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The Honorable Greg Abbott
Governor of the State of Texas
P.O. Box 12428
Austin, Texas 78711

Submitted via electronic mail

July 9, 2020

Governor Abbott:

The health and safety of our fellow Texans facing the COVID-19 pandemic is unquestionably a matter of the highest priority. Actions must be taken to address the threat. However, actions pressed with the force of law need input from those elected to write laws. The separation of lawmaking, law enforcement, and law interpretation are the foundational checks and balances that make Texas and America exceptional in the world. Many Texans fear that we have drifted away from those checks and balances. The simple truth is that doing the right thing in the wrong way causes harmful unintended consequences.

Over the course of the last four months, you have issued more than twenty executive orders under the Texas Disaster Act of 1975. Although many legislators, and even our own caucus, have criticized some of the actions you have taken during the COVID-19 pandemic, we know that you have undertaken each and every decision with painstaking care. Regardless, the fact remains that the effects of these orders have caused families across the state to take massive financial hits, and in many cases caused businesses to permanently close their doors. Family members have not seen each other in months, nor have they been able to care for their loved ones in nursing home communities. Gatherings have been restricted to under ten people, and business owners and individuals are subject to large fines for not wearing masks. Day after day, constituents fill our inboxes, flood our phone lines, and address us in person, begging for some sort of guidance on what they should do to keep their small businesses open, maintain their sanity, and try at a semblance of regular life without fear of government penalty.

On March 19, you declared a statewide disaster and invoked your authority under the Texas Disaster Act of 1975. Although Texans were under the initial impression that this disaster would last but two weeks, nearly four months have passed. It is hard to see an end in sight, and we are not certain that the last order under this disaster has been written. The 1975 law was written and certainly intended to address temporary disasters—it was passed in the wake of Hurricane Carla in 1961 and Hurricane Beulah in 1967, disasters whose consequences had clear ends in sight regarding repairs of the physical and economic damage incurred. The law was not written, however, to address a disaster of the magnitude or crisis of the length COVID-19 has turned out to be. In fact, we do not believe that any prior Legislature could have possibly foreseen this specific set of circumstances.

For disasters such as these, the drafters of the 1875 Constitution left the power in the executive to call a special session of the Texas Legislature to determine ways to move forward. As you know, many members of the Legislature, both inside and outside of our caucus, have called for such a session to convene. But ultimately, the power lies in you, and you alone, to call a special session. Our issue is not with the 1875 Texas Constitution, but with the Texas Disaster Act. Through our painful conversations with constituents, it is abundantly clear to us that the Texas Disaster Act of 1975 must be heavily reformed.

We have spoken with many members of the Legislature about these needed reforms. One popular proposal is to allow for a time limit on gubernatorial disaster declarations—for example, if a major disaster affecting a large part of the state exceeds a certain number of days, the Legislature must be called into session to address further actions. Another is to prohibit state agencies from suspending or revoking business or professional licenses due to a disaster declaration. The ideas we have debated and have heard from our colleagues are too numerous to include in this letter, but we perceive that there is a near unanimous belief among legislators that this is a priority issue for the legislature to discuss.

For the reasons mentioned above, we formally request that you place on the call reforms to the Texas Disaster Act should you decide to call a special session of the Legislature, or as an emergency item during the next regular session. Nothing at this point is more urgent. Reforms such as these will allow all 181 members to have a say and a vote for their district in a crisis of this magnitude, and us to do our duty to guard against overreach and protect liberty for all.

Governor Abbott, even with all of the struggles and trials of the past few months, we know we will overcome this in the way we have since 1836—with tenacity and resolve. The spirit of Texans can and will help our state make one of the biggest comebacks in the history of our nation and the world. But we must work—*together*—toward that day. So, we ask you, Governor Abbott: Please help us reform the Texas Disaster Act. It is the solution for which our constituents have been asking.

For Texas,

A handwritten signature in black ink, appearing to read "Mayes Middleton". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rep. Mayes Middleton
Chairman, Texas Freedom Caucus