

No. \_\_\_\_\_

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## In the Supreme Court of Texas

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TEXAS DEPARTMENT OF STATE HEALTH SERVICES; JOHN  
HELLERSTEDT, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF  
THE TEXAS DSHS,

*Appellants,*

v.

CROWN DISTRIBUTING LLC; AMERICA JUICE CO., LLC; CUSTOM  
BOTANICAL DISPENSARY, LLC; 1937 APOTHECARY, LLC,

*Appellees.*

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On Direct Appeal from the  
345th Judicial District Court, Travis County

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### STATEMENT OF JURISDICTION

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## IDENTITY OF PARTIES AND COUNSEL

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Texas Department of State Health Services  
John Hellerstedt, in his official capacity as Commissioner of the Texas DSHS

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### **Appellees:**

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America Juice Co., LLC  
Custom Botanical Dispensary, LLC  
1937 Apothecary, LLC

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## STATEMENT OF THE CASE

- Nature of the Case:* Appellees (“Plaintiffs”) sued the Texas Department of State Health Services and Commissioner John Hellerstedt (“Defendants”), challenging the constitutionality of Texas Health and Safety Code section 443.204(4) (“the Statute”) and the validity of 25 Texas Administrative Code section 300.104 (“the Rule”), both of which relate to consumable hemp products for smoking.
- Trial Court:* 345th Judicial District Court, Travis County  
The Honorable Lora J. Livingston
- Course of Proceedings:* The trial court issued a temporary injunction prohibiting Defendants from enforcing the Rule. Defendants filed an interlocutory appeal to the Third Court of Appeals. The court of appeals affirmed the injunction in part, reversed in part, and remanded. *Tex. Dep’t of State Health Servs. v. Crown Distrib. LLC*, No. 03-20-00463-CV, 2021 WL 3411551, at \*8 (Tex. App.—Austin Aug. 5, 2021, no pet.) (mem. op.).
- Disposition in the Trial Court:* Following a trial on the merits, the trial court declared the Statute unconstitutional, declared the Rule invalid in its entirety, and permanently enjoined Defendants from enforcing the Statute or the Rule. App’x 2–3. Defendants filed a direct appeal to this Court, and the trial court’s judgment is thereby superseded. *See* Tex. Civ. Prac. & Rem. Code § 6.001; Tex. R. App. P. 24.2(a)(3); *Neeley v. W. Orange-Cove Consol. ISD*, 176 S.W.3d 746, 754 & n.19 (Tex. 2005).

## **TO THE HONORABLE SUPREME COURT OF TEXAS:**

Defendants have filed a direct appeal to this Court from the trial court's judgment, which enjoined the enforcement of the Statute and Rule relating to consumable hemp products for smoking on the ground that the Statute violates the Texas Constitution. Defendants file this statement of jurisdiction under Texas Rule of Appellate Procedure 57.3 and request that the Court note probable jurisdiction over this appeal and order the parties to file appellate briefs.

### **STATEMENT OF JURISDICTION**

A party may appeal a trial court's judgment directly to this Court if the judgment grants or denies an injunction on the ground of the constitutionality of a Texas statute. Tex. Gov't Code § 22.001(c); *see Morath v. Tex. Taxpayer & Student Fairness Coal.*, 490 S.W.3d 826, 841, 846 (Tex. 2016). Defendants' appeal satisfies these conditions.

First, the trial court's final judgment grants an injunction against Defendants. Specifically, the judgment states that "[a] permanent injunction is granted enjoining Defendants from enforcing Texas Health and Safety Code Section 443.204(4) and 25 Texas Administrative Code Section 300.104." App'x 3.

Second, the final judgment grants the injunction on the ground of the constitutionality of a Texas statute. The judgment explains that the court concluded that the Statute "is not rationally related to a legitimate governmental interest," that "the real-world effect of [the Statute] is so burdensome as to be oppressive in light of any legitimate government interest," and that the Statute "violates the Texas Constitution." *Id.* at 2. The court therefore enjoined the enforcement of the Statute and the

Rule. *Id.* at 3; *see id.* at 1–2 (the court noting that “Plaintiffs raised the Rule invalidity *due to the statute’s unconstitutionality* in their Amended Petition”) (emphasis added).

Because the trial court expressly determined that the Statute is unconstitutional and issued an injunction based on that determination, this Court has jurisdiction over Defendants’ direct appeal.

**PRAYER**

The Court should note probable jurisdiction over this appeal and order the parties to file appellate briefs. Tex. R. App. P. 57.4.

Respectfully submitted.

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**CERTIFICATE OF SERVICE**

On December 6, 2021, this document was served on Matthew C. Zorn, lead counsel for Crown Distributing LLC and America Juice Co., LLC, via mzorn@yettercoleman.com, and Susan Hays, lead counsel for Custom Botanical Dispensary, LLC and 1937 Apothecary, LLC, via hayslaw@me.com.

/s/ Kyle D. Highful  
KYLE D. HIGHFUL

**CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this document contains 332 words, excluding exempted text.

/s/ Kyle D. Highful  
KYLE D. HIGHFUL



# Appendix

CROWN DISTRIBUTING LLC;	§	IN THE DISTRICT COURT
AMERICA JUICE CO., LLC	§	
CUSTOM BOTANICAL DISPENSARY, LLC;	§	
1937 APOTHECARY, LLC	§	
	§	
Plaintiffs	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
TEXAS DEPARTMENT OF STATE HEALTH	§	
SERVICES;	§	
JOHN HELLERSTEDT, in his official capacity as	§	
Commissioner of the Texas DSHS	§	
	§	
Defendants.	§	345TH DISTRICT COURT

**FINAL JUDGMENT**

Trial in the above-styled matter occurred on March 22, 2021. Plaintiffs Wild Hempettes, LLC; Crown Distributing LLC; America Juice Co., LLC; Custom Botanical Dispensary, LLC; and 1937 Apothecary, LLC (together “Plaintiffs”) appeared through their attorneys of record and announced ready for trial. Defendants Texas Department of State Health Services (“DSHS”) and John Hellerstedt, in his official capacity as Commissioner for DSHS (together “Defendants”) appeared through their attorneys of record and announced ready for trial.

After consideration of Defendants’ Motion for Summary Judgment, Plaintiffs’ Emergency Motion for Leave to Amend Pleadings, Defendants’ Motion for the Court to Reform its Temporary Injunction or, Alternatively, Rule on Plaintiffs’ Permanent Injunction, responses, replies, the pleadings, evidence, and arguments of counsel, the Court hereby rules as follows:

Plaintiffs’ Emergency Motion for Leave to Amend Pleadings is **GRANTED**. Plaintiffs’ Second Amended Petition presents no surprise or prejudice to Defendants. Plaintiffs raised the Rule invalidity due to the statute’s unconstitutionality in their Amended Petition: “For the reasons

stated above, the rule is invalid and cannot be applied to Wild Hempettes insofar as the Legislative Ban violates Tex. Const. art. XI, § 19.” Pl.’s Am. Verified Pet. at ¶ 75.” This position echoes the position of Plaintiffs since the inception of the case and throughout trial on the merits. Despite this knowledge and notice of Plaintiffs’ position, the Plaintiffs’ Response to Motion for Summary Judgment, and this Court’s Order on the Temporary Injunction on September 18, 2020, Defendants took no action to clarify the claims and filed no special exceptions. While the Amended Petition gives fair notice to Defendants,<sup>1</sup> the Second Amended Petition conforms to the evidence presented and the arguments made. Defendants cannot claim surprise or prejudice to the Amendment that the Plaintiffs seek. Therefore, the Motion is **GRANTED**.

Defendants’ Motion for Summary Judgment is **DENIED**.

Based on the entire record in this case, the Court concludes that Texas Health and Safety Code Section 443.204(4) is not rationally related to a legitimate governmental interest. In addition, based on the entire record in this case, the real-world effect of Texas Health and Safety Code Section 443.204(4) is so burdensome as to be oppressive in light of any legitimate government interest.

Every issue raised by the pleadings was tried and argued at the trial on the merits on March 22, 2021. Because the Second Amended Petition conforms to the trial, judgment is rendered in favor of Plaintiffs without additional evidence or hearing.

IT IS THEREFORE **ORDERED, ADJUDGED, and DECREED** that

- Texas Health and Safety Code Section 443.204(4) violates the Texas Constitution.

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<sup>1</sup> While the Third Court of Appeals concluded the Original Petition failed to give fair notice, the same cannot be said of the Amended Petition, filed February 2, 2021, especially in the context of the case as the whole and the consistent position of Plaintiffs throughout this case.

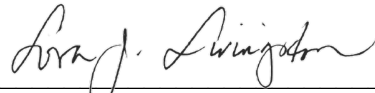
- 25 Texas Administrative Code Section 300.104 is invalid in its entirety.
- A permanent injunction is granted enjoining Defendants from enforcing Texas Health and Safety Code Section 443.204(4) and 25 Texas Administrative Code Section 300.104.

Defendants' Motion for the Court to Reform its Temporary Injunction, or Alternatively, Rule on Plaintiffs' Permanent Injunction is **DENIED** as moot.

Plaintiffs' request for attorney's fees is **DENIED**.

This is a final judgment that disposes of all claims and all parties and is appealable.

SIGNED on \_\_\_\_\_ November 16, 2021, at 10:53 pm .



\_\_\_\_\_  
HONORABLE JUDGE LORA J. LIVINGSTON

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

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