

**Plaintiffs,**

v.

**NELSON WOLFF, in His Official  
Capacity as Judge of Bexar County,  
Texas; C. JUNDA WOO, MD, MPH in  
Her Official Capacity as Medical Director  
of the Local Health Authority for Bexar  
County and the City of San Antonio; RON  
NIRENBERG, in his official Capacity as  
Mayor of the City of San Antonio, Texas;  
WILLIAM MCMANUS, in His Capacity  
as Chief of the San Antonio Police  
Department; and COVID OFFICER  
EDWARDS, BADGE NO. 9202, in Her  
Official Capacity as COVID Officer for  
the San Antonio Police Department,**

**Defendants.**

**IN THE DISTRICT COURT**

407th **JUDICIAL DISTRICT**

**BEXAR COUNTY, TEXAS**

**PLAINTIFFS' ORIGINAL PETITION AND VERIFIED APPLICATIONS  
FOR EMERGENCY TEMPORARY RESTRAINING ORDER,  
TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION**

COME NOW Plaintiffs, Pastor Matthew Hagee, Pastor John Hagee, Global Evangelism Incorporated d/b/a Cornerstone Christian Schools, Cornerstone Church, John Hagee Ministries, Rick and Eileen Ritchie, David Schmaltz and Brad Freeman (“Plaintiffs”) and file their Original

Petition, Verified Applications for Emergency Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, and for cause would show as follows:

### **I. DISCOVERY CONTROL PLAN**

1. Plaintiffs intend to conduct discovery under Level 2 of the rules set forth in Rule 190 of the Texas Rules of Civil Procedure.

### **II. DISCLOSURES**

2. Plaintiffs request Defendants provide disclosures in accordance with Texas Rule of Civil Procedure 194, including relevant documents.

### **III. TRCP 47 STATEMENT**

3. Plaintiffs are suing for injunctive relief and declaratory relief.

4. Plaintiffs are seeking monetary relief of less than \$100,000.00.

### **IV. JURISDICTION AND VENUE**

5. The Court has subject-matter jurisdiction under the Texas constitution, Article V, § 8, as the amount in controversy exceeds the minimum jurisdictional limits of the court exclusive of interest. The Plaintiff seeks relief that can be granted by courts of law or equity.

6. The Court has jurisdiction over the Plaintiffs' request for declaratory relief against Defendants because the Declaratory Judgment Act waives governmental immunity when the plaintiff is challenging the validity of an ordinance or order. *See* Tex. Civ. Prac. & Rem. Code §§ 37.004, 37.006; *Texas Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628 (2010); *Texas Ed. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994).

7. The Court has jurisdiction over the Plaintiffs' request for injunctive relief against Defendants because they are acting *ultra vires* by attempting to prevent schools from reopening with in-person instruction. *See City of El Paso v. Heinrich*, 284 S.W.3d 366-368-69 (Tex. 2009).

8. Plaintiffs have standing to seek declaratory and injunctive relief Cornerstone Christian Academies seeks to begin its 2020-2021 academic year with in-person instruction on August 12, 2020. A Directive issued By Defendant C. Junda Woo on behalf of Defendants Bexar County Health Authority and/or San Antonio Metropolitan Health District says that no private or public school may open for in-person instruction until at least September 7, 2020. Plaintiffs seek declaratory and injunctive permitting them to open as scheduled despite the Directive.

9. The Court has personal jurisdiction over Defendants.

10. Venue is proper because a substantial portion of the events giving rise to the claims occurred in Bexar County, Texas. *See* Tex. Civ. Prac. & Rem. Code §§ 15.002, 15.008, 15.035.

11. Plaintiffs request the Court provide notice of this lawsuit to the Texas Attorney General as required by Texas Government Code §402.010.

## **V. PARTIES**

12. Plaintiff Pastor Matthew Hagee, Lead Pastor of Cornerstone Church and Executive Director of Global Evangelism Incorporated, 18755 Stone Oak Pkwy, San Antonio, Texas (Bexar County) 78258.

13. Plaintiff Pastor John Hagee, Founding Pastor of Cornerstone Church and Executive Director of CUFI, is a resident of Bexar County, Texas.

14. Plaintiff Global Evangelism Incorporated d/b/a Cornerstone Christian Schools is a Texas corporation with its principal place of business in Bexar County, Texas.

15. Plaintiff Cornerstone Church is a Texas corporation with its principal place of business in Bexar County, Texas.

16. Plaintiff John Hagee Ministries is a Texas corporation with its principal place of business in Bexar County, Texas.

17. Plaintiffs Rick and Eileen Ritchie are residents of Bexar County, Texas.

18. Plaintiff David Schmaltz is a resident of Bexar County, Texas.

19. Plaintiff Brad Freeman is a resident of Bexar County, Texas.

20. Defendant Nelson Wolff is the elected county judge of Bexar County, Texas, and is being sued in his official capacity as county judge. He may be served with process wherever he may be found.

21. Defendant C. Junda Woo, MD, MPH is the medical director for the San Antonio Metropolitan Health District and an official of the Bexar County Health Authority, and is being sued in her official capacities as medical director. She may be served with process wherever she may be found.

22. Defendant Ron Nirenberg is the elected mayor of San Antonio, Texas, and is being sued in his official capacity as mayor. He may be served with process wherever he may be found.

23. Defendant William McManus is the chief of the San Antonio Police Department, and is being sued in his official capacity as chief. He may be served with process wherever he may be found.

24. Defendant Officer Edwards, Badge No. 9202, is a COVID code enforcement officer with the San Antonio Police Department and is being sued in her official capacity as an officer. She may be served with process wherever she may be found.

## **VI. BACKGROUND FACTS**

### **A. CORNERSTONE CHRISTIAN SCHOOLS**

25. Plaintiff John Hagee Ministries is the life's work of Pastor John C. Hagee, who has served in Christian ministry for more than 60 years. He is the founder and Senior Pastor of Plaintiff Cornerstone Church in San Antonio, Texas, a non-denominational evangelical church with more

than 22,000 active members. His son, Pastor Matthew Hagee, is the Lead Pastor of Cornerstone Church. As part of Cornerstone Church's ministry, it formed Global Evangelism Incorporated, which does business as Cornerstone Christian Schools ("Cornerstone"), in 1993. During the 2019-2020 school year, Cornerstone Christian Schools educated approximately 1,300 students in K-4 through 12<sup>th</sup> grades.

26. Cornerstone is scheduled to begin its 2020-2021 school year with in-person instruction available on August 17, 2020.<sup>1</sup> Cornerstone has been working for months to develop plans and prepare its campus for reopening.<sup>2</sup>

27. Plaintiffs Rick and Eileen Ritchie are working parents (Rick is a pediatric orthopedic surgeon and Eileen is an ICU nurse) with two students at Cornerstone. If Cornerstone does not open for in-person instruction, Rick or Eileen may be forced to quit their job to provide childcare and learning instruction for their children, depriving the city of a much-needed medical professional and reducing the quality of life for the family.

28. Plaintiff David Schmaltz is a single father of three students at Cornerstone. If Cornerstone does not open for in-person instruction, David may be forced to quit his job to provide childcare for his children, and without a job, he would be unable to provide for his and his children's essential needs.

29. Plaintiff Brad Freeman is a Texas Ranger who has been with the Texas Department of Public Safety for more than 20 years. He is also a single father with students at Cornerstone,

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<sup>1</sup> Declaration of Peter Barnes ("Barnes Decl."), attached hereto as Exhibit A and incorporated by reference as if fully set forth herein, at ¶4.

<sup>2</sup> Barnes Decl., Exhibit A, at ¶5.

who may be forced to quit his job should Cornerstone not reopen, leaving him unable to provide for his and his children's essential needs.

## **B. COVID-19**

30. COVID-19, a disease resulting from the SARS-CoV-2 novel coronavirus. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak to be a pandemic, and on March 13, 2020, President Trump declared a national emergency due to the outbreak of COVID-19 in the United states. Also, on March 13, Texas Governor Greg Abbott issued a disaster proclamation for the State of Texas due to COVID-19. Governor Abbott renewed the disaster declaration proclamation on April 12. On April 17, Governor Abbott reiterated that the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, had determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code.

## **C. THE DIRECTIVE**

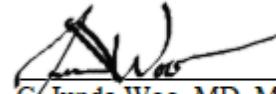
31. On July 17, 2020, Defendant C. Junda Woo, MD, MPH ("Woo") issued a health directive (the "Directive"), which purports to impose "restrictions on all public **and private** schools...offering instruction to students in any grades from pre-kindergarten through grade 12."<sup>3</sup> The Directive thus unconstitutionally infringes on the religious freedom enjoyed by private religious schools like Cornerstone by seeking to close those schools to in-person instruction against the schools' desires.

32. The Directive says that it is issued pursuant to Texas Health & Safety Code §81.082, which states that a "health authority" may perform certain actions. The Directive also

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<sup>3</sup> A true and correct copy of the Directive (as retrieved from <https://www.sanantonio.gov/Portals/0/Files/NewsReleases/health-directive-2020.pdf> on July 23, 2020) is attached as Exhibit B and incorporated by reference as if fully set forth herein (emphasis added).

says that it is issued by the “Local Health Authority for Bexar County and the City of San Antonio,” but does not name any specific organization as the issuing authority other than “Bexar County Health Authority” under Woo’s signature:<sup>4</sup>



C. Junda Woo, MD, MPH  
Bexar County Health Authority

After a diligent search, Plaintiffs can find no entity named “Bexar County Health Authority,” so it remains unclear what governmental entity or subdivision thereof actually issued the Directive.

33. Regardless of what entity issued the Directive, it is on its face contrary to orders issued by Governor Greg Abbott in Executive Order GA-28 (“GA-28”)<sup>5</sup>, which was issued on June 26, 2020, and to guidance provided by Texas Attorney General Ken Paxton to religious private schools in Texas in a letter dated July 17, 2020 (the “Paxton Letter”).<sup>6</sup>

34. GA-28 states that public schools may resume operations subject to guidelines provided by the Texas Education Agency, and that private schools “are encouraged to establish similar standards.”<sup>7</sup> GA-28 goes on to state that it supersedes “...any conflicting order issued by local officials...”<sup>8</sup>

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

<sup>5</sup> A true and correct copy of GA-28 (as retrieved from [https://gov.texas.gov/uploads/files/press/EO-GA-28\\_targeted\\_response\\_to\\_reopening\\_COVID-19.pdf](https://gov.texas.gov/uploads/files/press/EO-GA-28_targeted_response_to_reopening_COVID-19.pdf) on July 23, 2020) is attached as Exhibit C and incorporated by reference as if fully set forth herein.

<sup>6</sup> A true and correct copy of the Paxton Letter (as retrieved from <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/2020.07.17%20Letter%20to%20Religious%20Schools%20re%20COVID%2019%20Orders%20-%20Final.pdf> on July 23, 2020) is attached as Exhibit D and incorporated by reference as if fully set forth herein.

<sup>7</sup> GA-28, Exhibit C, at 4 ¶17.

<sup>8</sup> GA-28, Exhibit C, at 4.

35. The Paxton Letter acknowledges that local public health officials had begun to issue orders attempting to place restrictions on private religious schools. To provide guidance to those schools, the Paxton Letter states:

Local public health orders issued by cities and counties must be consistent with the Governor's orders and the Attorney General's guidance. If local public health orders are inconsistent with these authorities, the local orders must yield.

Under the Governor's orders, local governments are prohibited from closing religious institutions or dictating mitigation strategies to those institutions. Local governments are similarly prohibited from issuing blanket orders closing religious private schools. Because a local order closing a religious private school or institution is inconsistent with the Governor's order, any local order is invalid to the extent it purports to do so.

\* \* \*

Thus, as protected by the First Amendment and Texas law, religious private schools may continue to determine when it is safe for their communities to resume in-person instruction free from any government mandate or interference. Religious private schools therefore need not comply with local public health orders to the contrary.<sup>9</sup>

36. Defendant Mayor Ron Nirenberg knows that the Directive contradicts the guidance given by General Paxton, but he is undeterred in his desire to deny Plaintiffs their freedom of religion and is continuing to try and find ways to enforce the Directive against private, religious schools. On July 22, 2020, Defendant Mayor Ron Nirenberg gave an interview to KSAT regarding schools reopening.<sup>10</sup> When asked directly if Defendants could prevent private religious schools from conducting in-person classes before Labor Day, Mayor Nirenberg admitted it was unclear, but indicated that his office was looking for ways to do so, saying that "we will certainly have some clarification of that from our city attorney."<sup>11</sup> In that same interview, Mayor Nirenberg said

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<sup>9</sup> Paxton Letter, Exhibit D, at 2, 4 (internal citations omitted).

<sup>10</sup> Mayor Nirenberg's Interview is available at <https://www.ksat.com/video/news/2020/07/23/ksat-qa-mayor-nirenberg-provides-july-22-covid-19-update/>, last accessed on July 23, 2020.

<sup>11</sup> *Id.* at 3:17-3:50.

that, “We are going to issue the guidance . . . ensuring that we are doing so based on the public health guidance alone and not based on anything else.”<sup>12</sup> But calling the Directive “guidance” is misleading—it is actually an edict attempting to prevent schools from holding in-person instruction.

#### **D. ENFORCEMENT OF THE DIRECTIVE**

37. Guidelines, as Mayor Nirenberg called the Directive, are suggestions for operation, which do not generally come with police enforcement. In this case, however, upon information and belief, Defendants have used the San Antonio Police Department to attempt enforce the Directive. Indeed, four days after the Directive was issued, a “code enforcement officer” from the San Antonio Police Department arrived at Cornerstone to investigate an unknown complaint about which the officer could provide no specific details.

38. On July 21, 2020, four days after the Directive was issued, Peter Barnes, the elementary school principal of Cornerstone Christian Schools, was informed that a “code enforcement officer” had arrived and asked to speak to a school administrator.<sup>13</sup> When asked for a business card, the officer stated she did not have one, but identified herself as COVID Officer Edwards, Code Enforcement, Badge #9202 (“Edwards”).<sup>14</sup>

39. Mr. Barnes met with Defendant Edwards and asked her what brought her to Cornerstone.<sup>15</sup> Edwards said that there is a COVID complaint hotline, and she assumed that a complaint had been filed against Cornerstone.<sup>16</sup>

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<sup>12</sup> *Id.* at 2:35-46.

<sup>13</sup> Barnes Decl., Exhibit A, at ¶6.

<sup>14</sup> Barnes Decl., Exhibit A, at ¶7.

<sup>15</sup> Barnes Decl., Exhibit A, at ¶8.

<sup>16</sup> Barnes Decl., Exhibit A, at ¶8.

40. Edwards further informed Barnes that her office was a part of the San Antonio Police Department and that they followed up on complaints and issued citations where warranted.<sup>17</sup> Edwards could not, or would not, offer any other details about any specific complaints lodged against Cornerstone.<sup>18</sup>

41. After meeting with Dr. Luci Higgins, Superintendent of Schools at Cornerstone, and taking a tour of the campus with Mr. Barnes and Dr. Higgins, Edwards left Cornerstone without issuing any citations.<sup>19</sup>

\* \* \*

42. In summary, an unelected civil servant purporting to act on behalf of an undetermined “health authority” in Bexar County and/or San Antonio, Texas, issued an illegal and unconstitutional “directive” contrary to the orders and guidance of the Governor and Attorney General of Texas that interferes with the religious freedoms enjoyed by private, religious schools by purporting to prohibit those schools from being allowed to choose to conduct in-person classroom instruction, then engaged the services of the San Antonio Police Department to send a “COVID code enforcement officer” to visit a private religious school that intends to reopen with in-person classroom instruction and investigate an unidentified possible complaint to a “COVID hotline.”

43. These actions violate Plaintiffs’ Constitutional rights and should be enjoined and declared unconstitutional.

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<sup>17</sup> Barnes Decl., Exhibit A, at ¶9.

<sup>18</sup> Barnes Decl., Exhibit A, at ¶9.

<sup>19</sup> Barnes Decl., Exhibit A, at ¶10.

## VII. CAUSES OF ACTION

44. The Founding Fathers of this great nation:

... foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law.... No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it, which are necessary to preserve its existence...

*Ex parte Milligan*, 71 U.S. 2, 120-121 (1866).

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

During a pandemic, the judiciary, the other branches of government, and our fellow citizens—must insist that every action our governments take complies with the Constitution, especially now. If we tolerate unconstitutional government orders during an emergency, whether out of expediency or fear, we abandon the Constitution at the moment we need it most.

*In re Salon A La Mode et al.*, No. 20-0340, 2020 WL 2125844, at \*1 (concurring opinion, J. Blacklock) (Tex. May 5, 2020). Any government that has made the grave decision to suspend the liberties of a free people must demonstrate that its chosen measures are ***absolutely necessary*** to combat a threat of overwhelming severity. *Id.* Before suspending freedoms protected from infringement by the Constitution, the government is also required to demonstrate that less restrictive measures cannot adequately address the threat. *Id.* Whether it is strict scrutiny or some other rigorous form of review, courts must identify and apply a legal standard by which to judge the constitutional validity of the government’s anti-virus actions.

46. Justice Blacklock further stated: “[W]hen constitutional rights are at stake, courts cannot automatically defer to the judgments of other branches of government. When properly called upon, the judicial branch must not shrink from its duty to require the government’s anti-virus orders to comply with the Constitution and the law, no matter the circumstances.” *Id.* Government power cannot be exercised in conflict with the constitution, even in a pandemic. *In re Abbott*, 2020 WL 1943226 at \*1 (Tex. Apr. 23, 2020).

47. Viewed through this Constitutional framework, the Directive is improper and unenforceable against Plaintiffs. Plaintiffs are seeking relief entirely under state law and are not asserting any claims that arise under federal law.

48. Plaintiffs are entitled to declaratory relief against Defendants, as they are *ultra vires* claims against public officials for their actions in violation of state law. *See* Tex. Civ. Prac. & Rem. Code §37.001 *et seq.*; *City of El Paso v. Heinrich*, 284 S.W.3d. 366, 368-369 (Tex. 2009). Plaintiffs are persons, as defined by Tex. Civ. Prac. & Rem. Code §37.001, “whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise” because Defendants have based the Directive and their illegal actions on the authority granted under Texas Health & Safety Code § 81.082. Tex. Civ. Prac. & Rem. Code Ann. § 37.004(a); *see* Directive, Exhibit B.

49. Defendants’ actions under the purported authority of this provision of the Texas Health & Safety Code implicate numerous constitutional violations. First, Texas Health & Safety Code § 81.082 is facially unconstitutional. Second, the Directive, which relies upon that provision as its authority, is facially unconstitutional. Third, regardless of the facial constitutionality, Defendants’ use of that provision as authority to implement the Directive and close Plaintiffs’ religious, educational institution is unconstitutional.

50. Accordingly, Plaintiffs seek a declaration from this Court that: a) Texas Health & Safety Code § 81.082 is facially unconstitutional; b) the Directive is facially unconstitutional; and c) alternatively, Defendants' actions resulted in an unconstitutional application of Texas Health & Safety Code § 81.082.

**COUNT I**  
**DECLARATORY RELIEF THAT THE DEFENDANTS VIOLATE ARTICLE I,  
SECTION 6 OF THE TEXAS CONSTITUTION BY IMPERMISSABLY VIOLATING  
THE EXCLUSIVE AUTHORITY OF THE STATE LEGISLATURE TO MAKE LAWS**

51. Plaintiffs reallege and incorporate the foregoing paragraphs here as if fully set forth herein.

52. Plaintiffs seek a declaration that: (a) Texas Health & Safety Code § 81.082, on its face, violates Article II, § 1 of the Texas Constitution; (b) the Directive, on its face, violates Article II, § 1 of the Texas Constitution; and (c) alternatively, Defendants' purported enforcement of the Directive is an improper application of Texas Health & Safety Code § 81.082 that violates Article II, § 1 of the Texas Constitution.

53. Article II, section 1 of the Texas Constitution provides that:

The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

Tex. Const. art. II, §1. The Texas Constitution vests the Legislature with “legislative power, *i.e.*, the law-making power of the people,” and only the Legislature can exercise law-making power, subject to restrictions imposed by the Texas Constitution. Tex. Const. art. III, § 1.

54. Because of the Texas Constitution's “explicit prohibition against one government branch exercising a power attached to another,” *Perry v. Del Rio*, 67 S.W.3d 85, 91 (Tex. 2001),

exceptions to the constitutionally-mandated separation of powers may “never be implied in the least; they must be ‘expressly permitted’ by the Constitution itself.” *Fin. Comm'n of Texas v. Norwood*, 418 S.W.3d 566, 570 (Tex. 2013). The Legislature may enact laws that enhance the general welfare of the state and resolve political questions, such as the boundaries of political subdivisions, subject to constitutional limits. *Carter v. Hamlin Hosp. Dist.*, 538 S.W.2d 671, 673 (Tex. Civ. App.-Eastland 1976); *see also Hunter v. Cty of Pittsburgh*, 207 U.S. 161, 178-79 (1907).

55. The Legislature may delegate some of its powers to another branch, but only if those powers are not more properly attached to the Legislature by Constitutional mandate. For example, Legislative power cannot be delegated to the executive branch, either directly or to an executive agency. *State v. Rhine*, 297 S.W.3d 301, 306 (Tex. Crim. App. 2009). Such delegation becomes unconstitutional when its standards are not formulated for guidance and discretion is not limited. *See Ex parte Granviel*, 561 S.W.2d 503 at 514 (Tex. Crim. App 1978); *cf. State v. Rhine*, 297 S.W.3d 301, 306–07 (Tex. Crim. App. 2009) (“Therefore, if the legislature has provided sufficient standards to guide the agency's discretion and the delegated power is not legislative, that agency has not been granted a power that is more properly attached to the legislature and the delegation is not an unconstitutional violation of separation of powers.”).

56. Neither the Directive nor Officer Edwards identified the specific language of the Texas Health & Safety Code § 81.082 that purportedly grants counties and municipalities, much less individual civil servants, the authority to wholly restrict a private, religious institution from convening in-person classes. The reason for this is simple—the provision does not provide such authority. Generally, the Texas Health & Safety Code § 81.082 allows a “health authority” to have “supervisory authority and control over the administration of communicable disease control

measures in the health authority's jurisdiction unless specifically preempted by the department.”

Tex. Health & Safety Code Ann. § 81.082(a). “Health Authority” is defined as:

- (A) a physician appointed as a health authority under Chapter 121 (Local Public Health Reorganization Act) or the health authority's designee; or
- (B) a physician appointed as a regional director under Chapter 121 (Local Public Health Reorganization Act) who performs the duties of a health authority or the regional director's designee.

Tex. Health & Safety Code Ann. § 81.003(2). It also defines “Local health department” as “a department created under Chapter 121.” Tex. Health & Safety Code Ann. § 81.003(4). However, there is no indication that the City of San Antonio or Bexar County has appointed such an authority, nor is there any indication that Dr. Woo or Officer Edwards occupies such role or carries such unilateral power. Moreover, this provision is entirely ambiguous as to the identification or role of such “department.” Despite this lacking identification, Dr. Woo, in her Directive, holds herself as an authority under the “Bexar County Health Authority.” *See* Directive, Exhibit B. Regardless, this is one of the many indications that this provision defies the appropriate and constitutional separation of powers on its face by extending unchecked power to enigmatic regulators to restrict public and private institutions.

57. The Texas Health & Safety Code § 81.082 goes on to purportedly allow for the health authorities’ jurisdiction to be “amended, revised, or revoked by the department if the department finds that the modification is necessary or desirable in the administration of a regional or statewide public health program or policy.” Tex. Health & Safety Code § 81.082(b). Not only does this provision carry the same definitional issues as seen above, it also purports to extend an unchecked bureaucratic power with absolute discretion to amend and alter their directives unilaterally, as they deem fit.

58. The Directive, which claims authority “pursuant to the Texas Health & Safety Code §81.082,” without any further explanation, has the same facial issues and serves as Defendants’ tool to carry out the strict prohibition of in-person learning, even for private institutions, from July 17, 2020 to, at least, after September 7, 2020. *See* Ex. B. However, given the extended power to amend under § 81.082(b), Defendants are given the veiled authority to extend this order in perpetuity.

59. Finally, and in the alternative, the Texas Health & Safety Code §81.082 further dictates a limitation to these powers, to which Defendants give no consideration: “A declaration of a public health disaster may continue for not more than 30 days. A public health disaster may be renewed one time by the commissioner for an additional 30 days.” Tex. Health & Safety Code § 81.082(d). Thus, even assuming, *arguendo*, that the statute was not facially unconstitutional, Defendants’ Directive immediately exceeds the statutory limitation for these powers. Minimally, Defendants have failed to properly establish any health authority and, thus, failed to properly declare a “public health disaster” through that authority. However, even if Defendants had done so properly, this Directive would immediately extend beyond the statutory limitation of thirty days by seeking to restrict schools for fifty-two days, from July 17, 2020 to September 7, 2020. *See* Ex. B.

**COUNT II**  
**DECLARATORY RELIEF THAT THE DEFENDANTS VIOLATE**  
**THE TEXAS RELIGIOUS FREEDOM RESTORATION ACT**

60. Plaintiffs reallege and incorporate the foregoing paragraphs here as if fully set forth herein.

61. Plaintiffs seek a declaration that: (a) Texas Health & Safety Code § 81.082, on its face, violates the Texas Religious Freedom Restoration Act (“RFRA”); (b) the Directive, on its

face, violates RFRA; or (c) alternatively, Defendants' purported enforcement of the Directive is improper application of Texas Health & Safety Code § 81.082 that violates RFRA.

62. Defendants, as the official of county and municipal within the State of Texas, each qualify as a "Government agency" as defined by RFRA. Tex. Civ. Prac. & Rem Code § 110.001 (a)(2).

63. RFRA applies to Texas Health & Safety Code § 81.082 and the Directive, as RFRA applies to every "ordinance, rule, order, decision, practice, or other exercise of governmental authority" in Texas. *HEB Ministries, Inc.*, 235 S.W.3d at 643; see Tex. Civ. Prac. & Rem Code section 110.002(a).

64. To show a RFRA violation, a plaintiff must show the regulation substantially burdens the plaintiff's "free exercise of religion" and, if so, that the regulation must be the least restrictive means of further a compelling government interest to survive scrutiny. *Barr v. City of Sinton*, 295 S.W.3d 287, 299 (Tex. 2009).

65. Plaintiffs hold a sincere religious belief and seek to educate, have their children educated, through the in-person instruction of Plaintiffs' religious, educational institution to further that belief. *See* Tex. Civ. Prac. & Rem. Code section 110.001(a)(1).

66. As described above, Texas Health & Safety Code § 81.082, the Directive, and Defendants' actions do not satisfy a compelling governmental interest that would justify infringing on the religious liberties and enjoyed by Plaintiffs. Moreover, even assuming, *arguendo*, there were a compelling government interest, an entire cancellation of in-person instruction is not the least restrictive means of furthering a governmental interest.

**COUNT III**  
**DECLARATORY RELIEF THAT THE DEFENDANTS VIOLATE**  
**ARTICLE II, SECTION 1 OF THE TEXAS CONSTITUTION BY**  
**IMPERMISSABLY VIOLATING PLAINTIFFS' FREEDOM OF WORSHIP**

67. Plaintiffs reallege and incorporate the foregoing paragraphs here as if fully set forth herein.

68. Plaintiffs seek a declaration that: (a) Texas Health & Safety Code § 81.082, on its face, violates Article I, § 6 of the Texas Constitution; (b) the Directive, on its face, violates Article I, § 6 of the Texas Constitution; or (c) alternatively, Defendants' purported enforcement of the Directive is improper application of Texas Health & Safety Code § 81.082 that violates Article I, § 6 of the Texas Constitution.

69. Article I, § 6 of the Texas Constitution prohibits the any law forbidding the free exercise of religion and states:

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion. . . .

Tex. Const. art. I, § 19; *see also HEB Ministries, Inc. v. Tex. Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 649–50 (Tex. 2007). Texas courts have treated this provision and the “federal Free Exercise guarantees as coextensive.” *HEB Ministries, Inc.*, 235 S.W.3d at 649–50; U.S. Const. amend. I. The Free Exercise Clauses protects “the right of churches and other religious institutions to decide matters ‘of faith and doctrine’ without government intrusion.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*;, 140 S. Ct. 2049 (2020) (quoting *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 186 (2012)).

70. Where the object of a law or regulation “is to infringe upon or restrict practices because of their religious motivation, the law is not neutral; and it is invalid unless it is justified

by a compelling interest and is narrowly tailored to advance that interest.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993) (internal citations omitted). Even if the regulation is neutral on its face, it must also be generally applied and, if it is not, strict scrutiny is still applicable. *See id.*

71. Plaintiffs hold a sincere religious belief and seek to educate, and have their children educated, through the in-person instruction of Plaintiffs’ religious, educational institution to further those sincere beliefs. *See* Tex. Civ. Prac. & Rem. Code section 110.001(a)(1). The Texas Health & Safety Code § 81.082 and the Directive impermissibly make Plaintiffs’ beliefs the object of their enforcement and, thus, are not facially neutral. Moreover, Defendants’ actions in enforcing the Directive are not generally applied.

72. As described above, Texas Health & Safety Code § 81.082, the Directive, and Defendants’ actions do not satisfy a compelling governmental interest that would justify infringing on the religious liberties and enjoyed by Plaintiffs. Moreover, even assuming, *arguendo*, there were a compelling government interest, an entire cancellation of in-person instruction is not the least restrictive means of furthering a governmental interest.

**COUNT IV**  
**DECLARATORY RELIEF THAT THE DEFENDANTS VIOLATE**  
**ARTICLE I, SECTION 13 OF THE TEXAS CONSTITUTION**  
**BY VIOLATING PLAINTIFFS’ RIGHT TO DUE PROCESS**

73. Plaintiffs reallege and incorporate the foregoing paragraphs here as if fully set forth herein.

74. Plaintiffs seek a declaration that: (a) Texas Health & Safety Code § 81.082, on its face, violates Article I, § 13 of the Texas Constitution; (b) the Directive, on its face, violates Article I, § 13 of the Texas Constitution; or (c) alternatively, Defendants’ purported enforcement of the

Directive is improper application of Texas Health & Safety Code § 81.082 that violates Article I, § 13 of the Texas Constitution.

75. Article I, § 13 of the Texas Constitution provides that “[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities . . . except by the due course of the law of the land.” Tex. Const. art. I, § 19. Because of the similarities to the federal Due Process Clause, Texas courts “have traditionally followed contemporary federal due process interpretations of procedural due process issues.” *Honors Acad., Inc. v. Tex. Educ. Agency*, 555 S.W.3d 54, 60–61 (Tex. 2018), reh'g denied (Sept. 28, 2018) (quoting *Univ. of Tex. Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 929 (Tex. 1995)); see U.S. Const. amend. XIV, § 1 (“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . . .”). To show a violation of the right to Due Process, a plaintiff must show the existence of a liberty or property interest that is entitled to constitutional protection and deprivation of that right. Plaintiffs have several. *Honors Acad., Inc.*, 555 S.W.3d at 61.

76. Plaintiffs have a property interest, and fundamental right, to raise and rear their children with the autonomy to choose the education of their children. See *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (holding that the liberty protected by the due process clause “denotes not merely freedom from bodily restraint” but also a number of different rights including the right to “establish a home and bring up children.”); see also *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 535 (1925) (striking down a statute that required all children to attend public school in part because “the child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”); *Ginsberg v. State of N. Y.*, 390 U.S. 629, 639 (1968)

(“[C]onstitutional interpretation has consistently recognized that the parents’ claim to authority in their own household to direct the rearing of their children is basic in the structure of our society.”).

77. Plaintiffs have a property interest, and fundamental right, to direct the educational choices of their children. *See Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972) (recognizing the autonomy of parents to choose an academic path that conforms with the parents’ religious belief); *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) (“the right to educate one’s children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments.”).

78. Plaintiffs have a property interest, and fundamental right, to direct the religious upbringing of their children. *See Wisconsin v. Yoder*, 406 U.S. 205 (“the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society.”); *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944) (“The rights of children to exercise their religion, and of parents to give them religious training and to encourage them in the practice of religious belief, as against preponderant sentiment and assertion of state power voicing it, have had recognition here.”).

79. Plaintiffs are deprived of each of these fundamental rights by the Texas Health & Safety Code § 81.082, the Directive, and Defendants’ actions to wholly prohibit in-person educational instruction. Defendants cannot justify such deprivations, as the entire prohibition of in-person classes, is not the least restrictive means of furthering a compelling government interest.

#### **VIII. APPLICATION FOR TEMPORARY RESTRAINING ORDER**

80. Plaintiffs reallege and incorporate the foregoing paragraphs and incorporate them here as if fully set forth herein.

81. Plaintiffs seek a temporary restraining order preventing Defendants from enforcing the Directive and allowing Cornerstone to open for in-person classroom instruction as scheduled

on August 17, 2020. A temporary restraining order serves to provide emergency relief and preserve the status quo until a hearing may be had on a temporary injunction. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). To obtain injunctive relief, “the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.” *Id.* An applicant must plead a cause of action and present some evidence that tends to sustain it to show a probable right of recovery. *Intercontinental Terminals Co., LLC v. Vopak N. Am., Inc.*, 354 S.W.3d 887, 897 (Tex. App.—Houston [1st Dist.] 2011, no pet.). “[T]he applicant is not required to establish that it will prevail on final trial.” *Texas Kidney, Inc. v. ASD Specialty Healthcare*, No. 14-13-01106-CV, 2014 WL 3002425, at \*2 (Tex. App.—Houston [14th Dist.] July 1, 2014, no pet.).

82. The Uniform Declaratory Judgment Act and *Heinrich* each provide Plaintiffs with a cause of action to seek declaration and injunctive relief against the Defendants. Plaintiffs have a probable right to relief because, for the reason described above, the Defendants’ conduct violates the Texas Constitution. Plaintiffs will suffer probable, imminent, and irreparable injury absent a temporary restraining order and temporary injunction because enforcement of the Directive disallowing Cornerstone to hold in-person classroom instruction for its students as scheduled violates Plaintiffs’ constitutional rights to freedom of religious expression. Without immediate relief, Plaintiffs will suffer imminent and irreparable harm.

83. The harm to Plaintiffs described herein is a direct and proximate result of the acts of Defendants. The requested temporary restraining order is appropriate to preserve the status quo until a hearing on Plaintiff’s application for temporary injunctive relief can be held. For just cause, Plaintiffs request the entry of a Temporary Restraining Order as follows, and further requests entry of a Preliminary Injunction following a hearing:

84. Plaintiff will provide Defendants' counsel with notice of this Application for Temporary Restraining Order and hearing on same.

85. Plaintiff files this Verified Application for Temporary Restraining Order and Other Equitable Relief pursuant to general principles of equity, Texas Rules of Civil Procedure 680, *et seq.*, and Texas Civil Practice and Remedies Code section 65.011. Plaintiff is willing to post a bond as required by Texas law in an amount determined by the Court.

#### **IX. GROUNDS FOR TEMPORARY INJUNCTION**

86. Plaintiffs reallege the foregoing paragraphs and incorporates them here as if fully set forth herein.

87. Plaintiffs request this Court to set is Request for Temporary Injunction for hearing and after hearing issue a temporary injunction against Defendants.

88. Additionally, Plaintiffs further request that following a trial on the merits of this case, that the Court enter a permanent injunction against Defendants.

#### **X. REQUEST FOR RELIEF**

89. Plaintiffs request the following relief:

a. An order declaring that the:

- i. a) Texas Health & Safety Code § 81.082, on its face, violates Article II, § 1 of the Texas Constitution; b) Directive, on its face, violates Article II, § 1 of the Texas Constitution; and c) alternatively, Defendants' purported enforcement of the Directive is an improper application of Texas Health & Safety Code § 81.082 that violates Article II, § 1 of the Texas Constitution;

- ii. a) Texas Health & Safety Code § 81.082, on its face, violates the Texas Religious Freedom Restoration Act (“RFRA”); b) Directive, on its face, violates RFRA; and c) alternatively, Defendants’ purported enforcement of the Directive is improper application of Texas Health & Safety Code § 81.082 that violates RFRA;
- iii. a) Texas Health & Safety Code § 81.082, on its face, violates Article I, § 6 of the Texas Constitution; b) Directive, on its face, violates Article I, § 6 of the Texas Constitution; and c) alternatively, Defendants’ purported enforcement of the Directive is improper application of Texas Health & Safety Code § 81.082 that violates Article I, § 6 of the Texas Constitution; and
- iv. a) Texas Health & Safety Code § 81.082, on its face, violates Article I, § 13 of the Texas Constitution; (b) Directive, on its face, violates Article I, § 13 of the Texas Constitution; and (c) alternatively, Defendants’ purported enforcement of the Directive is improper application of Texas Health & Safety Code § 81.082 that violates Article I, § 13 of the Texas Constitution;
- b. A temporary restraining order that enjoins Defendants from prohibiting Plaintiffs’ from holding, or attending, in-person educational instruction at its facilities;
- c. A temporary injunction enjoining Defendants from prohibiting Plaintiffs’ from holding, or attending, in-person educational instruction at its facilities;
- d. A permanent injunction:

- i. enjoining Texas Health & Safety Code § 81.082; and
  - ii. enjoining the Directive;
- e. an award of costs and attorneys' fees; and
- f. all other relief that the Court may deem just, proper, and equitable.

Respectfully submitted,

WOODFILL LAW FIRM, PC

*/s/ Jared R. Woodfill*

Jared R. Woodfill

State Bar No. 00788715

Woodfill Law Firm, P.C.

3 Riverway, Suite 750

Houston, Texas 77056

Tel: (713) 751-3080

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woodfillservice@gmail.com (service)

jwoodfill@woodfilllaw.com (non-service)

VERIFICATION

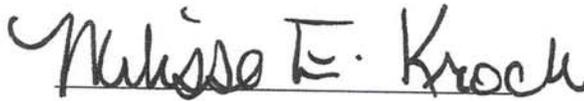
STATE OF TEXAS

COUNTY OF HARRIS

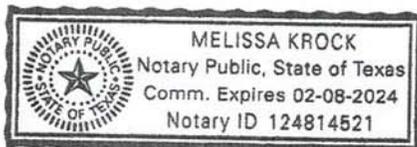
Before me, the undersigned notary public in and for said county and state, on this day personally appeared Peter Barnes and after being duly sworn, stated upon his oath that his secretary of the Republican Party of Texas and a delegate to the Republican Party Convention, that he has read Plaintiffs' Verified Original Petition and Verified Application for Temporary Restraining Order, and that the factual statements contained in the Verified Original Petition and Verified Application for Temporary Restraining Order are true and correct based upon his personal knowledge.

  
PETER BARNES

SUBSCRIBED AND SWORN TO before me this 24 day of July 2020, to which witness my hand and seal.



NOTARY PUBLIC



## DECLARATION OF PETER BARNES

I, Peter Barnes, hereby declare:

1. I am over 18 years of age, of sound mind, and in all ways capable of making this Declaration. The facts stated in this Declaration are within my personal knowledge and are true and correct. I could and would testify competently to these facts if called upon to do so.

2. I submit this Declaration in support of the Plaintiffs, Global Evangelism Incorporated d/b/a Cornerstone Christian Schools, Cornerstone Church, John Hagee Ministries, Rick and Eileen Ritchie, David Schmaltz and Brad Freeman (“Plaintiffs”) application for a temporary restraining order against C. Junda Woo, MD, MPH in Her Official Capacity as Medical Director of the Local Health Authority for Bexar County and the City of San Antonio; Nelson Wolff, in His Official Capacity as Judge of Bexar County, Texas; Ron Nirenberg, in his official Capacity as Mayor of the City of San Antonio, Texas; William McManus, in His Capacity as Chief of the San Antonio Police Department; and COVID Officer Edwards, Badge No. 9202, in Her Official Capacity as COVID Officer for the San Antonio Police Department

3. I am the Elementary School Principal at Plaintiff Cornerstone Christian Schools (“Cornerstone”) and therefore have personal knowledge of the events to which I am testifying herein.

4. Cornerstone is scheduled to begin its 2020-2021 school year with in-person instruction available on August 17, 2020.

5. Cornerstone has been working for months to develop plans and prepare its campus for reopening.

6. On July 21, 2020, I was informed that a “code enforcement officer” had arrived and wished asked to speak with a school administrator.

**EXHIBIT "A"**

7. I instructed my receptionist to ask for the officer's business card. After doing so, the receptionist told me the officer claimed not to have a business card, but identified herself as COVID Officer Edwards, Badge #9202.

8. I met with Officer Edwards and asked her what brought her to Cornerstone. Edwards said that there is a COVID complaint hotline, and she assumed that a complaint had been filed against Cornerstone.

9. Edwards further informed me that her office was a part of the San Antonio Police Department and that they followed up on complaints and issued citations where warranted. Edwards could not, or would not, offer any other details about any specific complaints lodged against Cornerstone.

10. After meeting with Dr. Luci Higgins, Superintendent of Schools at Cornerstone, and taking a tour of the campus with Mr. Barnes and Dr. Higgins, Edwards left Cornerstone without issuing any citations.

11. Without injunctive relief from this Court, Cornerstone faces an imminent and probable threat of irreparable injury if it is unable to conduct in-person classes as scheduled on August 17, 2020.

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

EXECUTED on July 24, 2020.

  
Peter Barnes

Melissa E. Krock 7/24/2020



## **Health Directive**

Due to moderate to sustained community transmission of COVID-19 in San Antonio, and pursuant to the Texas Health & Safety Code §81.082, the Local Health Authority for Bexar County and the City of San Antonio, issues this Directive imposing restrictions on all public and private schools (“**School Systems**”) offering instruction to students in any grades from pre-kindergarten through grade 12.

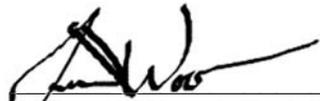
The following requirements are effective July 17, 2020:

- School systems must not re-open schools for on-campus, face-to-face instruction until after September 7th, 2020, although a School Board may accommodate families without Internet access/devices by providing access to remote learning as possible, or by otherwise addressing consistent with guidance issued by the Texas Education Agency.
- Virtual instruction is allowed consistent with individual district or school academic plans. Instructors may use classrooms for video streaming if they are alone in the classroom and building occupancy does not exceed 10%.
- All school sponsored events and activities, including but not limited to extracurriculars, fairs, exhibitions, academic and/ or athletic competitions, must not take place in person, on or off campus, until school systems resume on-campus instruction.
- By no later than Friday, August 21, 2020, each School System shall develop a written plan with safety and health protocols for resuming on-campus instruction and extracurricular activities. School systems must make the plan available to parents and the general public.

I believe this directive includes appropriate control measures based on the higher risk for spread of COVID-19 in schools due to their confined spaces, and the challenge for children in following social distancing and hygiene guidelines.

The start of on-campus instruction and activity may be delayed further based on ongoing monitoring and assessment of public health mitigation conditions.

This directive is issued under my authority as the Local Health Authority for Bexar County and the City of San Antonio on this the 17th day of July 2020.



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C. Junda Woo, MD, MPH  
Bexar County Health Authority

**EXHIBIT "B"**



GOVERNOR GREG ABBOTT

June 26, 2020

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8:45 AM CLOCK

JUN 26 2020  
*RAH*  
Secretary of State

The Honorable Ruth R. Hughs  
Secretary of State  
State Capitol Room 1E.8  
Austin, Texas 78701

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-28 relating to the targeted response to the COVID-19 disaster as part of the reopening of Texas.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,

*Gregory S. Davidson*

Gregory S. Davidson  
Executive Clerk to the Governor

GSD/gsd

Attachment

# Executive Order

BY THE  
GOVERNOR OF THE STATE OF TEXAS

Executive Department  
Austin, Texas  
June 26, 2020

EXECUTIVE ORDER  
GA 28

*Relating to the targeted response to the COVID-19 disaster  
as part of the reopening of Texas.*

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WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating certain social-distancing restrictions for Texans in accordance with guidelines promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC); and

WHEREAS, I issued Executive Order GA-14 on March 31, 2020, expanding the social-distancing restrictions for Texans based on guidance from health experts and the President; and

WHEREAS, I subsequently issued Executive Orders GA-16, GA-18, GA-21, GA-23, and GA-26 from April through early June 2020, aiming to achieve the least restrictive means of combatting the threat to public health by continuing certain social-distancing restrictions, while implementing a safe, strategic plan to Open Texas; and

WHEREAS, as Texas reopens in the midst of COVID-19, increased spread is to be expected, and the key to controlling the spread and keeping Texas residents safe is for all Texans to consistently follow good hygiene and social-distancing practices, especially those set forth in the minimum standard health protocols from DSHS; and

WHEREAS, due to recent substantial increases in COVID-19 positive cases, and increases in the COVID-19 positivity rate and hospitalizations resulting from COVID-19, targeted and temporary adjustments to the reopening plan are needed to achieve the

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least restrictive means for reducing the growing spread of COVID-19 and the resulting imminent threat to public health, and to avoid a need for more extreme measures; and

WHEREAS, everyone must act safely, and to that end, this executive order and prior executive orders provide that all persons should follow the health protocols from DSHS, which whenever achieved will mean compliance with the minimum standards for safely reopening, but which should not be used to fault those who act in good faith but can only substantially comply with the standards in light of scarce resources and other extenuating COVID-19 circumstances; and

WHEREAS, the “governor is responsible for meeting ... the dangers to the state and people presented by disasters” under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed \$1,000, and may be subject to regulatory enforcement;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, and in accordance with guidance from DSHS Commissioner Dr. Hellerstedt and other medical advisors, the Governor’s Strike Force to Open Texas, the White House, and the CDC, do hereby order the following on a statewide basis effective at noon on June 26, 2020:

Every business establishment in Texas shall operate at no more than 50 percent of the total listed occupancy of the establishment; *provided, however, that:*

1. There is no occupancy limit for the following:
  - a. any services listed by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) in its Guidance on the Essential Critical Infrastructure Workforce, Version 3.1 or any subsequent version;
  - b. religious services, including those conducted in churches, congregations, and houses of worship;
  - c. local government operations, including county and municipal governmental operations relating to licensing (including marriage licenses), permitting, recordation, and document-filing services, as determined by the local government;
  - d. child-care services;
  - e. youth camps, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths; and
  - f. recreational sports programs for youths and adults;
2. Except as provided below by paragraph number 5, this 50 percent occupancy limit does not apply to outdoor areas, events, or establishments, except that the following outdoor areas or outdoor venues shall operate at no more than 50 percent of the normal operating limits as determined by the owner:
  - a. professional, collegiate, or similar sporting events;
  - b. swimming pools;
  - c. water parks;
  - d. museums and libraries;
  - e. zoos, aquariums, natural caverns, and similar facilities; and

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- f. rodeos and equestrian events;
3. This 50 percent occupancy limit does not apply to the following establishments that operate with at least six feet of social distancing between work stations:
  - a. cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade;
  - b. massage establishments and other facilities where licensed massage therapists or other persons licensed or otherwise authorized to practice under Chapter 455 of the Texas Occupations Code practice their trade; and
  - c. other personal-care and beauty services such as tanning salons, tattoo studios, piercing studios, hair removal services, and hair loss treatment and growth services;
4. Amusement parks shall operate at no more than 50 percent of the normal operating limits as determined by the owner;
5. For any outdoor gathering in excess of 100 people, other than those set forth above in paragraph numbers 1, 2, or 4, the gathering is prohibited unless the mayor of the city in which the gathering is held, or the county judge in the case of a gathering in an unincorporated area, approves of the gathering, and such approval can be made subject to certain conditions or restrictions not inconsistent with this executive order;
6. For dine-in services by restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages, the occupancy limit shall remain at 75 percent until 12:01 a.m. on June 29, 2020, at which time such restaurants may only operate at up to 50 percent of the total listed occupancy of the restaurant, subject to paragraph number 9 below;
7. People shall not visit bars or similar establishments that hold a permit from the Texas Alcoholic Beverage Commission (TABC) and are not restaurants as defined above in paragraph number 6; provided, however, that the use by such bars or similar establishments of drive-thru, pickup, or delivery options for food and drinks is allowed to the extent authorized by TABC;
8. People shall not use commercial rafting or tubing services, including rental of rafts or tubes and transportation of people for the purpose of rafting or tubing;
9. For any business establishment that is subject to a 50 percent "total listed occupancy" limit or "normal operating limit," and that is in a county that has filed with DSHS, and is in compliance with, the requisite attestation form promulgated by DSHS regarding minimal cases of COVID-19, the business establishment may operate at up to 75 percent of the total listed occupancy or normal operating limit of the establishment;
10. For purposes of this executive order, facilities with retractable roofs are considered indoor facilities, whether the roof is opened or closed;
11. Staff members are not included in determining operating levels, except for manufacturing services and office workers;
12. Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at [www.dshs.texas.gov/coronavirus](http://www.dshs.texas.gov/coronavirus), people should not be in groups larger than ten and should maintain six feet of social distancing from those not in their group;
13. People over the age of 65 are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the

home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation;

14. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) should use good-faith efforts and available resources to follow the minimum standard health protocols recommended by DSHS;
15. Nothing in this executive order or the DSHS minimum standards precludes requiring a customer to follow additional hygiene measures when obtaining services. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering;
16. People shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible; and
17. For the remainder of the 2019-2020 school year, public schools may resume operations for the summer as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency (TEA). Private schools and institutions of higher education are encouraged to establish similar standards. Notwithstanding anything herein to the contrary, schools may conduct graduation ceremonies consistent with the minimum standard health protocols found in guidance issued by TEA.

Notwithstanding anything herein to the contrary, the governor may by proclamation add to the list of establishments or venues that people shall not visit.

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list or scope of services as set forth in this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

All existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes Executive Order GA-26, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, GA-24, GA-25, or GA-27. This

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JUN 26 2020

executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 26th  
day of June, 2020.

Handwritten signature of Greg Abbott in black ink.

GREG ABBOTT  
Governor

ATTESTED BY:

Handwritten signature of Ruth R. Hughs in black ink.

RUTH R. HUGHS  
Secretary of State

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
8:45am O'CLOCK

JUN 26 2020



## EXHIBIT "D"

**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 17, 2020

To Religious Private Schools in Texas:

With the start of the school year approaching, the Office of the Attorney General provides this guidance to help you comply with COVID-19 public health and disaster orders from State and local governments.

The Attorney General acknowledges the robust constitutional and statutory protections unique to religious individuals and communities at all times, even during the COVID-19 pandemic.<sup>1</sup> These protections promote religious liberty and ensure that permissible government action takes only the least restrictive form.

The Governor of Texas rightfully identified access to “religious services” as essential services, which must remain open even when other aspects of our communities must close to mitigate the spread of the virus.<sup>2</sup> Religious private schools and religiously affiliated private schools should utilize prior joint guidance on mitigation strategies for houses of worship issued by the Governor and Attorney General.<sup>3</sup> The Governor also exempted religious services from the state-wide masking order, but strongly encouraged houses of worship to require masks.<sup>4</sup> Additionally, when the Governor issued orders applicable to public schools, he expressly acknowledged that private schools and institutions have the freedom to make their own decisions.<sup>5</sup>

To mitigate the spread of COVID-19, the Governor referred all schools to the Texas Education Agency’s (TEA) guidance on how to safely reopen for in-person instruction during the 2020–2021 school year.<sup>6</sup> While this guidance by its terms applies only to

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<sup>1</sup> *Guidance for Houses of Worship During the COVID-19 Crisis*, <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Third%20Revised%20AG%20Guidance%20for%20Houses%20of%20Worship%20During%20the%20COVID-19%20Crisis%20-%20Final.pdf>. This joint guidance identifies that the recommendations provided to houses of worship for religious services are just that—recommendations—and are the least restrictive means of serving a compelling government interest to protect public health. *Id.* at 5.

<sup>2</sup> See generally Exec. Order GA-28.

<sup>3</sup> See *supra* note 1.

<sup>4</sup> See Exec. Order GA-29 at 2.

<sup>5</sup> See Exec. Order GA-28 at 4.

<sup>6</sup> Tex. Educ. Agency, SY 20-21 Public Health Planning Guidance, July 17, 2020, <https://tea.texas.gov/sites/default/files/covid/Covid-19-SY-20-21-Public-Health-Guidance.pdf>.

public schools, TEA recommended that all “school system leaders should do everything feasible to keep students, teachers, staff, and our communities safe.”<sup>7</sup> It is important to keep in mind, however, that “research from the Centers for Disease Control (CDC), among others, has found that while children do get infected by COVID-19 and some severe outcomes have been reported in children, relatively few children with COVID-19 are hospitalized or have severe symptoms.”<sup>8</sup> And as TEA recognized, “the American Academy of Pediatrics notes that COVID-19 risks must be balanced with the need for children to attend school in person, given that lack of physical access to school leads to a number of negative consequences, placing ‘children and adolescents at considerable risk of morbidity, and in some case, mortality.’”<sup>9</sup> TEA also determined that public schools may provide virtual education in limited circumstances, if the schools satisfy certain conditions.<sup>10</sup> As identified by TEA, schools have many tools at their disposal to safely reopen while also mitigating spread of the virus to students, faculty, and staff.

Recently, however, local public health officials have begun to issue orders restricting or limiting in-person instruction in private and public schools. This guidance is intended to clarify the application of those local orders to religious private schools and institutions.

Local public health orders issued by cities and counties must be consistent with the Governor’s orders and the Attorney General’s guidance. If local public health orders are inconsistent with these authorities, the local orders must yield.<sup>11</sup>

Under the Governor’s orders, local governments are prohibited from closing religious institutions or dictating mitigation strategies to those institutions. Local governments are similarly prohibited from issuing blanket orders closing religious private schools. Because a local order closing a religious private school or institution is inconsistent with the Governor’s order, any local order is invalid to the extent it purports to do so.

Moreover, local public health orders attempting to restrict the provision of religious instruction through religious private schools violate the United States and Texas Constitutions and the Texas Religious Freedom Restoration Act. As the Supreme Court reaffirmed last week, “[t]he First Amendment protects the right of religious institutions ‘to decide for themselves, free from state interference, matters of church

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<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* (quoting Am. Academy of Pediatrics, COVID-19 Planning Considerations: Guidance for School Re-entry, June 25, 2020).

<sup>10</sup> *Id.* at 2–3.

<sup>11</sup> See Exec. Order GA-28 (providing that the Governor’s order supersedes conflicting local orders and suspends local authority to impose inconsistent restrictions).

government as well as those of faith and doctrine.”<sup>12</sup> Likewise, the Texas Supreme Court acknowledges that “the government cannot set standards for religious education or training.”<sup>13</sup>

“Religious education is vital to many faiths practiced in the United States.”<sup>14</sup> For example, “[i]n the Catholic tradition, religious education is ‘intimately bound up with the whole of the Church’s life.’”<sup>15</sup> “Similarly, Protestant churches, from the earliest settlements in this country, viewed education as a religious obligation.”<sup>16</sup> Likewise, Judaism, Islam, the Church of Jesus Christ of Latter-day Saints, and the Seventh-day Adventist Church, among others, all have long traditions of religious education that demonstrate the “close connection that religious institutions draw between their central purpose and educating the young in the faith.”<sup>17</sup> In fact, “[m]ost of the oldest educational institutions in this country were originally established by or affiliated with churches, and in recent years, non-denominational Christian schools have proliferated with the aim of inculcating Biblical values in their students. Many such schools expressly set themselves apart from public schools that they believe do not reflect their values.”<sup>18</sup> These principles inform how the State must treat religious private schools, whether in normal times or times of crisis.

In addition to protections afforded to religious communities by the First Amendment to the United States Constitution and article I, section 6 of the Texas Constitution,<sup>19</sup> the Texas Religious Freedom Restoration Act (RFRA) applies to every “ordinance, rule, order, decision, practice, or other exercise of governmental authority” in Texas.<sup>20</sup> Texas RFRA prohibits the government from “substantially burden[ing]” the free exercise of religion,<sup>21</sup> which includes the ability of faith communities to educate their youth,<sup>22</sup> unless it can demonstrate a compelling interest for the restriction and prove it applies in the least restrictive way.<sup>23</sup> Even if the government may have a compelling interest in closing certain aspects of society to contain the spread of a virus, blanket government orders closing all religious private schools are not the least restrictive means of achieving that interest.

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<sup>12</sup> *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, No. 19-267, 2020 WL 3808420, at \*3 (U.S. July 8, 2020) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)).

<sup>13</sup> *HEB Ministries, Inc. v. Texas Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 643 (Tex. 2007).

<sup>14</sup> *Our Lady of Guadalupe Sch.*, 2020 WL 3808420, at \*10.

<sup>15</sup> *Id.* (quoting Catechism of the Catholic Church 8 (2d ed. 2016)).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at \*11–12.

<sup>18</sup> *Id.* at \*11.

<sup>19</sup> In *HEB Ministries*, 235 S.W.3d 627, the Texas Supreme Court held that the State’s attempt to regulate the accreditation standards of a postsecondary institution and the use of the name “seminary” violated the First Amendment and article I, section 6 of the Texas Constitution.

<sup>20</sup> Tex. Civ. Prac. & Rem. Code § 110.002(a).

<sup>21</sup> *Id.* § 110.003(a).

<sup>22</sup> *Our Lady of Guadalupe Sch.*, 2020 WL 3808420, at \*11–12.

<sup>23</sup> Tex. Civ. Prac. & Rem. Code § 110.003(b).

Thus, as protected by the First Amendment and Texas law, religious private schools may continue to determine when it is safe for their communities to resume in-person instruction free from any government mandate or interference. Religious private schools therefore need not comply with local public health orders to the contrary.

Sincerely,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive style with a large, prominent initial "K".

Ken Paxton  
Texas Attorney General