No. ___

In the Supreme Court of Texas

IN RE STATE OF TEXAS,
Relator.

On Petition for Writ of Mandamus
to the Third Court of Appeals, Austin

PETITION FOR WRIT OF MANDAMUS

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Respondent:
The Honorable Third Court of Appeals, Austin

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Table of Contents

Index of Authorities

Page(s)

Cases:

Statutes and Rule:

Other Authorities:

Record References

"App." refers to this petition's appendix, and "MR" to the mandamus record.

Statement of the Case

Nature and Course of the Underlying Proceeding:	City of Austin Mayor Steve Adler and Travis County Judge Andy Brown issued parallel emergency orders prohibiting in-person dining services between 10:30 p.m. and 6:00 a.m. from December 31 until January 3. App. B; App. C. The State sued to enjoin enforcement of these orders because they conflict with Governor Abbott's executive order, which prevails under the Texas Disaster Act of 1975, Tex. Gov't Code § 418.001, *et seq*. The trial court denied a request for a temporary restraining order and temporary injunction, App. G, and the State sought emergency Rule 29.3 relief to preserve the status quo pending appeal. App. I. The Third Court of Appeals denied emergency relief on the evening of December 31, approximately an hour before the mayor and county's orders became effective. App. J.
Respondent:	The Honorable Third Court of Appeals, Austin
Respondent's Challenged Action:	Yesterday night, the court of appeals refused the State's request for emergency Rule 29.3 relief pending appeal of the trial court's refusal to issue a temporary injunction. App. J.

Statement of Jurisdiction

The Court has jurisdiction under Texas Government Code section 22.002(a).

Issues Presented

The Texas Disaster Act names the Governor the "commander in chief" of the State's response to a disaster, such as COVID-19, charging him with the "orderly restoration and rehabilitation of persons and property affected by disasters." Tex. Gov't Code §§ 418.011–.026. To that end, the Governor may issue orders with the force of law, *id.* § 418.012, and suspend statutes or orders that prevent him from addressing a disaster, *id.* § 418.016(a). The Governor has issued GA-32, which sets the conditions under which businesses may operate given COVID-19 and suspends any contrary local orders. Mayor Adler and Judge Brown have issued orders for the City of Austin and Travis County, respectively (jointly "Order 24"), which prohibit restaurants from offering in-person dining services between 10:30 p.m. and 6:00 a.m., despite GA-32 authorizing their operation. The State filed an accelerated appeal and sought Rule 29.3 relief to preserve the status quo. The Third Court of Appeals denied Rule 29.3 relief.

The issue presented is whether the court of appeals' order refusing Rule 29.3 relief to preserve the status quo pending this accelerated appeal is a clear abuse of discretion for which the State has no adequate remedy by appeal.

To the Honorable Supreme Court of Texas:

The Texas Disaster Act of 1975 makes the Governor the "commander in chief" of the State's response to a disaster, TEX. GOV'T CODE § 418.015(c), with the power to issue executive orders that "have the force and effect of law." *Id.* § 418.012. The Governor has issued such an order, GA-32, which comprehensively establishes when and under what conditions all businesses—including restaurants and bars—may open, and which expressly preempts more restrictive local orders. App. A at 3–6 (GA-32). The Legislature's directions make clear that the Governor's order is the last word on when, whether, and to what extent these businesses may remain open.

The City of Austin and Travis County remain undeterred. Though City of Austin Mayor Steve Adler previously acknowledged that GA-32 prevented him from issuing COVID-19 orders beyond what GA-32 allows[1], both Adler and Travis County Judge Andy Brown have ordered that restaurants and bars must shut down in-person dining services from 10:30 p.m. to 6:00 a.m. GA-32 permits such businesses remain open during these hours. App. A at 3–6. And both structured their orders transparently intending to evade judicial review: each waited until late December 29 to announce their intentions, and each order is scheduled to expire January 3, 2021. App. B at 3–4; App. C at 2–3.

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[1] *Surges in COVID-19 Cases Cause Friction Between Local Leaders, Governors*, National Public Radio, KUT 90.5, Heard on Morning Edition, published June 16, 2020 at 5:11 AM, https://www.npr.org/2020/06/16/877778833/surges-in-covid-19-cases-cause-friction-between-local-leaders-governors (last visited on January 1, 2021).

This is neither the first time that local officials have exceeded their emergency powers during the COVID-19 pandemic, nor the first time they have sought to evade this Court's review. But without this Court's urgent intervention, it will be far from the last. This Court's clear guidance is necessary both to vindicate the consistent, statewide disaster response that the Act requires and to deter local officials from issuing temporary orders on little notice that upset the settled expectations of residents and businesses alike.

Statement of Facts

A. The Texas Disaster Act of 1975 "provide[s] an emergency management system embodying all aspects of predisaster preparedness and postdisaster response." Tex. Gov't Code § 418.002(7). This comprehensive regime "provide[s] a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters," *id.* § 418.002(3), by "clarify[ing] . . . the roles of the governor, state agencies, the judicial branch of state government, and local governments in . . . response to, and recovery from[,] disasters," *id.* § 418.002(4).

True to its stated purpose, the Act is clear as to the Governor's role in responding to a disaster. The Governor is charged with determining whether a disaster has occurred and, if so, declaring a state of disaster. *Id.* § 418.014(a). "During a state of disaster and the following recovery period," the Governor "is the commander in chief" of the State's disaster response, *id.* § 418.015(c), "responsible for meeting . . . the dangers to the state and people presented by disasters." *Id.* § 418.011(1).

The Act vests the Governor with extraordinary powers to meet that responsibility. The Act gives his executive orders "the force and effect of law." *Id.* § 418.012.

The Governor may further suspend "any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency" if these "provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster." *Id.* § 418.016(a). The Governor "may control ingress and egress to and from a disaster area and the movement of persons and occupancy of premises in the area." *Id.* § 418.018(c). And he may "use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster," *id.* § 418.017(a), including "temporarily reassign[ing] resources, personnel, or functions" of state executive departments or agencies. *Id.* § 418.017(b).

The Act also enables certain local officials to exercise the Governor's powers subject to his direction and control. Under the Act, the "presiding officer of the governing body" of an incorporated city or county is deemed the "emergency management director" for that political subdivision. *Id.* § 418.1015(a). That director must "serve[] as the governor's designated agent in the administration and supervision of duties under this chapter." *Id.* § 418.1015(b). Such a director "may exercise the powers granted to the governor under this chapter on an appropriate local scale." *Id.* The presiding officer of a political subdivision may also "declare a local state of disaster," *id.* § 418.108(a), which, consistent with Section 418.1015(a)'s directive that such an officer acts as the Governor's agent, triggers local or interjurisdictional emergency aid plans, allows the officer to evacuate the affected area, and enables the officer to control the movement of persons and occupancy of premises in that area. *Id.* § 418.108(d), (f), (g).

B. Consistent with discharging his statutory responsibilities, Governor Abbott has issued a series of orders designed to mitigate the risks from COVID-19 and provide for a speedy and uniform statewide recovery. On October 7, he issued Executive Order GA-32, directing "the continued response to the COVID-19 disaster as Texas reopens." App. A. GA-32 sets capacity guidelines for various businesses and establishments. As relevant here, GA-32 expressly permits restaurants to offer dine-in services, whether indoor or outdoor, subject to GA-32's capacity restrictions. App. A at 3–6. It does not limit the hours during which restaurants or bars may operate, nor does it restrict when individuals may patronize these businesses, instead allowing both businesses and individuals to make those decisions. App. A at 3–6.

GA-32 expressly "supersede[s] any conflicting order issued by local officials . . . to the extent that such a local order restricts services allowed by this executive order." App. A at 6. It suspends sections 418.1015(b) and 418.108 of the Government Code—sections designating local officials as the Governor's agents and allowing for local emergency declarations—"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." *Id.* GA-32 permits local officials to enforce its terms as well as "local restrictions that are consistent with" GA-32's terms. *Id.*

C. Near the close of business on December 29, 2020, Mayor Adler and Judge Brown issued Order 24. App. B; App. C. Order 24 acknowledged that the Governor had issued numerous executive orders related to the COVID-19 pandemic, including GA-32. It then noted that GA-32 permitted individuals not to wear masks or other facial coverings while dining at a restaurant or similar establishment, App. B at 2;

App. C at 2, and stated that gatherings at restaurants and over the New Year required "extraordinary emergency measures." App. B at 2; App. C at 2. Order 24 invoked section 418.018(g) of the Texas Disaster Act as authorizing local officials to control premises during a local disaster. App. B at 2; App. C at 2.

Order 24's central operative provision is a prohibition on "indoor and outdoor dine-in food and beverage service" between 10:30 p.m. and 6:00 a.m. App. B at 3; App. C at 2–3. It enforces this prohibition by making a violation a criminal offense, punishable by a fine of up to $1,000. App. B at 2–3; App. C at 3. It authorizes numerous local inspectors to enforce Order 24, and threatens additional enforcement efforts if "widespread compliance" is not forthcoming. App. C at 3. The order expires on January 3, 2021, at 6:00 a.m. App. B at 3; C at 2.

D. After advising both Adler and Brown that Order 24 violated the Governor's controlling order, GA-32, the State sued both, along with the City of Austin and Travis County, seeking a declaration that Order 24 was invalid and an injunction against enforcing Order 24. The trial court held a hearing on December 31 at 1:30 p.m. on the State's application for a temporary restraining order and motion for temporary injunction. The court advised during the hearing that a transcript was unlikely to be forthcoming for several days. At approximately 5:30 p.m., the trial court refused the State's request in a brief letter indicating that the court viewed the State as unlikely to succeed on the merits and that it believed the State could not demonstrate an irreparable harm absent immediate relief. App. G.

The State appealed. App. H. It further sought emergency relief from the court of appeals, moving for Rule 29.3 relief to preserve the status quo and asking for

expedited consideration of its appeal given both the imminent enforcement of Order 24 and its short duration. App. I. At approximately 9:30 p.m. on December 31, 2020, the court of appeals denied the State's request for emergency relief, but noted that the motion for expedited consideration of the appeal remained pending. App. J. That motion remains pending as of the filing of this petition.

Summary of the Argument

The Third Court of Appeals clearly abused its discretion when it permitted Mayor Adler's and Judge Brown's illegal, irremediable order to remain in force pending appeal. Rule 29.3 relief is not only appropriate given such an order, but required.

I. Rule 29.3 relief was the only means to protect the State's rights and avoid confusion among City of Austin and Travis County residents pending appeal. The State has a sovereign right to the correct interpretation and enforcement of its laws, and a particular interest in the mitigation of disasters. Order 24 impinges on both. The Texas Disaster Act assigns the Governor both the responsibility for managing statewide disasters and extraordinary powers to meet those disasters. By issuing an order that contradicted the Governor's, Mayor Adler and Judge Brown violated the State's sovereign right to see the Act followed by its terms and its interest in seeing the consistent application of statewide COVID-19 recovery efforts. The court of appeals was required to issue Rule 29.3 relief to protect those interests pending appeal.

In addition, the State has demonstrated that it will prevail on the merits. The Act gives local public officials disaster-response authority only as the Governor's agents, so an act contradicting the Governor's authority necessarily exceeds the

principal/agent relationship. GA-32 further supersedes any contrary local orders on its own terms. And even if it did not, Governor Abbott validly suspended the powers on which Mayor Adler and Judge Brown relied in issuing Order 24 in the first place—again, rendering their actions *ultra vires*.

II. Following the court of appeals' deferral of Rule 29.3 relief, no other avenue for protecting the State's or individuals' rights remains. No other court can correct the court of appeals' improper refusal to protect these rights pending appeal, and monetary damages are plainly insufficient to redress a structural redistribution of governmental power.

The harms presented by Order 24 are currently ongoing, distorting the Act's careful assignment of powers to the Governor and threatening confusion to both residents and restaurants in the City of Austin and Travis County. These ongoing, serious harms require this Court's swift intervention. Local officials will continue to exceed their powers under the Act and promulgate orders deliberately designed to evade this Court's review unless this Court intervenes—and these guaranteed recurrences ensure this Court will retain jurisdiction regardless of Order 24's expiration date.

Standard of Review

To obtain mandamus relief, a relator must show that the respondent abused its discretion and no adequate appellate remedy exists. *In re Turner*, 591 S.W.3d 121, 124 (Tex. 2019) (orig. proceeding). A court of appeals "has no 'discretion' in determining what the law is or applying the law to the facts." *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). And this Court has recognized that

mandamus relief is appropriate when the court improperly denies necessary interim relief. *H & R Block, Inc. v. Haese*, 992 S.W.2d 437, 438-39 (Tex. 1999) (per curiam).

ARGUMENT

I. The Third Court of Appeals Clearly Abused Its Discretion in Denying Temporary Relief Under Rule 29.3.

"When an appeal from an interlocutory order is perfected, the appellate court may make any temporary orders necessary to preserve the parties' rights until disposition of the appeal." Tex. R. App. P. 29.3. To establish entitlement to that relief, movants must state the relief sought, the legal basis for the relief, and the facts necessary to establish a right to that relief. *See, e.g.*, *Lamar Builders, Inc. v. Guardian Sav. & Loan Ass'n*, 786 S.W.2d 789, 791 (Tex. App.—Houston [1st Dist.] 1990, no pet.); *see also, e.g.*, *McNeely v. Watertight Endeavors, Inc.*, No. 03-18-00166-CV, 2018 WL 1576866, at *1 (Tex. App.—Austin Mar. 23, 2018, order) (per curiam). Here, a stay of Order 24 pending appeal is not only appropriate, but required.

A. Rule 29.3 relief is necessary to preserve the status quo pending appeal.

The State is entitled to an order enjoining enforcement of Order 24 because it is the only way "to preserve the parties' rights" pending appeal, including, if necessary, proceedings on a petition for review in this Court. Tex. R. App. P. 29.3; *see* Tex. Gov't Code § 22.002(a). "As a sovereign entity, the State has an intrinsic right to enact, interpret, and enforce its own laws." *State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015). That right is paramount when the State addresses disasters or public emergencies.

Order 24 violates that right in several ways. First, it violates the statutory scheme contemplated by the Act. The Act empowers local officials only to the extent they act as the Governor's agents and consistent with the Governor's executive orders. Tex. Gov't Code § 418.1015(b). Order 24 violates the Act by exercising derived executive power in a manner inconsistent with the Governor's order. It further violates the Act by purporting to exercise executive power that has been expressly suspended by GA-32. App. A at 6.

Second, the Order inhibits the State's ability to provide a clear and consistent response to COVID-19. This inconsistency prevents restaurants from knowing whether they can remain open during an important holiday, and prevents individuals from engaging in lawful conduct guaranteed throughout the remainder of the State. It likewise stifles the implementation of the Governor's recovery plan, and impedes the State's ability to communicate changing obligations during the COVID-19 recovery by giving Texans reason to doubt which official's orders control for the duration of the pandemic. An order from this Court is the only way to prevent this illegal transfer of executive power and to prevent the obstruction of the State's COVID-19 response.

A stay order pending appeal is further the only way to preserve the status quo in Austin and Travis County. Order 24 was announced with only two days' notice prior to taking effect, App. B at 3–4; App. C at 2–4, despite many plans around the holiday having been made weeks or months in advance. It not only disrupts those plans and the operation of businesses across the City and County, it imposes a surprise criminal penalty on anyone violating the last-minute obligations Order 24 imposes. App. B at

3–4; App. C at 3. Individuals should not be required to risk a criminal sanction to learn whether the Governor's orders control over contrary local emergency orders—and this Court should not sanction litigation tactics apparently engineered to stymie this Court's review of those orders. Courts routinely order Rule 29.3 relief under such circumstances. *E.g.*, *GLO v. City of Houston*, No. 03-20-00376-CV, 2020 WL 4726695, at *2 (Tex. App.—Austin July 31, 2020, order) (per curiam); *WC 1st & Trinity, LP v. Roy F. & JoAnn Cole Mitte Found.*, No. 03-19-00905-CV, 2020 WL 544748, at *1 (Tex. App.—Austin Feb. 3, 2020, no pet.) (per curiam) (mem. op.); *Mulcahy v. Cielo Prop. Grp., LLC*, No. 03-19-00117-CV, 2019 WL 2384150, at *1 (Tex. App.—Austin June 6, 2019, order) (per curiam).

B. The State is likely to prevail on the merits.

A stay of Order 24 is especially appropriate here because the State is likely to prevail on appeal, either before the court of appeals or, if necessary, before this Court. Order 24 is illegal, and its issuance *ultra vires*, because: (1) the Mayor and County Judge violated their authority as the Governor's agent under the Act; (2) GA-32 expressly preempts contradictory orders, such as Order 24; and (3) Governor Abbott validly suspended the only sources of authority on which Order 24 relies.

1. Order 24 expressly relies on powers conferred on local officials under the Act. App. B at 2; App. C at 2. But local officials wield these powers under the Act only as emergency management directors. Specifically, the Act provides that the "presiding officer of . . . a county" is designated an emergency management director for the Act's purposes, Tex. Gov't Code § 418.1015(a), and states that a "director

serves as the governor's designated agent in the administration and supervision of duties under this chapter"—that is, for all provisions of the Act, *id.* § 418.1015(b), including the power to control premises under section 418.018(g), on which Order 24 expressly relies. App. B at 2; App. C at 2.

Therefore, any powers Mayor Adler or Judge Brown could exercise under the Act were as Governor Abbott's agent: that is, on Governor Abbott's behalf and subject to his control. Restatement (Third) of Agency § 1.01 (2006); *see also Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 697 (Tex. 2017); *Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 590 (Tex. 2017). An agent who acts beyond the "business entrusted to his care," or who exceeds the scope of his agency relationship, no longer acts on behalf of the principal. *In re ADM Investor Servs., Inc.*, 304 S.W.3d 371, 374 (Tex. 2010). In other words, such an agent by definition acts *ultra vires*.

Order 24 plainly exceeded Adler's and Brown's authority as Governor Abbott's agents. GA-32 expressly supersedes "any conflicting order issued by local officials . . . to the extent that such a local order restricts services allowed by this executive order," App. A at 6. By issuing an order that restricted services that GA-32 permitted under certain occupancy restrictions—specifically dine-in indoor and outdoor services at restaurants at whatever hours businesses and individuals choose to do so—Adler and Brown contradicted their principal's stated policy. Contradicting a principal's written, express orders necessarily exceeds an agent's agency relationship.

The Act's recitation of local disaster authority under section 418.108 cannot save Order 24. After all, section 418.108 states that a "presiding officer of the governing body of a political subdivision"—which includes all emergency management directors—may exercise certain specific powers similar to the Governor's. Tex. Gov't Code § 418.108. But emergency management directors cannot pick and choose powers for their agency relationship. As section 418.1015 notes, an "emergency management director serves as the governor's designated agent in the administration and supervision of duties *under this chapter*"—that is, the entire Act. *Id.* § 418.1015(b) (emphasis added). The Legislature did not nonsensically make presiding officers of counties subject to the Governor's authority as agents in one provision only to give those officers unbounded authority in the next. As an act exceeding the scope of Adler's and Brown's authority as the Governor's agents, Order 24 is necessarily invalid.

2. Even if Order 24 were not invalid by virtue of Mayor Adler's and Judge Brown's violation of the principal/agent relationship they share with Governor Abbott, it would be invalid by GA-32's terms. To "the extent that . . . a local order restricts services allowed by" GA-32, GA-32 expressly "supersede[s]" it. App. A at 6. Order 24 restricts what GA-32 permits. *Compare* App. A at 3–5, *with* . GA-32 expressly allows dine-in services without a time restriction, by providing that "[r]estaurants 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." App. A at 5 [¶6]. While GA-32 places capacity limits on businesses, including restaurants, it does not prohibit those businesses from keeping their

normal hours, nor does it restrict when individuals may patronize establishments. App. A at 3–5.

Order 24's central prohibition adds a restriction that the Governor's order does not impose. As of 10:30 p.m. on December 31, restaurants across the State could continue to welcome guests for New Year's Eve; in Austin and Travis County, they would be subject to criminal prosecution and an up to $1,000 fine. App. B at 3–4; App. C at 3. This is a "local order [that] restricts services allowed by" GA-32, App. A at 6, and is therefore invalid by GA-32's express terms. App. A at 6.

Even had GA-32 not expressly preempted more restrictive orders such as Order 24, GA-32, as the Governor's order during a disaster, has the "force and effect of law" under the Act. Tex. Gov't Code § 418.012. A local "ordinance which conflicts or is inconsistent with state legislation is impermissible." *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 18–19 (Tex. 2016). By giving the Governor's orders the effect of law, the Legislature has made those orders preemptive of contradictory local orders or legislation of their own force; that GA-32 provides for preemption as well only confirms this result.

3. Finally, Governor Abbott has validly suspended section 418.018, the only authority on which Order 24 relies. In GA-32, Governor Abbott exercised his power under the Act to suspend statutes when those statutes would "in any way prevent, hinder, or delay" coping with a disaster. Tex. Gov't Code § 418.016(a). Indeed, Governor Abbott specifically cited section 418.018 when he suspended 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" GA-32. App. A at

6. Mayor Adler and Judge Brown therefore lacked the authority to rely on section 418.018 in the first place, and therefore lacked authority under the Act to issue Order 24.

This power to suspend local officials' ability to rely on the Act is consistent with the Act's extensive grants of authority to the Governor. After all, the Act gives the Governor the ability to use "all available resources of . . . political subdivisions" of the State "that are reasonably necessary to cope with a disaster." Tex. Gov't Code § 418.017(a). The power to suspend local officials' authority to issue contradictory orders follows naturally from the Governor's far greater power to commandeer any resources that Adler, Brown, the City of Austin, or Travis County have at hand necessary to combat COVID-19 and ensure an orderly, uniform statewide reopening. To limit the Governor's authority otherwise would presume the Legislature gave the Governor the power to use resources at the disposal of the City of Austin and Travis County while empowering those political subdivisions to undercut the Governor's use of those resources. This Court avoids such inherently contradictory results.

II. The State Has No Adequate Appellate Remedy.

The State has exhausted every other avenue for interim relief. The court of appeals continues to exercise jurisdiction over this dispute while the State's appeal remains pending. That court has refused the State's request for temporary relief pending its appeal, and the State's motion for expedited consideration remains pending. App. I; App. J. Monetary relief cannot redress local officials' improper exercise of Governor Abbott's power, nor can it restore the State's coordinated COVID-19 response in Austin or Travis County, nor can it prevent Austin and Travis County

residents from being placed with the intolerable choice of determining whether to follow GA-32 or Order 24. Without this Court's issuance of mandamus relief, the State and residents of Austin and Travis County must abide Order 24 and the harms it causes until the court of appeals or this Court invalidates that order.

This Court's intervention is urgently needed. Austin and Travis County authorities currently enforce Adler's and Brown's unlawful order; the State's ability to maintain a uniform response to the COVID-19 emergency is currently impeded; and Austin and Travis County residents are unsure which orders to follow. The COVID-19 pandemic remains ongoing, and other city and county officials will construe the bounds of their authority under the Act based on whether Order 24 is allowed to remain in force.

This Court's intervention will likewise preserve the status quo until this Court can resolve the issues of statewide importance presented here. Though Order 24 will expire by its own terms on Sunday night, a live controversy for this Court's eventual resolution will remain. Order 24 is the paradigmatic wrong "capable of repetition, yet evading review": a 55-and-a-half hour order usurping the Governor's prerogatives cannot escape this Court's scrutiny because of its short duration. *Blum v. Lanier*, 997 S.W.2d 259, 264 (Tex. 1999); *cf. Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020). This is doubly so given that Mayor Adler and Judge Brown provided virtually no notice of their intended order, and structured it to cover only holidays and a weekend—ideal conditions for frustrating judicial review. In any event, the circumstances in Austin and Travis County have not abated, so Mayor Adler and Judge Brown could re-issue or extend their order on the same grounds.

And even if they do not, other city and county officials may well follow suit. These likely results not only underscore the need for mandamus relief but confirm this Court's ongoing jurisdiction.

Prayer

The Court should grant the petition for a writ of mandamus and order the court of appeals to issue Rule 29.3 relief enjoining enforcement of Order 24 pending final resolution of the underlying appeal.

Respectfully submitted.

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Mandamus Certification

Pursuant to Texas Rule of Appellate Procedure 52.3(j), I certify that I have reviewed this petition and that every factual statement in the petition is supported by competent evidence included in the appendix or record. Pursuant to Rule 52.3(k)(1)(A), I certify that every document contained in the appendix is a true and correct copy.

/s/ Judd E. Stone
Judd E. Stone

Certificate of Service

On January 1, 2021, this document was served electronically on Sameer Birring, lead counsel for the City of Austin, and Sherine Thomas, lead counsel for Travis County, via Sameer.Birring@austintexas.gov and Sherine.Thomas@traviscountytx.gov, respectively.

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