

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

<b>STEVEN HOTZE, M.D. AND SID MILLER</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>(Agriculture Commissioner</b>	§	
<b>for the State of Texas),</b>	§	
<b>Plaintiffs,</b>	§	
<b>V.</b>	§	
<b>DAN PATRICK in his official</b>	§	<b>TRAVIS COUNTY, TEXAS</b>
<b>capacity as Lieutenant Governor</b>	§	
<b>of the State of Texas, RICK DELEON</b>	§	
<b>in his official capacity as Sergeant-</b>	§	
<b>at-Arms for the Texas State Senate, and</b>	§	
<b>THE TEXAS STATE SENATE,</b>	§	
<b>Defendants.</b>	§	<b>_____ JUDICIAL DISTRICT</b>

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

Plaintiffs Steven Hotze, M.D. and Sid Miller file this Plaintiffs’ Original Petition, Application for Emergency Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Dan Patrick in his official capacity as Lieutenant Governor of the State of Texas, Rick DeLeon in his official capacity as the Sergeant-at-Arms for the Texas State Senate, and the Texas State Senate.

**INTRODUCTION**

On January 13, 2021, the Lieutenant Governor of the State of Texas Dan Patrick (“Patrick”), led an unconstitutional effort to shut down Plaintiffs’ and all Texans’ access to the Texas State Senate. Specifically, Patrick and the Texas State Senate (“Senate”) passed Senate Resolution 1 (“SR 1”) which requires, among other things, “a wristband demonstrating a negative COVID-19 test for entry to the [Senate] gallery,” and further mandates that “[a]

member of the public is required to have a wristband demonstrating a negative COVID-19 test to enter a committee hearing.” (Exhibit “A”)

Patrick’s purple wristbands are a result of Senate Resolution 1, section 17, which states:

PROCEDURES RELATED TO COVID-19.

(a) Public seating in the gallery will be limited to ensure social distancing in accordance with COVID-19 guidelines. A wristband demonstrating a negative COVID-19 test is required for entry to the gallery.

(b) No personal data will be collected from persons who are tested to enter the Capitol. However, aggregate data indicating the number of persons tested each day and the number of positive tests shall be available to the members of the senate.

(g) A person who demonstrates proof of vaccination against COVID-19 shall be treated for all purposes the same as a person who has tested negative for COVID-19 and shall be entitled to a wristband.

(k) A member of the public is required to have a wristband demonstrating a negative COVID-19 test to enter a committee hearing.

(Exhibit “A”)

For state-wide elected officials like Plaintiff Commissioner Sid Miller, a wristband identifying a negative COVID-19 test is required daily to enter onto the floor of the Senate or to enter a committee hearing. (Exhibit “C”) For individuals like Plaintiff Dr. Steven Hotze (“Hotze”), a daily negative COVID-19 test is required for him to view the Senate from the gallery or participate in a Senate committee meeting.

On March 2, 2021, Hotze attempted to enter the gallery of the Senate. (Exhibit "B") Hotze was told by Defendant Sergeant-at-Arms for the Texas State Senate ("Sergeant-at-Arms") that he could not enter the Senate gallery unless he had a purple wristband. (Exhibit "B") Because Hotze did not have the requisite wristband, he was denied access to the Senate gallery. (Exhibit "B") The Sergeant-at-Arms then identified how Hotze could acquire the wristband, stating that Hotze would need to go to the tents outside the Capitol's north entrance and be tested for COVID-19, and, if he successfully completed the test, Hotze would be issued a purple wristband which would allow him to enter the Senate gallery. (Exhibits "A" and "B") The Sergeant-at-Arms further stated that the wristband was only good for the day and if Hotze wanted to enter on another day, he would have to go through the same process to acquire the purple wristband. (Exhibit "A" and "B") Hotze told the Sergeant-at-Arms that he did not want to be tested for COVID-19 and wanted to enter the Senate gallery. (Exhibit "B") The Sergeant-at-Arms refused to allow Hotze to enter the Senate gallery without having a negative COVID-19 test and the accompanying purple wristband. (Exhibit "B") The Sergeant-at-Arms also indicated to Hotze that even proof of a COVID-19 vaccination would not allow Hotze access to the Senate gallery. (Exhibit "B") Hotze was denied access to the Senate gallery due to his refusal to submit to a COVID-19 medical test. (Exhibit "B")

On March 2, 2021, Hotze attempted to enter a Senate committee meeting/hearing room to observe a Senate Committee. (Exhibit "B") Again, due to Patrick's purple wristband policy, SJ 1, Hotze was denied access to the Senate committee room due to his refusal to be tested for COVID-19, and his failure to have the purple wristband. (Exhibit "B")

After being denied access to the Senate gallery and Senate committee room, Hotze went to the two large tents previously identified by the Sergeant-at-Arms as the location for acquiring

the purple wristband. (Exhibit “B”) The tents are positioned outside the Capitol’s north entrance. (Exhibits “B” and “D”) The individual at the entrance of the first tent stated that Hotze needed to complete the registration paperwork prior to being tested.<sup>1</sup> (Exhibits “B” and “D”) The individual then indicated that Hotze could then be tested for COVID-19. (Exhibit “B”) The individual in charge of the tent told Hotze he would have to wait for the test results outside the exit area of the tent. (Exhibit “B”) Because Hotze refused to go through this COVID-19 medical procedure, he did not get a purple wristband and was not allowed to engage in his government as it relates to the Senate. (Exhibit “B”) Specifically, Hotze was denied access to every area controlled by the Senate.

On March 2, 2021, Hotze attempted to enter the Texas House gallery where he was told that he could enter the gallery and any committee hearing without having to submit to the COVID-19 medical procedure. (Exhibits “B” and “E”) HR 4 is consistent with the statement.<sup>2</sup> Additionally, Hotze was allowed to enjoy the public areas of the Capitol without having to submit to the COVID-19 medical test. (Exhibit “B”)

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<sup>1</sup> Inside the tents, an invasive medical test is performed on the individual to determine if they have COVID-19. Purple wristbands are awarded to those who test negative, allowing them to access the Senate. The purple wristband expires at the end of the day. Upon information and belief, the color of the wristband changes daily. To participate or observe the Senate the next day, one must again earn the purple wristband. Without the purple wristband, Plaintiffs and all Texans are banned from participating in their government as it relates to the Senate.

<sup>2</sup> HR 4, Sec. 14. States, “A new Rule 5, Section 19A, relating to face masks during floor sessions, shall read as follows:

Rule 5, Sec. 19A. FACE MASKS REQUIRED DURING FLOOR SESSIONS.  
Each person admitted to the house floor or gallery for the purpose of participating in, attending, providing support for, or observing house proceedings is required to wear at all times a face mask that complies with the recommendations of the Centers for Disease and Prevention.

The Texas Legislature will remain in session until May 28, 2021. Hotze desires to testify in numerous hearings involving the Senate, including, but not limited to, hearings on election integrity and Governor Abbott's power under the Texas Disaster Act. (Exhibit "B") Additionally, Hotze desires to watch the Senate in person from the Senate gallery as it debates legislation important to Hotze. (Exhibit "B") Because Hotze has refused to submit to the COVID-19 medical procedure, Patrick, the Senate, and the Sergeant-at-Arms will not allow him to engage in person in the legislative process as it relates to the Senate. Moreover, his access is completely precluded in that the Senate does not allow one to testify via Zoom or any other digital platform. Similarly, Commissioner Sid Miller can only represent the Texas Department of Agriculture in front of the Senate if he too is willing to submit to Patrick's purple wristband policy. (Exhibit "C")

Under Patrick's purple wristband policy, one either submits to the COVID-19 medical test or is prohibited from having the Senate hear their voice on issues impacting Texas. Defendant Patrick's, Senate's, and Sergeant-at-Arms' SR 1, violates Hotze's and Miller's rights under the Texas Constitution.

#### **DISCOVERY CONTROL PLAN**

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

#### **TRCP 47 STATEMENT**

Plaintiffs are suing for injunctive relief and declaratory relief. Plaintiffs are seeking monetary relief of less than \$100,000.00.

#### **JURISDICTION AND VENUE**

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 of exclusive interest. Plaintiffs seek relief that can be granted by courts of law or equity.

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, order, or government action. *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).

The Court has jurisdiction over the Plaintiffs' request for injunctive relief against Defendants because Defendants are acting *ultra vires* by unlawfully enforcing a provision that violates Texas law and the Texas Constitution. *See* Tex. Civ. Prac. & Rem. Code § 65.021; *see also* *City of El Paso v. Heinrich*, 284 S.W.3d 366-368-69 (Tex. 2009).

Plaintiffs have standing to seek declaratory and injunctive relief because they are adversely and irrevocably harmed by the illegal resolution Defendants are implementing.

The Court has personal jurisdiction over the Defendants.

Venue is proper in Travis County because Defendants have their principal office in Travis County, Texas. *See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(3) and 15.005 Tex. Gov. Prac. & Rem. Code.

Plaintiffs have provided the Texas Attorney General with notice of this suit as required by Texas Civil Practice & Remedies Code §30.004(b).

## **PARTIES**

Plaintiff Steven Hotze, M.D. is a resident of Harris County, Texas, and a citizen of the United States. Dr. Hotze was denied access to the Texas Senate Gallery and Senate Committee Rooms due to his wish not to be tested for COVID-19 while at the Texas State Capitol.

Plaintiff Honorable Sid Miller is the duly elected Agriculture Commissioner for the State of Texas. During the legislative session, Agriculture Commissioner Miller is required to access the Senate Chamber and Committee Rooms to address legislation related to his office. Despite his objection to Patrick's Rules regarding COVID-19, Commissioner Miller is required to be tested almost daily to access the Senate.

Defendant Dan Patrick ("Patrick") is the Lieutenant Governor and President of the Senate of Texas. He is sued in his official capacity as the Lieutenant Governor of the State of Texas. The Lieutenant Governor decides all questions of parliamentary procedure in the Senate. He has broad discretion in following Senate procedural rules. The Lieutenant Governor may be served through the Attorney General of the State of Texas, 300 W. 15th St., Austin, Texas 78701.

Defendant Rick DeLeon ("DeLeon") is the Sergeant-at-Arms for the Senate for the 87<sup>th</sup> Legislature. DeLeon and the Office of the Sergeant-at-Arms is responsible for enforcing SR 1 as it relates to the COVID-19 medical procedure required by SR 1. Defendant DeLeon's office prevented Hotze from entering the Senate. The Sergeant-at-Arms may be served through the Attorney General of the State of Texas, 300 W. 15th St., Austin, Texas 78701.

Defendant Texas State Senate is recognized under the Texas Constitution, Article III, Sec. 1, stating, "Legislative power of this State shall be vested in a Senate and House of Representatives, which together shall be styled 'The Legislature of the State of Texas.'" The Texas Senate may be served through the President Pro Tempore of the Texas Senate, Brian Birdwell, or the Attorney General for the State of Texas, 300 W. 15th St., Austin, Texas 78701.

## STATEMENT OF THE CLAIM

The Texas Constitution prohibits laws that abridge the freedom of speech or the right of the people to petition the government for a redress of grievances. Article III, section 11 of the Texas Constitution provides that each “House may determine the rules of its own proceedings.” However, the House and Senate must determine procedures, consistent with the Texas and U.S. Constitutions, for providing public access, conducting public testimony, debate and voting on legislation during the legislative session. The rules set by the House and Senate have historically conformed to constitutional restraints requiring voting and debate to occur in person. Because Patrick’s SR 1 requires a daily medical test as a prerequisite to participate in legislative matters related to the Texas Senate during the 87th Legislative Session, the requirement violates Article III, Section 16, Article I, Section 8, and Article I, Section 27 of the Texas Constitution. Moreover, SR 1 violates the Texas Open Meetings Act.

“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). The House and Senate must determine procedures, consistent with the Texas and U.S. Constitutions, for providing public access, conducting public testimony, debate and voting on legislation during the legislative session. “All government power in this country, no matter how well-intentioned, derives only from the state and federal constitutions.” *In re Salon A La Mode et al.*, No. 20-0340 (concurring opinion, J Blacklock) (Tex. May 5, 2020). 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.” *Id.* 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. Justice Blacklock previously 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). Texas law does not and cannot empower Patrick or the Texas Senate to impose a medical test before one is able to participate in their government.

## THE DECLARATION

### **1. Patrick's Purple Wristband and the COVID-19 Medical Testing Mandated in SR 1 Violates Article III, Section 16 of the Texas Constitution**

The Texas Constitution provides: “The session of each House shall be open, except the Senate when in Executive session.” TEX. CONST. art. III, § 16. This constitutional limit on legislative power requires the Senate to be open and accessible to the public. Dictionaries define “open” as “accessible” or “allowing access.” NEW OXFORD AM. DICTIONARY 1227 (3D ED. 2010); *see also Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 563 (Tex. 2014) (explaining that often look to the dictionary definitions to determine a terms' common ordinary meaning). The common understanding of the term “session” is “a meeting of a deliberative or judicial body to

conduct its business. NEW OXFORD AM. DICTIONARY 1597 93D ED. 2010). Construing these terms together, the Texas Constitution requires that the meeting of both Houses of the Legislature shall be accessible to the public, except when the Senate is in executive session. TEX. CONST. art. III, §16; see *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 300 (Tex. 1990) (“The executive and legislative decisions of our governmental officials as well as the underlying reasoning must be discussed openly before the public rather than secretly behind closed doors.”); G. Braden, THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSES 129 (1977) (“Plenary sessions of the House and Senate have always been open to the public.”). The constitutional mandate that the legislative session be “open” supersedes any statutory emergency authority that may otherwise apply to the Senate. See TEX. CONST. art. III, § 16 (“The sessions of each House shall be open....”). The Senate is not “open” or “accessible” in that SR 1 requires Plaintiffs and all Texans to submit to the COVID-19 medical procedure as a prerequisite to participating in their government as it relates to the Texas Senate. Accordingly, SJ 1, sections 17(a),(b),(g), and (k), violate Article III, §16 of the Texas Constitution in that the Senate is closed to those who refuse to submit to the COVID-19 medical procedure.

## **2. Patrick’s SR 1 Violates Article I, § 8 of the Texas Constitution**

Article I, § 8 of the Texas Constitution provides: “Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press.” By requiring Plaintiffs to daily submit to a COVID-19 test or provide proof of vaccination for same, Defendants’ trample on Plaintiffs’ rights under Article I, § 8. A rule that unreasonably restricts speech by requiring a medical procedure as a prerequisite to expressing the speech violates Tex. Const. art. I § 8.

Pre-speech sanctions, or prior restraints such as those imposed by Patrick and the Senate, are presumed to be unconstitutional under this provision of our state constitution. See *San Antonio Express-News, Div. of Hearst Corp. v. Roman*, 861 S.W.2d 265 (Tex. App.- San Antonio 1993, no writ). In *Kinney v. Barnes*, the Texas Supreme Court defined the free speech presumption, stating, "Enshrined in Texas law since 1836, this fundamental right recognizes the 'transcendent importance of such freedom to the search for truth, the maintenance of democratic institutions, and the happiness of individual men.' Tex. Const. art. I, § 8 interp. commentary (West 2007). Commensurate with the respect Texas affords this right is its skepticism toward restraining speech. While abuse of the right to speak subjects a speaker to proper penalties, we have long held that 'pre-speech sanctions' are presumptively unconstitutional." 443 S.W.3d 87, 90 (Tex. 2014) (footnotes omitted).

In *Operation Rescue-Nat'l v. Planned Parenthood of Houston and Southeast Texas*, 975 S.W.2d 546, 559 (Tex. 1998) (footnote omitted), the Texas Supreme Court identified the applicable standard for judging restrictions on free speech, stating, "To define the protections of Article I, Section 8 simply as one notch above First Amendment protections is to deny state constitutional guarantees any principled moorings whatever. We reject this approach. The text, history, and purposes of Article I, Section 8 have been thoroughly examined by this Court. We know of nothing to suggest that injunctions restricting speech should be judged by a different standard under the state constitution than the First Amendment."

Two factors are considered in determining the standard by which legislative restrictions on freedom of expression are to be measured: whether the forum is public, and whether the restriction is based on the content of the speech. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44-46 (1983). When the forum is public and the statutory restriction content-neutral, the

Texas Constitution requires an “intermediate” scrutiny and permits regulation of the time, place, and manner of expression that is narrowly tailored to serve a significant governmental interest and that leaves open ample alternative channels of communication. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *Operation Rescue-Nat'l v. Planned Parenthood of Houston and Southeast Texas*, 975 S.W.2d 546, 556 (Tex. 1998). Thus, a limitation on content-neutral speech passes constitutional muster under the Article I, § 8 scrutiny if it is a “precision regulation”<sup>3</sup> and employs “the narrowest terms that will accomplish the pin-pointed objective.”<sup>4</sup>

Content-neutral laws that govern expression but do not seek to restrict its content are subject to intermediate scrutiny. *Turner Broad. Sys., Inc., v. F.C.C.*, 512 U.S. 622, 642 (1994). The U.S. Supreme Court in *United States v. O'Brien* set out a four-part test to determine whether content-neutral restrictions on protected speech are constitutional and valid under the First Amendment. 391 U.S. 367, 377, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968); *Foster v. City of El Paso*, 396 S.W.3d 244, 253 (Tex. App.—El Paso 2013, no pet.) Under this test, restrictions that are content neutral in time, place and manner are permissible only if: (1) they are within the constitutional power of the government; (2) they further an important or substantial governmental interest; (3) the asserted governmental interest is unrelated to the suppression of free expression; and (4) the incidental restrictions on alleged First Amendment freedoms are no greater than is essential to the furtherance of that interest. *Rivera v. State*, 363 S.W.3d 660, 667 n. 7 (quoting *O'Brien*, 391 U.S. at 377). When free speech is abused the appropriate remedy is to

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<sup>3</sup> *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 767 (1994) (quoting *NAACP v. Claiborn Hardware Co.*, 458 U.S. 886, 916 (1982)).

<sup>4</sup> *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 767 (1994) (quoting *Carroll v. President and Comm'rs of Princess Anne*, 393 U.S. 175, 183 (1968)).

punish the abuse rather than to deny the right to speak. *Davenport v. Garcia*, 834 S.W.2d 4, 9 (Tex. 1992) (quoting *Ex parte Tucker*, 220 S.W. 75 (1920)).

Here, the Texas House, a body almost five times the size of the Texas Senate, does not require Plaintiffs or Texans to subject themselves to the COVID-19 medical procedure prior to engaging in their government. (Exhibit “E”) Instead, they need only wear a mask when entering the Texas House gallery or testifying in front of House committees. (Exhibit “E”) Also, to enter the Texas Capitol’s areas open to the public that are not controlled by the Senate, Texans are not required to subject themselves to a COVID-19 test. Additionally, Governor Abbott’s most recent Executive Order regarding the COVID-19 pandemic, GA-34, does not require businesses, establishments, or government operated facilities/buildings to administer a COVID-19 test prior to entering the facility. (Exhibit “F”) In fact, GA-34 eliminates the mask mandate.

### **3. Patrick’s SR 1 Violates Article I, § 27 of the Texas Constitution**

The Texas Constitution creates a right for citizens to petition their government: “The citizen shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.” TEX. CONST. art. I, §27 (“Petition Clause”). Article I, section 27 assures citizens of an important substantive political right—the right to petition the government for redress. *Corpus Christi Indep. Sch. Dist. v. Padilla*, 709 S.W.2d 700, 704 (Tex. App.-Corpus Christi 1986, no writ). The Petition Clause of the Texas Constitution reserves the right to petition the government for a redress of grievances as follows: Right of Assembly; petition for redress of grievances. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those vested with the powers of

government for redress of grievances or other purposes, by petition, address or remonstrance. Tex. Const. art. 1. § 27.

The right to petition is inseparable from the right of free speech. Although the rights are distinct guarantees, they are cut from the same constitutional cloth, inspired by the same principles and ideals. Thus, as a general rule, the rights are subject to the same constitutional analysis. *Clay v. Jenkins*, 248 S.W.3d 418, 423 (Tex. App.-Amarillo 2009, no writ).

**4. SR 1 Violates Tex. Rev. Civ. Stat. Ann. Art. 6252-17, § 2(a).**

The executive and legislative decisions of governmental officials as well as the underlying reasoning must be discussed openly before the public rather than secretly behind closed doors. In order to effect this policy, the Open Meetings Act requires that every regular, special, or called meeting or session of every governmental body shall be open to the public. Tex. Rev. Civ. Stat. Ann. Art. 6252-17, § 2(a). A "meeting" includes any deliberation involving a "quorum" or majority of the members of a governing body at which they act on or discuss any public business or policy over which they have control. Article 6252-17 §§ 1(a) and (d). Any verbal exchange between a majority of the members concerning any issue within their jurisdiction constitutes a "deliberation." Article 6252-17 § 1(b). When a majority of a public decision making body is considering a pending issue, there can be no "informal" discussion. There is either formal consideration of a matter in compliance with the Open Meetings Act or an illegal meeting. The explicit command of Tex. Rev. Civ. Stat. Ann. art. 6252-17, § 2(a) is for openness at every stage of the deliberations. *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 300 (Tex. 1990). Accordingly, the court has demanded exact and literal compliance with the terms of this statute. *Id.* Requiring Plaintiffs and every Texan to undergo the COVID-19 medical procedure as a prerequisite to engaging in their government as it relates to the Senate, is a violation of the Open

Meetings Act in that it requires that every called meeting or session of every governmental body, including the Senate, shall be open to the public. The meetings are not “open to the public” if one is required to undergo a medical test to participate or view the process.

### **CAUSES OF ACTION**

The Plaintiffs brings their claims for relief under the Uniform Declaratory Judgment Act. They also bring suit under *City of El Paso v. Heinrich*, 284 S.W.3d, 366, 368-369 (Tex. 2009), which authorizes *ultra vires* claims against public officials who act in violation of state law.

Plaintiffs are seeking relief entirely under state law and are not asserting any claims that arise under federal law.

### **EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER**

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

Plaintiffs seek a temporary restraining order preventing Defendants from implementing and enforcing SR 1, Section 17 (a),(b),(g), and (k). 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 irreparably injury in the interim.” See *Butnaru*, 84 S.W.3d at 204. 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.).

The Uniform Declaratory Judgment Act and *Heinrich* each provide Plaintiffs with a cause of action to seek declaratory and injunctive relief against the Defendants. Plaintiffs have a probable right to relief because, for the reason described above, the Defendants’ conduct violates their rights under the Texas Constitution and the Texas Open Records Act. Plaintiffs will suffer probable, imminent, and irreparable injury absent a temporary restraining order and temporary injunction because the Defendants are trampling on Plaintiffs’ rights under the Texas Constitution and are exceeding Defendants’ authority under the Texas Constitution. The deprivation of liberty is an irreparable injury.

Without immediate relief, Plaintiffs will suffer imminent and irreparable harm. With each day that passes Plaintiffs are deprived of their liberty and rights under the Texas Constitution in that they are required to have a medical procedure prior to engaging in their government as it relates to the Senate.

The harm to Plaintiffs described herein is a direct and proximate result of the acts of Defendants enforcing and implementing SR 1. The requested temporary restraining order is appropriate to preserve the status quo until a hearing on Plaintiffs’ 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 notice and hearing:

Plaintiffs will provide Defendants’ counsel with notice of this Application for Temporary Restraining Order and hearing on same.



Plaintiffs file this Application for a 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. Plaintiffs are willing to post a bond as required by Texas law in an amount determined by the Court.

### **GROUND FOR TEMPORARY INJUNCTION**

Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

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

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

### **DEMAND FOR JUDGMENT**

Plaintiffs demand the following relief:

- a. A declaration that Senate Resolution 1, sections 17 (a), (b), (g), and (k) violate Article III § 16 of the Texas Constitution and is invalid;
- b. a declaration that Senate Resolution 1, sections 17 (a), (b), (g), and (k) violate Article I § 8 of the Texas Constitution and is invalid;
- c. a declaration that Senate Resolution 1, sections 17 (a), (b), (g), and (k) violate Article I § 27 of the Texas Constitution and is invalid;
- d. a temporary and permanent injunction that prevents Defendants from enforcing and implementing Senate Resolution 1, section 17(a)(b)(g) and (k);
- e. a temporary restraining order that suspends the enforcement of Senate Resolution 1, sections 17(a), (b), (g), and (k);
- f. an award of nominal and compensatory damages;

- g. an award of costs and attorneys' fees; and
- h. all other relief that the Court may deem just, proper, or equitable.

Respectfully submitted,

**WOODFILL LAW FIRM, PC**

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