

No. _____

In the Supreme Court of Texas

In re GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF
THE STATE OF TEXAS,

Relator.

On Petition for Writ of Mandamus
to the Fourth Court of Appeals, San Antonio

PETITION FOR WRIT OF MANDAMUS

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RECORD REFERENCES

“App.” refers to the appendix to this petition. “MR” refers to the mandamus record.

STATEMENT OF THE CASE

Nature of the underlying proceeding: The City of San Antonio and Bexar County sued Relator Governor Greg Abbott to enjoin enforcement of Executive Order GA-38, which disallows local government entities from requiring individuals to wear face coverings. MR.14. The trial court issued a temporary restraining order prohibiting enforcement of that provision of GA-38. App.33. This Court stayed the TRO. App. 40. The trial court then held an evidentiary hearing and granted a temporary injunction. App.42-43. The Governor filed a notice of appeal, which superseded the temporary injunction. App.51; *see* Tex. Civ. Prac. & Rem. Code § 6.001(b); Tex. R. App. P. 24.2(a)(3), 29.1(b). The City and County moved under Rule 29.3 to reinstate the temporary injunction pending appeal. MR.17, 19; App.51.

Respondent: Fourth Court of Appeals, San Antonio

Respondent’s challenged actions: Eleven minutes after the Governor filed his response to the Rule 29.3 motion, the court of appeals granted the motion and reinstated the temporary injunction pending disposition of the appeal. App.55 (per Rios, Watkins, and Rodriguez, JJ.).

STATEMENT OF JURISDICTION

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

ISSUE PRESENTED

Whether the court of appeals’ grant of Rule 29.3 relief was a clear abuse of discretion.

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 and empowers him to issue executive orders that have the “force and effect of law.” Several trial courts have concluded, however, that when the Governor and localities issue contradictory emergency orders, the local orders control.

The City of San Antonio and Bexar County disagree with parts of the Governor’s response to the COVID-19 pandemic—specifically, the provisions in Executive Order GA-38 that prohibit local governments from requiring individuals to wear face coverings. They sued the Governor to enjoin enforcement of those provisions. The trial court granted their request pending a trial on the merits set for December.

The Governor immediately filed an accelerated interlocutory appeal, which superseded the temporary injunction. The City and County responded by filing a motion under Texas Rule of Appellate Procedure 29.3 to reinstate the temporary injunction pending appeal.

A mere eleven minutes after the Governor filed his response, the court of appeals granted the motion. That action contravened two orders from this Court recognizing that the injunctive relief at issue upends, rather than preserves, the status quo. The court of appeals’ decision thereby compounds the widespread confusion over mask mandates in Texas and frustrates the State’s ability to cohesively address the pandemic. Urgent relief is necessary to correct the court of appeals’ errors and restore the status quo until this Court has resolved the underlying dispute.

STATEMENT OF FACTS

1. The Texas Disaster Act authorizes the Governor to protect citizens in times of crisis. Tex. Gov't Code §§ 418.001-418.261. As the Chief Executive Officer of the State of Texas, Tex. Const. art. IV, § 1, the Governor is charged with “meeting . . . the dangers to the state and people presented by disasters,” *id.* § 418.011. The Legislature imbued the Governor with broad powers in those circumstances, including the ability to suspend certain statutes, issue executive orders with the force and effect of law, and control the movement of persons and occupancy of premises. *Id.* §§ 418.012, 418.016, 418.018.

To discharge his statutory responsibilities under the Disaster Act, the Governor has issued a series of orders over the course of the last year and a half to mitigate the risks from COVID-19 and to provide for a speedy and uniform statewide recovery. Relevant here, the Governor issued Executive Order GA-36 on May 18, 2021. MR.5. Although GA-36 provided a temporary exception for public schools, allowing them to maintain existing face-covering mandates until June 4, 2021, GA-36 provided that no governmental entity, “including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering.” MR.7. Executive Order GA-38, issued on July 29, contains this identical language. MR.14.

2. The City and County sued the Governor and sought a declaration that GA-38 exceeds his authority under the Disaster Act. App.8. Alternatively, they asked for a declaration that the Disaster Act violates both the Suspension and Separation of

Powers Clauses of the Texas Constitution. App.11.; *see* Tex. Const. art. I, § 28; *id.* art. II, § 1.

Initially, the City and County sought a temporary restraining order, which the trial court granted. App.33-34. That TRO enjoined the Governor from enforcing GA-38 insofar as it (1) prohibited the City and County from requiring their employees or visitors to their facilities to wear masks and (2) prohibited City and County officials from requiring masks in public schools. App.33. The Governor filed a petition for a writ of mandamus and an accompanying motion for emergency temporary relief, which the Fourth Court of Appeals denied. App.38.

The Governor then sought mandamus relief from this Court. App.40. The Court quickly stayed the TRO. App.40. Relatedly, the Court also stayed a TRO issued by a trial court in Dallas that had enjoined enforcement of GA-38. *See* Order, *In re Abbott*, No. 21-0686 (Tex. Aug. 15, 2021). In both instances, the Court noted that “the trial court’s temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court’s hearing and decision on plaintiffs’ request for a temporary injunction.” *See id.*; App.40.

3. After this Court stayed the TRO, the trial court held a temporary-injunction hearing and granted a temporary injunction. App.42-43. The temporary injunction is identical in scope to the TRO that this Court already stayed. Like the TRO, the temporary injunction enjoins enforcement of GA-38 to the extent that GA-38 (1) prohibits the City and County from requiring their employees or visitors to their facilities to wear masks, and (2) prohibits City and County officials from requiring masks in public schools. App.42.

4. The Governor filed a notice of accelerated interlocutory appeal in the Fourth Court of Appeals. App.51. That notice superseded the temporary injunction. Tex. Civ. Prac. & Rem. Code § 6.001(b); Tex. R. App. P. 24.2(a)(3), 29.1(b). On August 18, the City and County filed an emergency motion under Texas Rule of Appellate Procedure 29.3 seeking an order preserving the temporary injunction pending appeal. App.51. The court of appeals did not request a response. But to ensure speedy consideration of the motion, the Governor filed his response the next day. MR.17. Only eleven minutes after that response was filed, MR.19, the court of appeals issued a seven-page order granting the motion. App.49-55. The court concluded that GA-38 altered the status quo and that the temporary injunction restored the status quo. App.55. Calling the circumstances of the case “unique, and quite frankly, unprecedented,” the court concluded that reinstating the temporary injunction was necessary to preserve the parties’ rights and prevent irreparable harm. *Id.*

The Governor now seeks mandamus relief from that order.

SUMMARY OF THE ARGUMENT

The statewide prohibition on mask mandates has been in effect since May. The temporary injunction—and reinstatement of the injunction—alter, rather than restore, that status quo. This Court confirmed that when it stayed the TRO, which is identical in scope to the temporary injunction that the court of appeals has allowed to take effect. The court of appeals clearly abused its discretion in departing from this Court’s order, issued just over a week ago.

The temporary injunction adds to the statewide confusion arising from the multiple, conflicting orders that courts at all levels of the judiciary have issued in the past

several weeks. And the injunction is inconsistent with the plain language of the Disaster Act, which vests the Governor with broad authority to manage the statewide response to the pandemic. The court of appeals did not even address the scope of the Disaster Act in granting the motion. That analysis would have compelled the conclusion that reinstating the injunction failed to preserve the parties' rights; instead, it provided relief to one party at the expense of the other, and in so doing, prevented the Governor from exercising the authority the Legislature bestowed on him in these exact circumstances.

ARGUMENT

I. The Court of Appeals Abused Its Discretion In Granting Rule 29.3 Relief.

Mandamus relief is available where the lower court's error "constitute[s] a clear abuse of discretion" and the relator lacks "an adequate remedy by appeal." *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). Both elements are satisfied here.

A. The court of appeals upended the status quo.

Under Texas Rule of Appellate Procedure 29.3, "[w]hen 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." The rule "gives an appellate court great flexibility in preserving the status quo based on the unique facts and circumstances presented." *In re Geomet Recycling LLC*, 578 S.W.3d 82, 89 (Tex. 2019). The status quo is "the last, actual, peaceable, non-contested status which preceded the pending controversy." *Clint ISD v. Marquez*, 487 S.W.3d 538, 556 (Tex. 2016).

The court of appeals held that granting Rule 29.3 relief preserved the status quo. App.55. It reasoned that GA-38 “altered the status quo, which had allowed local government entities to implement and enforce policies reasonably necessary to protect public health.” App.52.

But that reasoning ignores that the relevant provisions in GA-38 and its predecessor, GA-36, have been in place for months. The Governor issued GA-36 on May 18, 2021. MR.5. GA-36 provided, with a few delineated exceptions, that no governmental entity, “including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering.” MR.7. GA-38 contains the exact same restrictions on local authorities. MR.14. On May 18, there was no active dispute between the parties. Indeed, rather than immediately sue when GA-36 took effect, the City and County waited months, failing to seek injunctive relief until August 10. *See* App.3.

Accordingly, the trial court’s temporary injunction, and the court of appeals’ reinstatement of that order, upend, rather than preserve, the status quo. This Court has already recognized as much. When it stayed the trial court’s TRO, it found that “the trial court’s temporary restraining order alters the status quo preceding this controversy” App.40. The court of appeals did not mention that stay order or explain how its Rule 29.3 analysis comports with it.

Instead, the court of appeals cited this Court’s recent decision in *In re TEA* for the proposition that courts of appeals have “the authority under Rule 29.3 to provide relief from the state’s automatic right to suspend a temporary injunction.” App.51.

But in *In re TEA*, the Court considered whether a court of appeals had authority to issue temporary orders to prevent the installation of a board of managers in the Houston Independent School District. 619 S.W.3d 692, 681-82 (Tex. 2021). Without that relief, the courts may have lost jurisdiction to resolve the underlying dispute. *Id.* at 688-89. And the Rule 29.3 relief avoided disruption of the status quo. *Id.* at 683-84. By contrast, the City and County did not need the court of appeals to issue temporary orders to maintain a live case or controversy. Denying Rule 29.3 relief would not have prevented the court of appeals from addressing the merits of the trial court’s temporary injunction and would not have altered the status quo.

B. The court of appeals’ relief contravenes the Disaster Act.

Rule 29.3 authorizes a court of appeals to “make any temporary orders necessary to preserve the *parties*’ rights until disposition of the appeal” (emphasis added). The court of appeals considered, and ultimately credited, the City and County’s evidence about the pandemic circumstances. But the court wholly failed to address the Governor’s stake in this appeal. The City and County seek to protect their own purported rights to issue orders at the expense of the Governor’s right to issue overriding statewide orders. The court was therefore obligated to consider the Governor’s arguments that his ability to manage the State’s response to the pandemic would be affected by the reinstatement of the temporary injunction. And consideration of those arguments would have confirmed the Governor’s position that, under the Disaster Act, the Governor’s order controls.

1. The Legislature deputized the Governor, not localities, to manage statewide disasters.

The trial court’s temporary injunction cannot be reconciled with the text of the Disaster Act. The Governor—not local officials—“is the commander in chief” of the State’s disaster response. Tex. Gov’t Code § 418.015(c). And the Disaster Act unambiguously provides that “[t]he governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area.” *Id.* § 418.018(c) (emphasis added).

GA-38’s prohibition on local governments implementing mask mandates falls comfortably within this broad statutory language. Regulating the wearing of face masks qualifies as an exercise of the Governor’s power to “control ingress and egress to a disaster area” and the “occupancy of premises in the area.” *Id.* Bexar County and San Antonio, no less than Texas’s other counties and cities, fall within the “disaster area,” which has been declared “for *all* Texas counties.” MR.11 (emphasis added). And a prohibition on mask mandates controls “ingress and egress” to the locations in which the City and County wish to implement a mask mandate and the “occupancy of those premises” because it authorizes the entry of individuals that would be prohibited under their preferred regime.

2. The City and County act as the Governor’s agents under the Disaster Act.

The City and County’s attempt to arrogate to themselves the power to manage the response to a statewide emergency falters for an additional reason: section 418.108, which allows certain officials to address a locally declared disaster, requires the City and County to do so as the Governor’s agents.

To make clear the chain of command and scope of local officials' power during a statewide disaster, the Disaster Act states that “[t]he presiding officer of the governing body of an incorporated city or a county . . . is designated as the emergency management director,” Tex. Gov’t Code § 418.1015(a), and that those “emergency management director[s] serve[] as the governor’s designated agent[s] in the administration and supervision of duties under this chapter,” *id.* § 418.1015(b).

Giving the word “agent” its usual meaning, *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011), local officials cannot countermand the Governor’s emergency orders because “an agent is subject to the control of the principal, and not vice versa.” *State v. El Paso County*, 618 S.W.3d 812, 820–21 (Tex. App.—El Paso 2020, no pet.).

The statute’s “structure, subject matter, [and] context” demonstrate that local officials’ emergency power under section 418.108(g) is derivative of the Governor’s. *State v. Atwood*, 16 S.W.3d 192, 195 (Tex. App.—Beaumont 2000, pet. ref’d). He is “the commander in chief of state agencies, boards, and commissions having emergency responsibilities.” Tex. Gov’t Code § 418.015(c). To that end, the “governor 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). These provisions establish the Governor’s authority over local officials exercising emergency responsibilities under section 418.1015. It has long been the law that a “county is merely an arm of the state [T]he state may use, and frequently does use, a county as its agent in the discharge of the State’s functions and duties.” *Childress County v. State*, 92 S.W.2d 1011, 1015 (Tex. 1936); *accord El Paso County*, 618 S.W.3d at 820-23. The

Disaster Act does not countenance local officials attempting to substitute their views about how to handle an emergency for those of the State’s commander in chief.

Lest there be any doubt, the Act clarifies that “[t]he *governor* is responsible for meeting . . . the dangers to the state and people presented by disasters” —and is accountable to voters for failing to do so. Tex. Gov’t Code § 418.011(1) (emphasis added). If local officials could supersede any of the Governor’s emergency orders merely by claiming that a statewide emergency is also a local one, the Governor would quickly find himself unable to discharge his statutory duties. Because an Act cannot both task the Governor with a duty and simultaneously empower local officials to frustrate it, there “ha[s] to be a tie-breaker” —in this instance, the Governor. *See El Paso County*, 618 S.W.3d at 822. After all, under the Act, it is the “legislature by law” —not localities—that may terminate the Governor’s use of his emergency powers. Tex. Gov’t Code § 418.014(c). Accordingly, executive orders issued pursuant to the Disaster Act, like GA-38, validly preempt conflicting local rules or ordinances. *El Paso County*, 618 S.W.3d at 826.

3. GA-38 lawfully suspends the statutes that localities could rely upon to craft rules for a statewide disaster response.

In their petition, the City and County argued that the Governor’s suspension of certain statutes that they would use to impose mask mandates exceeds his authority under the Disaster Act. App.8-11. They are wrong. The Disaster Act supplies the Governor with the power to “suspend the provisions of any regulatory statute prescribing the procedures for the conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any

way prevent, hinder, or delay necessary action in coping with a disaster.” Tex. Gov’t Code § 418.016(a). “[T]o ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with” the Governor’s Executive Order, paragraph 4(b) of GA-38 invokes the Governor’s statutory power to suspend certain provisions of the Health and Safety Code and other statutes. MR.14.

The City and County argued in their petition that the Governor could not suspend these laws, upon which they would rely to impose a mask mandate. App.9. They argued that the Disaster Act “says nothing about the suspension of laws authorizing local governments to adopt public-health measures in their jurisdictions,” pointing to section 122.006 of the Health and Safety Code. App.10. But section 122.006 merely permits home-rule municipalities to “adopt rules to protect the health of persons in the municipality.” It says nothing about whether the Governor, in times of emergency, may suspend that authority.

To the extent the City and County contend that the health of persons in their jurisdictions is not “state business” within the reach of the Governor’s suspension authority, that, too, is wrong. App.9. Because the Disaster Act “does not define the term ‘state business,’” the starting point is that term’s “common, ordinary meaning.” *El Paso County*, 618 S.W.3d at 823. Texas courts “[e]schew[] a hyper-technical definition of the term ‘state business.’” *Id.* at 824. And “common dictionary meanings,” *id.*, for the term “business” in the context of the phrase “state business” include “purposeful activity: activity directed toward some end.” Webster’s Third International Dictionary 302 (1961). GA-38’s mask-mandate prohibition easily “fits the classic definition of” state business, *El Paso County*, 618 S.W.3d at 824: it is a

regulation aimed at achieving the Governor’s goal of striking a balance between “the ability of Texans to preserve livelihoods” and “protecting lives” through “the least restrictive means of combatting the evolving threat to public health.” MR.11, 13.

It is of no moment that GA-38’s mask-mandate prohibition applies at the local level. As the Eighth Court of Appeals explained, the term “state business” does not “mean only the activities of state agencies and actors.” *El Paso County*, 618 S.W.3d at 824. To the contrary, “state business” often occurs at a local level because “the state may use . . . a county as its agent in the discharge of the State’s functions and duties.” *Childress County*, 92 S.W.2d at 1015. “[H]ad the Legislature meant to so limit the term [to state agencies and actors], it would have said ‘official state business,’ as it has done in many other statutes.” *El Paso County*, 618 S.W.3d at 824 (collecting statutes).

Likewise, a series of laws permitting local mask mandates would “prevent, hinder, or delay necessary action in coping with a disaster” because the Governor may consider a variety of factors—not just preventing transmission of COVID-19—in forming a statewide response to a disaster. Tex. Gov’t Code § 418.016(a). In *Abbott v. Anti-Defamation League Austin, Southwest, and Texoma Regions*, this Court held that the Governor is not required to prevent the transmission of COVID-19 at all costs but may instead consider a variety of policy goals when determining which statutes to suspend. 610 S.W.3d 911, 918 (Tex. 2020). In that case, the plaintiffs argued that a gubernatorial order restricting the number of delivery locations for mail-in ballots was improper because it was likely to increase the spread of COVID-19. *Id.* at 915. The Court rejected that argument as unduly myopic. Addressing this disaster

requires more than just “a desire to alleviate the threat of the pandemic.” *Id.* at 918. Were it otherwise, the Governor’s “pandemic orders would operate as a one-way ratchet.” *Id.* Instead, the Governor may also consider “other important goals, such as promoting economic welfare [and] protecting constitutional rights.” *Id.*

Executive Order GA-38 is fully consistent with *Anti-Defamation League Austin*. It attempts to “balance a variety of competing considerations,” *id.*—principally, “the ability of Texans to preserve livelihoods” and “protecting lives” through “the least restrictive means of combatting the evolving threat to public health.” MR.11, 13. And the Governor has decided that allowing hundreds of localities to craft their own rules would eviscerate any uniformity in the State’s response to the COVID-19 disaster. This is a judgment call that is subject to good-faith disagreement. But that is why “the only question that [the courts] are capable of answering is, under the text of the statute, who is the proverbial captain of the ship to make the difficult decisions” regarding state efforts to “meet disaster dangers” posed by “the COVID-19 pandemic.” *El Paso County*, 618 S.W.3d at 819. As described above, the Governor holds that obligation—not local officials, the trial court, or the court of appeals.

4. The Disaster Act is constitutional.

The City and County also contend that the Governor’s suspension power under the Disaster Act unconstitutionally delegates to the Governor the authority to suspend laws. App.11-12. Again, they are wrong. The Texas Constitution has an express separation-of-powers clause, Tex. Const. art. II, § 1, and, unsurprisingly, vests “legislative power” in the Legislature, *id.* art. III, § 1. It also provides that “[n]o power

of suspending laws in this State shall be exercised except by the Legislature.” *Id.* art. II, § 28.

This Court has recognized, however, that (1) the government cannot function if the Legislature—which usually meets for only a few months every two years—cannot delegate tasks to the Executive, and (2) “[d]efining what legislative power is or when it has been delegated is no easy task.” *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 873 (Tex. 2000). Generally, legislative power is “the power to make rules and determine public policy.” *Id.* Whether a delegation of legislative power is unconstitutional devolves to “a debate not over a point of principle but over a question of degree.” *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 466 (Tex. 1997). The Legislature may delegate legislative power to another branch “as long as the Legislature establishes reasonable standards to guide the agency in exercising those powers.” *Id.*

The Disaster Act satisfies the nondelegation doctrine because it contains adequate standards to guide the Governor in its application. Section 418.002 sets forth in detail the Act’s several purposes, and section 418.003 describes limitations. Definitions are provided to interpret the Act, including “Disaster,” which includes an “epidemic” like COVID-19. Tex. Gov’t Code § 418.004(1). Section 418.011 pronounces the Governor’s responsibilities to include “meeting” “dangers to the state and people presented by disasters.” Section 418.012 allows the Governor to issue executive orders with the force and effect of law. A state of disaster may be declared if the Governor “finds a disaster has occurred or that the occurrence or threat of disaster is imminent.” *Id.* § 418.014(a). The provision describes how long a state of

disaster continues, *id.* § 418.014(b), limits a state of disaster to not more than 30 days unless renewed by the Governor, *id.* § 418.014(c), and announces that the Legislature by law may terminate a state of disaster at any time, *id.*

Section 418.016(a) further permits suspension of certain regulatory laws and rules based on a factual determination by the Governor about the effects of a rapidly unfolding disaster. If such a law or rule thwarts or diminishes the government's ability to mitigate the disaster, the Governor may suspend it. The Legislature's consent to such suspensions is subject to its power to terminate a state of disaster under section 418.014(c).

The Disaster Act is similar to the Pink Bollworm Act, which withstood a challenge under article I, section 28. *See Williams v. State*, 176 S.W.2d 177, 184-85 (Tex. Crim. App. 1943). That Act empowered the Governor and the Agriculture Commissioner to designate zones where growing cotton would be permitted. *Id.* at 183. The court upheld the statute on the ground that article I, section 28 still allows the Legislature to delegate "the power to grant exceptions . . . of a fact-finding and administrative nature." *Id.* at 185. So, too, with section 418.016(a), which allows the Governor to determine, based on the facts at hand in each disaster, whether a particular statute would "prevent, hinder, or delay necessary action in coping with a disaster."

Thus, the Disaster Act properly sets out its legislative purpose and provides reasonable standards to guide the Governor in exercising his delegated duties in a state of disaster, including the suspension of regulatory statutes or rules.

II. The Governor Has No Adequate Appellate Remedy.

The Governor is entitled to mandamus relief because he lacks an adequate remedy from the court of appeals' order. He cannot appeal the grant of Rule 29.3 relief, but that order further undermines the State's ability to achieve an orderly, cohesive, and uniform response to the pandemic. Indeed, because the City and County are acting outside of their authority, it is the State that is suffering an injury from the reinstatement of the trial court's temporary injunction. The State has a "justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporations in accordance with law." *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (per curiam). The sovereign "would be impotent to 'enforce its own laws' if it could not temporarily enjoin those breaking them pending trial." *Id.* (citation omitted). Those concerns are all the more pronounced in a fluid environment where multiple jurisdictions are actively flouting GA-38.

Other counties, cities, and political subdivisions are relying on hastily obtained temporary restraining orders, and now temporary injunctions, to issue their own disaster-response orders, splintering the State's ability to respond to the pandemic in the manner the Disaster Act contemplates. The Governor's injury is therefore both immediate and ongoing, and any recourse to the regular channels of appellate review will come too late.

Here, the injury is particularly acute because the Rule 29.3 relief will stay in effect pending final disposition of the appeal of the temporary injunction. App.55. Even if the appeal of the temporary injunction receives expedited consideration, a decision from the Fourth Court of Appeals could be weeks or months away. All the while the

State will be unable to maintain uniformity in its response to the pandemic. When the ordinary appellate process cannot afford timely relief, mandamus is proper. *See In re Woodfill*, 470 S.W.3d 473, 480-81 (Tex. 2015) (per curiam).

PRAYER

The Court should grant this petition and issue a writ of mandamus directing the court of appeals to vacate its Rule 29.3 order of August 19, 2021.

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 II
JUDD E. STONE II

CERTIFICATE OF SERVICE

On August 23, 2021, this document was served electronically on (1) Deborah Klein and William Christian, lead counsel for the City of San Antonio, via Deborah.klein@sanantonio.gov and wchristian@gdhm.com; and (2) Joe Gonzales, lead counsel for Bexar County, via Gonzales.joe@bexar.org.

/s/ Judd E. Stone II
JUDD E. STONE II

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 4,445 words, excluding emptied text.

/s/ Judd E. Stone II
JUDD E. STONE II

No. _____

In the Supreme Court of Texas

In re GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF
THE STATE OF TEXAS,

Relator.

On Petition for Writ of Mandamus
to the Fourth Court of Appeals, San Antonio

APPENDIX TO PETITION FOR WRIT OF MANDAMUS

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/s/ Judd E. Stone II _____
JUDD E. STONE II

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TAB 1:
PLAINTIFF'S VERIFIED ORIGINAL
PETITION (AUG. 10, 2021)

CAUSE NO. _____

CITY OF SAN ANTONIO and
COUNTY OF BEXAR

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

Bexar County - 45th District Court

Plaintiffs,

vs.

___JUDICIAL DISTRICT

GREG ABBOTT, in his official capacity
as Governor of Texas,

Defendant.

BEXAR COUNTY, TEXAS

**PLAINTIFFS' VERIFIED ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION, AND DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs the City of San Antonio, through its Mayor Ron Nirenberg, and the County of Bexar, through its County Judge, acting in their status and through their authority as Emergency Management Directors in and for each of the City of San Antonio and County of Bexar, authorize and direct legal counsel to file this Original Petition as an action necessary for the preservation of life or other disaster mitigation, response, or recovery and shows the Court as follows:

I. Discovery Control Plan

1. Plaintiffs intend that a Level 3 Discovery Control Plan govern this action under Rule 190.4, Texas Rules of Civil Procedure.

II. Parties

2. The City of San Antonio is a home-rule city, located in Bexar County, Texas. TEX. CONST. art. XI, § 5. The County of Bexar through its Commissioners Court is the administrative head of Bexar County. TEX. CONST. art. IX, § 1 (Collectively, "Plaintiff" or "Plaintiffs").

3. The Hon. Greg Abbott, Defendant, is the Governor of the State of Texas and is sued in his official capacity only. He may be served at 1100 San Jacinto Blvd., Austin, Texas 78701.

III. Jurisdiction and Venue

4. The subject matter in controversy is within the jurisdictional limits of this Court. TEX. CONST. art. V, § 8; TEX. GOV'T CODE § 24.007; TEX. CIV. PRAC. & REM. CODE § 37.003.

5. Venue is proper in Bexar County, Texas because all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred there. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

6. Pursuant to Rule 47(c)(2), Texas Rules of Civil Procedure, Plaintiffs state they seek non-monetary relief only.

IV. Facts

7. Almost a year and half after it began, the COVID-19 pandemic remains a public health emergency. As of the date of this filing, over 52,000 Texans have died due to COVID-19, including 3,700 in Bexar County.

8. The City of San Antonio through its Mayor Ron Nirenberg ("City") first declared a public health emergency regarding COVID-19 on March 2, 2020 and the County of Bexar through Bexar County Judge Nelson W. Wolff ("County") declared a state of local disaster on March 13, 2020. The City issued seven subsequent declarations of a public health emergency, six declarations and one addendum, until the eighth declaration was issued on June 4, 2020, and County Judge Nelson Wolff issued approximately twenty similar emergency orders. Faced with rising hospitalizations and cases in the weeks the initial orders, the City adopted the first addendum to the eighth emergency declaration requiring face coverings for individuals over 10 years old when unable to maintain social distancing. June 17, 2020 Addendum ("1st Addendum"); Executive Order NW-10. In light of the ongoing emergency, both the County and the City maintained their face covering requirements in all subsequent addendums or executive orders through February 5, 2021. *See* 1st – 12th Addendums; Executive Orders NW 1 – 19. On March 9, 2021, San Antonio issued the current

addendum to the initial COVID-19 emergency declaration. (“13th Addendum”). The 13th Addendum issued by Mayor Nirenberg encourages the consideration of face coverings as a COVID-19 mitigation strategy but only includes a requirement for face coverings on public transportation. The most recent executive order NW-20 issued by County Judge Nelson Wolff adopted similar measures.

9. Junda Woo, M.D. serves as the local Public Health Authority for the City of San Antonio and Bexar County, with the authority “to administer state and local laws relating to public health within the appointing body’s jurisdiction.” TEX. HEALTH & SAFETY CODE § 121.021. In her capacity as Public Health Authority, she has issued directives throughout the pandemic, including previously requiring masks in schools in the San Antonio and Bexar County area.

10. The virus has mutated and developed more contagious strains, such as the Delta variant. The advent of the Delta variant has resulted in the fastest rise in hospitalizations throughout the state since the beginning of the pandemic. Hospitals and medical professionals in the San Antonio area report dwindling ICU and hospital capacities. Meanwhile, schools in San Antonio and Bexar County are preparing for the beginning of a new school year.

11. While vaccination remains the most powerful tool to prevent severe disease from COVID-19 and reduce transmission, appropriate face coverings are also an effective tool to reduce transmission of the virus. Currently less than 50% of the Texas population is fully vaccinated, and vaccines are not yet available to children under 12 years old and are less effective in individuals with certain health conditions, like those undergoing cancer treatment or organ transplant recipients.

12. City and County officials have determined that the rising number of COVID-19 cases in the City and County have created a public-health emergency that requires that the City’s employees and visitors to City facilities and County employees and visitors to County facilities wear masks or other face coverings. The San Antonio and Bexar County Health Authority has also

determined that masks are needed in public schools to minimize virus transmission. The Governor, however, has entered an Executive Order prohibiting the City and County from adopting or enforcing these masking requirements.

13. On July 29, 2021, Governor Abbott issued Executive Order GA-38 (“Executive Order 38”), which prohibits cities, counties, public schools, and health districts from enacting masking requirements to protect the health of their communities. A true and correct copy of Executive Order 38 is attached as Exhibit 1.

14. Executive Order 38 provides that (with the exception of state living centers, government hospitals, prisons, and jails): “No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering . . .” ¶ 4.a.

15. Executive Order 38 further provides that the imposition of any such face-covering requirement by a local governmental entity or official constitutes a ‘failure to comply with’ this executive order that is subject to a fine up to \$1,000.” ¶ 4.b.

16. Executive Order 38 suspends the following laws “[t]o the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements”:

- a. Sections 418.1015(b) and 418.108 of the Texas Government Code. Section 418.1015(b) allows the emergency management director of city or county to exercise the same emergency management powers as the governor “on an appropriate local scale” during a state of disaster. Section 418.108 allows the declaration of a local state of disaster.
- b. Chapter 81, Subchapter E of the Texas Health and Safety Code. In general, Chapter 81, Subchapter E gives local health authorities “supervisory authority and control over the administration of communicable disease control measures in the health authority’s jurisdiction,” § 81.082, and includes various provisions for the implementation of appropriate control measures like: quarantine, isolation, testing, and education.
- c. Chapters 121, 122, and 341 of the Texas Health and Safety Code. Chapter 121 concerns local health departments and districts, and specifically provides that the governing body of a municipality or county “may enforce any law

that is reasonably necessary to protect the public health.” § 121.003(a). Chapter 122 likewise contains explicit powers and rights for home-rule municipalities to protect public health. Section 122.06 states: “A home-rule municipality may: (1) adopt rules to protect the health of persons in the municipality, including quarantine rules to protect the residents against communicable disease; and (2) provide for the establishment of quarantine stations, emergency hospitals, and other hospitals.” Chapter 341 prescribes the minimum requirements of sanitation and health protection in this state but expressly allows a home rule municipality to enact “more stringent ordinances.” § 341.081.

- d. Chapter 54 of the Texas Local Government Code. Chapter 54 allows the enforcement of municipal ordinances, including health and safety ordinances.
- e. In addition to suspending these specific laws, GA-038 includes a catch-all provision, suspending “[a]ny other statute invoked by any local governmental entity or official in support of a face-covering requirement.”

17. The City of San Antonio has over 12,000 employees and the County of Bexar has approximately 5,000 employees. All City personnel report to the City Manager, who is responsible for implementing policies at the direction of the Mayor and City Council. County personnel report to the various elected officials comprising County government or to the County Manager acting on behalf of Commissioners Court, and who is responsible for implementing policies at the direction of the County Judge and Bexar County Commissioners Court. These City and County employees include public-facing employees like librarians, community health workers, and first-responders. The City and County have determined that it is necessary for all City and County employees to wear masks to contain the spread of the virus in the City and County. But for Executive Order 38, the City and County would implement mandatory face covering requirements for all City and County employees.

18. The City and County each own and operate various public facilities. Some facilities, such as senior centers and early education and child care assistance sites or similar County facilities, serve vulnerable populations or children who are too young to receive a vaccine. In the City and County’s judgment, it is imperative that visitors to these facilities wear masks to contain the spread

of the virus in the City and County. But for Executive Order 38, the City and County would implement mandatory face covering requirements at all City and County-owned properties. Exhibit 3 (Declaration of City Manager); Exhibit 4 (Declaration of County Judge).

19. The San Antonio and Bexar County Health Authority has also determined that requiring masks in public schools is necessary to prevent further spread of COVID-19 during the current increase in cases due to the spread of the highly contagious delta variant. With students in San Antonio-area schools returning to classrooms in coming days, the Health Authority needs to put in place an appropriate masking directive to ensure the safety of the community. But for Executive Order 38, the City and County's Public Health Authority would issue a directive requiring masks in local schools. Exhibit 2 (Declaration of Public Health Authority).

20. The City and County therefore jointly bring this action seeking a judicial declaration that Executive Order 38's suspension of all laws allowing the City and County to impose masking requirements exceeds the Governor's authority to suspend laws under the Texas Disaster Act of 1973, or in the alternative, that the suspension of laws in Executive Order 38 violates the Suspension Clause and the Separation of Powers Clause of the Texas Constitution.

V. Causes of Action

A. The City and County jointly seek a declaratory judgment that the Governor's suspension of laws allowing local governments to impose mask requirements is *ultra vires* and outside the scope of his authority under the Texas Disaster Act of 1975.

21. The City of San Antonio and the County of Bexar seek a declaratory judgment that Executive Order 38 exceeds the Governor's authority under the Texas Disaster Act of 1975. In particular, the Governor's power to suspend laws during a disaster under the statute does not extend to the public health laws that allow the City and County to impose masking requirements on its own employees and members of the public who visit City and County-owned facilities.

22. In Executive Order 38, the Governor identifies the following provision in the Texas Disaster Act of 1975 as the source of his legal authority to suspend all laws that allow local governments to impose masking requirements:

The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

TEX. GOV'T CODE § 418.016(a).

23. This statute gives the governor authority to suspend statutes and regulations governing state officials and agencies, but not the statutes giving local governments the authority to manage public health within their own jurisdictions. None of the statutes suspended by the Governor in Executive Order 38 related to masking requirements is a “regulatory statute prescribing the procedures for the conduct of *state business* or the orders or rules of a *state agency*.” (emphases added); *see also KMS Retail Rowlett, LP v. City of Rowlett*, 593 S.W.3d 175, 183 (Tex. 2019) (“When interpreting statutes, we look to the plain meaning of the enacted text.”). The City and County’s ability to set the conditions of the workplace of their own employees is not state business. The City and County’s right to place conditions on the public’s use of City and County-owned property is not state business. The City and County’s Public Health Authority does not prescribe procedures for the conduct of state business, either; instead issuing directives to slow the spread of disease in the local community. And of course, neither the City nor the County is a state agency. This provision therefore provides the Governor with no statutory authority to suspend the laws in that allow the City and County to impose masking requirements on its employees or visitors to City and County-owned buildings, nor to strip the authority of the City and County’s Public Health Authority to require masks in local public schools. *See, e.g.*, TEX. HEALTH & SAFETY CODE §§ 121.003, 121.021, 121.024, 122.006.

24. In *State v. El Paso County*, 618 S.W.3d 812 (Tex. App.—El Paso 2020, no pet.), the El Paso court of appeals reached a contrary interpretation of the statute, holding, with one justice dissenting, that the suspension statute was not limited to “state agencies and actors,” but included a county’s adoption of an emergency order limiting the capacity of restaurants. *Id.* at 823–24. The City and County respectfully submit, however, that the dissenting justice’s interpretation of the statute is the correct one: Properly read, the statute does not allow the Governor to suspend statutes authorizing local governments to respond to public health disasters, but instead leaves “local authorities the leeway to act in their best independent judgment within the confines of their own jurisdictions.” *Id.* at 840 (Rodriguez, J., dissenting).

25. By limiting the Governor’s power to suspend laws to the procedures “for the conduct of state business” or the “orders or rules of a state agency,” TEX. GOV’T CODE § 418.016(a), the Legislature gave “the Governor the ability to clear state-level bureaucratic logjams, expedite administrative action at state-level agencies, and depart from the regular order of state-level business if doing so would help facilitate a disaster response.” *Id.* at 838 (Rodriguez, J., dissenting). But the plain text of the statute says nothing about the suspension of laws authorizing local governments to adopt public-health measures in their jurisdictions, such as Section 122.06 of the Health and Safety Code, which expressly states that “[a] home-rule municipality may adopt rules to protect the health of persons in the municipality, including quarantine rules to protect the residents against communicable disease.”

26. Here, the limited grant of the authority to suspend laws in the Texas Disaster Act does not give the Governor the authority to suspend public-health statutes that grant home-rule municipalities the authority to adopt masking requirements or suspend authority of Counties to impose similar requirements. To the extent that Executive Order 38 purports to do so, it is an *ultra vires* act of the Governor. “The statutory text of the [Disaster] Act as written sets the parameters of

the Governor’s power here, and the Governor’s actions must comport with the conditions set on him by the Legislature. If they do not, he acts without any authority and his actions are *ultra vires* and without legal effect.” *Id.* at 831 (Rodriguez, J., dissenting).

27. The City and County therefore respectfully request that Executive Order 38 exceeds the Governor’s authority to suspend laws under the Texas Disaster Act of 1975 and that Executive Order 38’s prohibition on local governments’ adoption of mask mandates is therefore invalid.

B. In the alternative, the City and County seek a declaratory judgment that the Texas Disaster Act of 1975 Violates the Suspension Clause and the Separation of Powers Clause of the Texas Constitution

28. In the alternative, the City and County seek a declaratory judgment that Section 418.016 of the Texas Government Code is unconstitutional under the Suspension Clause and the Separation of Powers Clause of the Texas Constitution. If the Texas Disaster Act of 1975 allows the Governor to suspend any and all laws that authorize the City and County to impose a mask requirement, then the statute itself unconstitutional, because only the Legislature has the nondelegable power to suspend laws.

29. The Suspension Clause states: “No power of suspending laws in this State shall be exercised except by the Legislature.” TEX. CONST. art. I, § 28.

30. The Separation of Powers Clause states that no branch of government “shall exercise any power properly attached to either of the others shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.” TEX. CONST. art. 2, § 1.

31. The Texas Supreme Court has held that the Suspension Clause does not permit the Legislature to “delegate to a municipal corporation or to anyone else, authority to suspend a statute law of the State.” *Brown Cracker & Candy Co. v. City of Dallas*, 137 S.W. 342, 343 (Tex. 1910); *see also Arroyo v. State*, 69 S.W. 503, 504 (Tex. Crim. App. 1902) (“Under the constitution, the legislature ha[s] no right to delegate its authority . . . to set aside, vacate, suspend, or repeal the general laws of

this state.”). “This provision means what it says. The judiciary may not suspend laws. Nor may the executive. Only the Legislature.” *In re Hotzge*, No. 20-0430, 2020 WL 4046034 (Tex. July 17, 2020) (Devine, J., concurring).

32. Thus, the legislature’s grant of authority to the Governor to suspend laws is unconstitutional, including the suspension of any laws that authorize the City or County to impose a masking requirement. The City and County respectfully request that this Court declare Section 418.016 of the Texas Government Code unconstitutional under Suspension Clause and the Separation of Powers Clause and that Executive Order 38 is therefore invalid to the extent it purports to suspend the laws authorizing the City and County to adopt masking requirements.

VI. Application for Temporary Restraining Order and Temporary Injunction

33. The City of San Antonio through its Mayor and the County of Bexar through its County Judge seek temporary injunctive relief to restrain the enforcement of Executive Order 38’s prohibition on mask mandates against the City or County pending a final judgment.

34. To obtain temporary injunctive relief, an applicant must show it has a cause of action, that it has a probable right to relief, and that it is faced with imminent irreparable harm. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). An applicant has a probable right to relief if it has a cause of action for which relief may be granted. *See Universal Health Services, Inc. v. Thompson*, 24 S.W.3d 570, 577-78 (Tex. App.—Austin 2008, no pet.).

35. A temporary restraining order and injunction’s purposes are to maintain the status quo pending trial. The status quo is the “last actual, peaceable, noncontested status which preceded the pending controversy.” *City of San Antonio v. Vakey*, 123 S.W.3d 497, 502 (Tex. App.—San Antonio 2003, no pet.). However, “[w]here the acts sought to be enjoined violate an expressed law, the status quo to be preserved could never be a condition of affairs where the respondent would be permitted to continue the acts constituting that violation.” *Id.*; *see also In re Newton*, 146 S.W.3d 648,

651 (Tex. 2004) (“the continuation of illegal conduct cannot be justified as preservation of the status quo”). The City and County seek to preserve the last *status quo* lawfully authorized by the Texas Disaster Act of 1975.

36. As detailed above, The City and County have well-supported causes of action that Executive Order 38’s suspension of laws authorizing the City and County’s imposition of mask mandates is unlawful and therefore can show a probable right of recovery.

37. The City and County are faced with imminent irreparable harm, including the unmitigated spread of COVID-19 throughout the San Antonio and larger Bexar County community, which threatens to overwhelm the area’s healthcare system capacity, and for which no remedy at law exists without the protections of a temporary restraining order and injunctive relief.

38. Plaintiffs are ready and willing to post a bond, and requests that the Court set the bond for a nominal amount not to exceed \$1,000.00.

VII. Conditions Precedent

39. All conditions precedents have been performed or have occurred.

VIII. Prayer

40. Plaintiffs the City of San Antonio and Bexar County pray that this Court issue a Temporary Restraining Order and Temporary Injunction prohibiting Defendant and all those acting in concert with him from enforcing Executive Order 38 to the extent it prohibits the City or County from adopting a mask mandate. On final hearing, Plaintiffs pray that this Court enter final judgment awarding the City and County the declaratory relief described above and costs of court. Plaintiffs prays for such other relief, whether at law or in equity, to which they may show themselves to be justly entitled.

Respectfully submitted,

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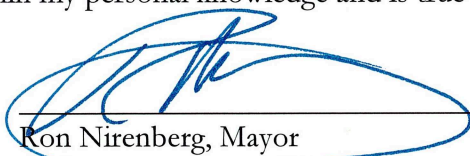
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VERIFICATION

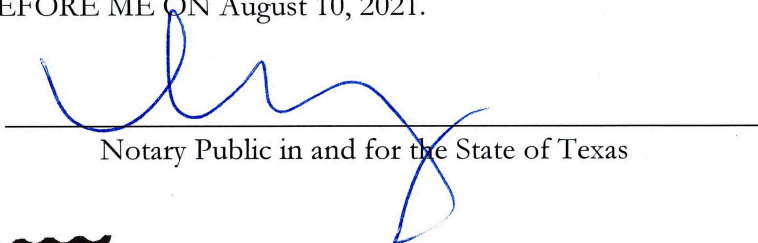
STATE OF TEXAS §
 §
COUNTY OF BEXAR §

I, Ron Nirenberg, hereby certify that I am the Mayor of the City of San Antonio, and that I am authorized to make this verification on its behalf. I have read the above petition, and certify that every statement contained in it is within my personal knowledge and is true and correct.



Ron Nirenberg, Mayor
City of San Antonio, Texas

SUBSCRIBED AND SWORN TO BEFORE ME ON August 10, 2021.



Notary Public in and for the State of Texas

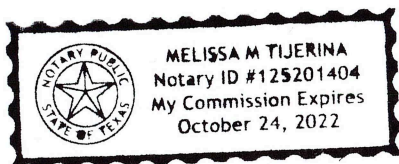


Exhibit 1
Executive Order GA 38

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
July 29, 2021

EXECUTIVE ORDER
GA 38

Relating to the continued response to the COVID-19 disaster.

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 Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, from March 2020 through May 2021, I issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing and other mitigation strategies; and

WHEREAS, combining into one executive order the requirements of several existing COVID-19 executive orders will further promote statewide uniformity and certainty; and

WHEREAS, as the COVID-19 pandemic continues, Texans are strongly encouraged as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices; and

WHEREAS, receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government, but it is strongly encouraged for those eligible to receive one; and

WHEREAS, state and local officials should continue to use every reasonable means to make the COVID-19 vaccine available for any eligible person who chooses to receive one; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility “for meeting ... the dangers to the state and people presented by disasters” under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the “governor may issue executive orders ... hav[ing] the force and effect of law;” and

WHEREAS, under Section 418.016(a), the “governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;” and

WHEREAS, under Section 418.018(c), the “governor may control ingress and egress to

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and from a disaster area and the movement of persons and the occupancy of premises in the area;” and

WHEREAS, under Section 418.173, the legislature authorized as “an offense,” punishable by a fine up to \$1,000, any “failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;”

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, do hereby order the following on a statewide basis effective immediately:

1. To ensure the continued availability of timely information about COVID-19 testing and hospital bed capacity that is crucial to efforts to cope with the COVID-19 disaster, the following requirements apply:
 - a. All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the Centers for Disease Control and Prevention (CDC).
 - b. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.
2. To ensure that vaccines continue to be voluntary for all Texans and that Texans’ private COVID-19-related health information continues to enjoy protection against compelled disclosure, in addition to new laws enacted by the legislature against so-called “vaccine passports,” the following requirements apply:
 - a. No governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.
 - b. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual’s vaccination status for any COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
 - c. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer’s vaccination status for any COVID-19 vaccine administered under an emergency use authorization. No consumer may be denied entry to a facility financed

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App.018

- in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization.
- d. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
 - e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. 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.
3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:
- a. There are no COVID-19-related operating limits for any business or other establishment.
 - b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.
 - c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
 - d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
 - e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
 - f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
 - g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

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4. To further ensure that no governmental entity can mandate masks, the following requirements shall continue to apply:
 - a. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering; *provided, however, that*:
 - i. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and
 - ii. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.
 - b. This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:
 - i. Sections 418.1015(b) and 418.108 of the Texas Government Code;
 - ii. Chapter 81, Subchapter E of the Texas Health and Safety Code;
 - iii. Chapters 121, 122, and 341 of the Texas Health and Safety Code;
 - iv. Chapter 54 of the Texas Local Government Code; and
 - v. Any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

- c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.
5. To further ensure uniformity statewide:
 - a. 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 or allows gatherings restricted by 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

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App.020

- 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.
- b. Confinement in jail is not an available penalty for violating this executive order. 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 all pre-existing COVID-19-related executive orders and rescinds them in their entirety, except that it does not supersede or rescind Executive Orders GA-13 or GA-37. This 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 29th
day of July, 2021.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "Joe A. Esparza".

JOE A. ESPARZA
Deputy Secretary of State

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JUL 29 2021

Exhibit 2
Declaration of Junda Woo, MD

STATE of TEXAS §

COUNTY OF BEXAR §

My name is Dr. Junda Woo. I am a medical doctor and the San Antonio and Bexar County Public Health Authority. I am over the age of 18 and competent to make this declaration. The facts stated within it are within my personal knowledge and are true and correct.

1. I received my medical degree from the State University of New York and Masters in Public Health from the University of Texas School of Public Health. I have an active license to practice medicine in Texas and have served as Local Public Health Authority for San Antonio since 2018 and for Bexar County since 2019.
2. As San Antonio and Bexar County Public Health Authority, it is my job and sworn duty to implement and enforce laws to protect the public health; establish, maintain and enforce quarantine; aid in disease suppression and prevention, and report and manage contagious, infectious, and dangerous epidemic diseases within my jurisdiction.
3. I am one of the leaders of the City of San Antonio and Bexar County's public health response to the COVID-19 pandemic, in coordination with partners including healthcare providers, long-term care providers, hospitals and school districts. Additionally, I review and interpret health statistics for our jurisdiction, including the vaccination rate, number of hospitalized cases, testing capacity, available hospital beds, and use of intensive care beds and ventilators.
4. As the local health authority, I am responsible for enforcing public health law and implementing rules and guidelines to slow the spread of disease in the local community. Within and outside of the COVID-19 context, I monitor many threats to the public health and must respond based on quickly evolving situations on the ground. Thus, it is important that I am able to use the tools the state law gives me to protect the public health. This includes, but is not limited to, Texas Health and Safety Code Sections 121.003 and 122.006, as well as other statutes in the Code that authorize me to respond to local conditions and to prevent the spread of disease in many contexts. Due to the rapid rate of spread of the delta variant of SARS-CoV-2, I need to be able to enforce public health laws and take quick actions to address risks to the community and suppress the spread of disease. This includes the ability to require masks where and when appropriate and to quarantine close contacts of schoolchildren who have COVID-19, to quickly stop transmission within congregate settings such as schools.
5. Bexar County is currently at a "severe" level under our risk guidelines, with a hospital stress score that is approaching critical levels. We have more than 1,197 hospital COVID patients, compared to a peak of 1,267 in June 2020 and 1,520 in January 2021. Unlike at those times, our community no longer has an additional 1,600 healthcare staff deployed at local hospitals by the Texas Department of State Health Services.

6. In the next week, local hospitals are likely to surpass the number of patients they had during June 2020. This situation is due to the contagiousness of the Delta variant and the fact that significant pockets of the population remain unvaccinated in our marginalized communities. Unlike last year when each person with COVID would typically infect two others, each person with the now-ubiquitous delta variant is believed to infect 8 or 9 people.
7. Hospitals already had been under strain due to a large number of pediatric patients with respiratory syncytial virus (RSV). RSV, the most common cause of bronchiolitis and pneumonia in children younger than 1 year of age, is transmitted through respiratory droplets and touching surfaces that have respiratory droplets or secretions. RSV is easily spread in school and child care settings.
8. Public school districts in Bexar County begin their semesters, in person, as early as August 9, 2021. San Antonio schools used multiple, layered mitigation strategies last year to successfully minimize outbreaks. With the Delta variant, schools need every tool at their disposal, including the ability to require masks and/or quarantine. Metro Health investigations have identified incorrect and/or inconsistent masking as the most common source of local outbreaks. Masks work through the combination of source control and protection for the mask wearer. Most studies that have shown success in limiting transmission in schools have involved staff and/or students wearing masks as one of the school's prevention strategies ^{1,2,3,4}. The Governor's Executive Order GA-38, however, has suspended Chapters 121, 122, and 341 of the Texas Health and Safety Code which provides my authority to take action to prevent the spread of communicable diseases. In the absence of the suspension of these laws, I would exercise my authority as Public Health Authority to direct actions to abate the spread of COVID-19, to include requiring the use of masks in public schools to wear masks or face coverings.
9. The highly contagious nature of the delta variant is also impacting City of San Antonio and Bexar County operations. The number of City and County employees who have had to quarantine due to the delta variant has increased over the past few weeks, reaching levels near those at the height of the pandemic. The City and County provide a number of services which require the interaction of their employees with the public and operate a number of facilities that attract large crowds of visitors where social distancing is impracticable.

¹ ABC Science Collaborative. (2021). "The Reopen Our Schools Act of 2021" (S.L. 2021-4) [Report.]. <https://abcsciencecollaborative.org/wp-content/uploads/2021/06/ABCs-Final-Report-June-2021.06-esig-DB-KZ-6-29-21.pdf>

² Hershov RB et al. (2021). Low SARS-CoV-2 Transmission in Elementary Schools - Salt Lake County, Utah, December 3, 2020-January 31, 2021. *MMWR Morb Mortal Wkly Rep.* Mar 26;70(12):442-448.

³ Volpp KG et al. (2021). Minimal SARS-CoV-2 Transmission After Implementation of a Comprehensive Mitigation Strategy at a School — New Jersey, August 20–November 27, 2020. *MMWR Morb Mortal Wkly Rep.* Mar 26; 70(11);377–381.

⁴ Centers for Disease Prevention & Control. (2021). Science Brief: Transmission of SARS-CoV-2 in K-12 Schools and Early Care and Education Programs – Updated. https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html

10. The spread of the delta variant among City and County employees as well as among visitors to City and County facilities can be significantly decreased by the required use of masks.⁵ In my opinion as Public Health Authority, I believe that a mask mandate is warranted for City and County employees and visitors to City and County facilities in order to protect the public health. Under the Governor’s Executive Order GA-38, however, local governments are prohibited from requiring “any person to wear a face covering or to mandate that another person wear a face covering.”

My name is Dr. Junda Woo and I am an employee of the City of San Antonio, a government entity. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.



Dr. Junda Woo
City of San Antonio Public Health Authority
Bexar County Public Health Authority

Executed in Bexar County, State of Texas, on the 9th day of August, 2021.

⁵ Centers for Disease Control & Prevention. (2021). Science Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2. <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>

Exhibit 3
Declaration of Erik Walsh

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

My name is Erik Walsh. I am the City Manager for the City of San Antonio. I am over the age of 18 and competent to make this declaration. The facts stated within it are within my personal knowledge and are true and correct.

1. My name is Erik Walsh. I am the City Manager for the City of San Antonio. I am over the age of 18 and competent to make this affidavit. The facts stated within it are within my personal knowledge and are true and correct.
2. I have been employed by the City of San Antonio in various capacities since 1994 and have held the position of City Manager since 2019. As City Manager, I oversee over 13,000 City of San Antonio employees. These employees work at city owned buildings and facilities located through San Antonio. Many of these City facilities are open to provide services to the public, such as City libraries, Development Services offices, Metropolitan Health Services and senior centers. Additionally, many City employees' job duties require them to be out in the public on a daily basis to provide services, to include but not limited to police and fire personnel, animal care officers, code enforcement officers and solid waste personnel. Part of my job duties as the City Manager is to assure that city operations are provided in an efficient and effective manner to assure that services to city residents continue.
3. The City owns and operates various facilities open to the public essential for the delivery of City services. Some facilities, such as senior centers and early education and child care assistance sites, serve vulnerable populations or children who are too young to receive a COVID-19 vaccine. Many of these facilities were closed last year to help curtail the spread of the virus.
4. The City of San Antonio, as with most of the nation, has been impacted by the pandemic. Due to the quick spread of the disease, in accordance with state and national guidelines, the City had to shut down many of its services to the public, and placed many of its employees on remote work and furlough in 2020. COVID led to increased costs in operations combined with loss of revenues. With the roll out of vaccinations this past Spring, the City has strongly encouraged its employees to be vaccinated, providing convenient vaccination locations. Infection numbers decreased in late Spring and early Summer. However, with the onset of the Delta variant, infection rates have increased to levels consistent with the height of the pandemic. I have been advised by the local Public Health Authority that the Delta variant is significantly more contagious than the original COVID strain and that using masks is necessary to help curtail its spread.
5. Accordingly, in my capacity as City Manager for the City of San Antonio, I believe it is necessary for the public health and the best interests of the City to require all City employees and all visitors to City-owned facilities delivering City services to wear a mask

or other face covering. Without a mask mandate for City employees and people visiting to City facilities for services, I fear that the spread of the virus will cause the City further disruptions.

6. Under the Governor's Executive Order GA-38, local governments are prohibited from requiring "any person to wear a face covering or to mandate that another person wear a face covering." Executive Order GA-38 ostensibly prohibits me from issuing the mask mandate for City employees and visitors to public buildings that I believe is necessary to protect the public's health and the interests of the City. In the absence of Executive Order GA-38, I would issue a directive in my capacity as City Manager that all City employees and all visitors to City-owned buildings delivering City services must wear masks. Executive Order GA-38 prevents me from taking this necessary step to protect the City's employees and its residents receiving services from the City and from determining what is in the best interest of keeping the City operating in an efficient and effective manner. With the virulent spread of the Delta variant, this prohibition, which does not apply to private businesses, is and will impact the ability of the City to operate and to provide necessary services to its citizens.

My name is Erik Walsh and I am an employee of the City of San Antonio, a government entity. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.



ERIK WALSH
CITY MANAGER
CITY OF SAN ANTONIO

Executed in Bexar County, State of Texas, on the 9th day of August, 2021.

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

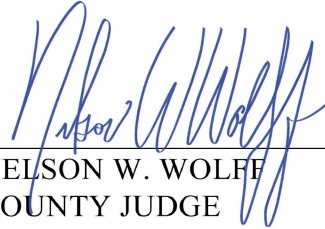
My name is Nelson W. Wolff. I am the County Judge for the County of Bexar. I am over the age of 18 and competent to make this declaration. The facts stated within it are within my personal knowledge and are true and correct.

1. I have served as County Judge of Bexar County since appointed in 2001. As County Judge, I along with my fellow commissioners, oversee a large number of County operations and employees who report directly to the Bexar County Commissioners Court, though we have a County Manager to assist in the handling of day-to-day issues. During the COVID-19 pandemic, I have been significantly involved in leading Bexar County’s COVID-19 response along with other members of the Bexar County Commissioners Court.
2. Bexar County has been significantly impacted by the COVID-19 pandemic. As a result of the quick spread of COVID-19, and in accordance with state and national guidelines, Bexar County previously had to minimize many of its direct services to the public, and place many of its employees on remote work in 2020. To mitigate the effects of COVID-19 for those employees who were deemed essential personnel or who could not perform their functions remotely, the County invested heavily in personal protective equipment and environmental controls which led to increased operating costs. When vaccinations became available, the County strongly encouraged all of its employees to get vaccinated. Commissioners Court worked with local health providers to provide convenient vaccination locations.
3. Throughout the nation and in Bexar County, infection numbers decreased in late spring and early summer. Unfortunately, the appearance of the Delta variant in Bexar County has caused infection rates to increase to levels consistent with the height of the pandemic. Through my position as County Judge, I have received advice from time to time from local health experts and through my participation in meetings with the Local Health Authority and other community leaders. The Local Health Authority has recently indicated that Bexar County is currently at a “severe” level under local risk guidelines, with a hospital stress score that is approaching a critical level. I have also been advised by medical professionals that the Delta variant is significantly more contagious than the original COVID strain and that using masks can help to mitigate the spread and protect employees and visitors.
4. The information I have learned about the Delta variant from medical professionals and current infection trends is significant to the Bexar County workforce. The Bexar County Commissioners Court is ultimately responsible for the safety and security of those County employees reporting to Commissioners Court and working at County-owned facilities throughout Bexar County. Many of these County facilities provide services directly to the public, such as Bibliotech digital libraries, Bexar Heritage and Parks Department, Economic and Community Development, Emergency Management, the Fire Marshall’s

Office, Human Resources, as well as several other County service providers. Additionally, many County employees' job duties require them to interact with a significant number of members of the public daily in order to provide services, such as animal care officers, code enforcement officers, members of the Fire Marshall's Office and Facilities Management.

5. As County Judge, I along with my fellow County Commissioners are responsible for ensuring that County operations are provided in a safe and efficient manner and that County residents continue to receive County services without interruption. This would include the safe operation of County facilities located throughout Bexar County which are open to the public. Some of these facilities regularly attract large crowds where effective social distancing is not possible or provide services in such a way that social distancing is not possible. Importantly, some of these Bexar County facilities serve vulnerable populations and through the pandemic, have been essential for providing badly needed resources such as food and rental assistance to community members most severely impacted.
6. I believe it is necessary for the public health and the health and safety of County employees and visitors to require County employees and visitors to wear a mask or other face covering when in County-owned facilities. Without a mask mandate for County employees and visitors, I believe the spread of the virus will quickly cause the County to have to return to a reduction of County services, the closing of some County buildings and possible interruption of a workforce which is sufficient to effectively carry out the critical functions of Bexar County government and serve those members of the community most in need.
7. Though a mask mandate would help protect County employees and visitors as well as reduce the risk of transmission of COVID-19, under the Governor's current executive order GA-38, local governments are prohibited from requiring "any person to wear a face covering or to mandate that another person wear a face covering." Executive order GA-38 prohibits me from issuing the mask mandate for County employees and visitors to public buildings that I believe is critically necessary to protect the health and safety of County employees, the health and safety of visitors to County facilities and ultimately, protection of the interests of the broader Bexar County community. In short, Bexar County provides critical services to the local community and must often do so through repeated in-person contact which substantially increases the risk of infection. Should an outbreak of the Delta variant occur in County facilities, Bexar County may be left unable to fully provide those critical, necessary services to members of the surrounding Bexar County community.
8. The current status of COVID-19 risk in our community is rated as "severe" yet GA-38 attempts to restrict local government officials from implementing basic public health and safety measures. In the absence of executive order GA-38, I would issue a directive in my capacity as County Judge that all County employees and all visitors to County-owned facilities must wear face coverings. Executive order GA-38 prevents me from taking this necessary step to protect County employees and those visitors receiving services from the County and further, from making decisions about what is in the best interests of the County and its operations. If left in place in light of the highly infectious Delta variant, the prohibition contained in GA-38 will impact the ability of the County to operate safely and

limit County staff's ability to provide necessary and oftentimes critical services to the citizens of Bexar County.



NELSON W. WOLFF
COUNTY JUDGE
COUNTY OF BEXAR

Executed in Bexar County, State of Texas, on the 10th day of August, 2021.

TAB 2:
ORDER GRANTING TEMPORARY
RESTRAINING ORDER (AUG. 10, 2021)

CITY OF SAN ANTONIO and
BEXAR COUNTY,
Plaintiffs,

§
§
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§
§
§
§
§
§
§

IN THE DISTRICT COURT

vs.

45th JUDICIAL DISTRICT

GREG ABBOTT, in his official capacity
as Governor of Texas,

Defendant.

BEXAR COUNTY, TEXAS

ORDER GRANTING TEMPORARY RESTRAINING ORDER

After considering Plaintiffs’ application for temporary restraining order, the pleadings, the affidavits, and the arguments of counsel, the Court finds that there is evidence that harm is imminent to Plaintiffs from Executive Order GA-38’s prohibition on Plaintiffs’ adoption of mask mandates as a measure to protect the public health from the spread of the COVID-19 virus, and if the Court does not issue the temporary restraining order, Plaintiffs will be irreparably injured.

It is accordingly ordered that the Clerk of this Court issue a temporary restraining order, operative until and pending hearing on Plaintiffs’ application for a temporary injunction, below ordered, restraining Defendant Greg Abbott, in his official capacity as Governor of Texas, and all those acting in concert with him, from enforcing Sections 3(b), 3(g), 4, and 5(a) of Executive Order GA-38 to the extent those provisions (1) prohibit the City of San Antonio and Bexar County from requiring City and County employees or visitors to City- and County-owned facilities to wear masks or face coverings; or (2) prohibit the San Antonio and Bexar County Public Health Authority from requiring masks in public schools in the City and County.

The Clerk shall issue such temporary restraining order, however, only upon Plaintiffs’ filing with the Clerk a cash bond or bond executed by them and adequate sureties in the amount of \$100, approved and conditioned as the law requires.

It is further ordered that Plaintiffs' application for a temporary injunction, as contained in the verified petition, be heard on the 16th day of August, 2021, at 9:00 a.m. The hearing will take place remotely on Zoom:

Link: <https://zoom.us/my/bexarpresidingcourtzoom>

Meeting ID: 917-895-6796.

Telephone access number: 1-346-248-7799.

SIGNED August 10, 2021, at 9:00 am/pm.



Hon. Judge Antonia (Toni) Arteaga
Judge Presiding

APPROVED AS TO FORM:

CITY OF SAN ANTONIO

Andrew Segovia
City Attorney
SBN: 24103187
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Litigation Division
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203 S. St. Mary's St., 2nd Floor
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/s/Deborah Lynne Klein

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General Litigation Division
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Austin, Texas 78711-2548
(512) 475-4071 / Fax (512) 320-0667

COUNSEL FOR DEFENDANT

TAB 3:
ORDER DENYING PETITION FOR WRIT
OF MANDAMUS (AUG. 13, 2021)



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-21-00336-CV

In re Greg **ABBOTT**, in his official capacity as Governor of The State of Texas

Original Proceeding¹

PER CURIAM

Sitting: Luz Elena Chapa, Justice
Irene Rios, Justice
Beth Watkins, Justice

Delivered and Filed: August 13, 2021

EMERGENCY MOTION FOR TEMPORARY RELIEF DENIED; PETITION FOR WRIT OF MANDAMUS DENIED

On August 12, 2021, relator Greg Abbott, in his official capacity as Governor of the State of Texas, filed a petition for a writ of mandamus and an emergency motion for temporary relief challenging a temporary restraining order signed by the trial court on August 10, 2021. After considering the petition and the motion, this court concludes relator is not entitled to the relief sought. Accordingly, the petition and the motion are denied. *See* TEX. R. APP. P. 52.8(a).

PER CURIAM

¹This proceeding arises out of Cause No. 2021CI16133, styled *City of San Antonio and Bexar County v. Greg Abbott, in his official capacity as Governor of Texas*, pending in the 45th Judicial District Court, Bexar County, Texas, the Honorable Antonia Arteaga presiding.

TAB 4:
ORDER, *IN RE ABBOTT*, No. 21-0687
(AUG. 15, 2021)

IN THE SUPREME COURT OF TEXAS

No. 21-0687

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

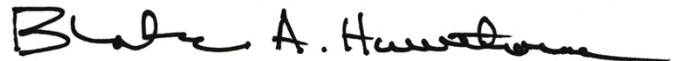
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The order on Plaintiffs' Verified Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Declaratory Judgment dated August 10, 2021, in Cause No. 2021CI16133, styled *City of San Antonio and Bexar County v. Greg Abbott, in his official capacity as Governor of Texas, in the 45th District Court of Bexar County, Texas*, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

TAB 5:
ORDER GRANTING TEMPORARY
INJUNCTION (AUG. 16, 2021)

CITY OF SAN ANTONIO and
BEXAR COUNTY,
Plaintiffs,

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

vs.

45th JUDICIAL DISTRICT

GREG ABBOTT, in his official capacity
as Governor of Texas, and
STATE OF TEXAS
Defendants.

BEXAR COUNTY, TEXAS

ORDER GRANTING TEMPORARY INJUNCTION

On August 16, 2020, the Court heard the application for temporary injunction filed by Plaintiffs City of San Antonio and Bexar County. All parties appeared through counsel.

After considering Plaintiffs’ application for temporary injunction, the pleadings, the evidence, and the arguments of counsel, the Court finds that unless Defendant Greg Abbott, in his official capacity as Governor of Texas, is temporarily restrained as described below, Plaintiffs will suffer irreparable injury before trial on the merits through the inability to impose masking requirements to control the spread of the COVID-19 virus that threatens to overwhelm the capacity of the healthcare system in the City and County and to cause the City and County to reduce services to the community and furlough workers. The Court further finds that Plaintiffs have shown a probable right to relief on the merits of their claims.

IT IS THEREFORE ORDERED that the Clerk of this Court issue a temporary injunction, operative until final judgment, restraining Defendant Greg Abbott, in his official capacity as Governor of Texas, and each of his agents, employees, or those in active participation or concert with him, from enforcing Sections 3(b), 3(g), 4, and 5(a) of Executive Order GA-38 to the extent those provisions (1) prohibit the City of San Antonio and Bexar County from requiring City and County employees or visitors to City- and County-owned facilities to wear masks or face coverings;

or (2) prohibit the San Antonio and Bexar County Public Health Authority from requiring masks in public schools in the City and County.

IT IS FURTHER ORDERED that that in lieu of requiring Plaintiffs to execute and file a new Bond, the \$100.00 Bond executed and filed by Plaintiffs in connection with the Temporary Restraining Order is hereby deemed extended in conformity with the law to the period during which the Temporary Injunction is in effect.

It is further ordered that trial on the merits of this cause be set on the 13th day of December, 2021, at 9:00 a.m. The hearing will take place remotely on Zoom:

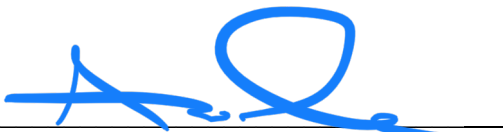
Link: <https://zoom.us/my/bexarpresidingcourtzoom>

Meeting ID: 917-895-6796.

Telephone access number: 1-346-248-7799.

The time announced for the final trial hearing on the merits is three hours.

SIGNED August 16, 2021, at 4:52 am/pm.



Judge Presiding

APPROVED AS TO FORM:

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COUNSEL FOR DEFENDANT

TAB 6:
ORDER, No. 04-21-00342-CV
(AUG. 19, 2021)



COURT OF APPEALS

FOURTH COURT OF APPEALS DISTRICT
 CADENA-REEVES JUSTICE CENTER
 300 DOLOROSA, SUITE 3200
 SAN ANTONIO, TEXAS 78205-3037
 WWW.TXCOURTS.GOV/4THCOA.ASPX

MICHAEL A. CRUZ,
 CLERK OF COURT

TELEPHONE
 (210) 335-2635

FACSIMILE NO.
 (210) 335-2762

REBECA C. MARTINEZ
 CHIEF JUSTICE
 PATRICIA O. ALVAREZ
 LUZ ELENA D. CHAPA
 IRENE RIOS
 BETH WATKINS
 LIZA A. RODRIGUEZ
 LORI I. VALENZUELA
 JUSTICES

August 19, 2021

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RE: Court of Appeals Number: 04-21-00342-CV
 Trial Court Case Number: 2021CI16133
 Style: Greg Abbott, in his Official Capacity as Governor of Texas

v.
City of San Antonio and County of Bexar

Enclosed please find the order which the Honorable Court of Appeals has issued in reference to the above styled and numbered cause.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,
MICHAEL A. CRUZ, Clerk of
Court



Jamie Osio
Deputy Clerk, Ext. 53262

cc: Dinah L. Gaines (DELIVERED VIA E-MAIL)
Honorable Antonia Arteaga (DELIVERED VIA E-MAIL)
Mary Angie Garcia (DELIVERED VIA E-MAIL)
Mary Martinez Wilson (DELIVERED VIA E-MAIL)



Fourth Court of Appeals
San Antonio, Texas

August 19, 2021

No. 04-21-00342-CV

Greg **ABBOTT**, in his Official Capacity as Governor of Texas,
Appellant

v.

CITY OF SAN ANTONIO and County of Bexar,
Appellees

From the 45th Judicial District Court, Bexar County, Texas
Trial Court No. 2021CI16133
Honorable Antonia Arteaga, Judge Presiding

ORDER

Sitting: Irene Rios, Justice
Beth Watkins, Justice
Liza A. Rodriguez, Justice

Before us is an emergency motion asking this court to exercise its authority under Rule 29.3 of the Texas Rules of Appellate Procedure to reinstate a temporary injunction during the pendency of this appeal. This appeal, which is accelerated in nature, challenges a temporary injunction restraining the Texas Governor, Greg Abbott, and his agents and employees, from enforcing sections of Executive Order GA-38 to the extent it prohibits local officials and governmental entities from requiring masks or face coverings be worn in certain settings in the City of San Antonio and Bexar County. *See* Tex. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4) (authorizing an appeal from an interlocutory order that grants or refuses a temporary injunction). For the reasons set out below, we grant the emergency motion. *See* TEX. R. APP. P. 29.3.

Background

On August 10, 2021, the City of San Antonio and Bexar County filed a declaratory judgment suit challenging Executive Order GA-38, which was signed by the Governor on July 29, 2021. Executive Order GA-38 provides, with some exceptions, that: “No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering” The City and County’s suit alleges that the Governor acted ultra vires and outside the scope of his authority under the Texas Disaster Act of 1975 and, alternatively, that the Texas Disaster Act of 1975 violates the Texas Constitution. The City and County’s suit also includes an application for a temporary injunction.

The trial court held a hearing on the temporary injunction application on Monday, August 16, 2021, at 9:00 a.m. After the hearing, the trial court signed an order granting the temporary injunction.¹ Specifically, the temporary injunction order restrains the Governor, in his official capacity “and each of his agents, employees, or those in active participation in concert with him from, enforcing [s]ections 3(b), 3(g), 4, and 5(a) of Executive Order GA-38 to the extent those provisions (1) prohibit the City of San Antonio and Bexar County from requiring City and County employees or visitors to City- and County-owned facilities to wear masks or face coverings; or (2) prohibit the San Antonio and Bexar County Public Health Authority from requiring masks in public schools in the City and County.”² The temporary injunction order also sets the case for trial on the merits on December 13, 2021, at 9:00 a.m.

¹ Executive Order GA-38 states as follows: Section 3(b) provides that “no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering”; Section 3(g) provides that failure to comply with the executive order may be “subject to a fine up to \$1,000”; Section 4 provides that “[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering....”; and Section 5(a) provides, among other things, Executive Order GA-38 “shall supersede any conflicting order issued by local official in response to the COVID-19 disaster....”

² The temporary injunction order was signed by the trial court on August 16, 2021, at 4:52 p.m.

Hours after the trial court signed the temporary injunction order, the Governor filed a notice of appeal in this court.³ The Governor’s notice of appeal states that “[u]pon filing of this instrument” the temporary injunction order “is superseded” pursuant to Rule 29.1(b) of the Texas Rules of Appellate Procedure⁴ and section 6.001(b) of the Texas Civil Practice and Remedies Code.⁵

The appellees, the City of San Antonio and Bexar County, acknowledge that the Governor’s notice of appeal suspended the trial court’s temporary injunction. However, in the emergency motion, the City and County ask us to preserve their rights by issuing an order reinstating the trial court’s temporary injunction.

Analysis

Initially, we address this court’s authority to grant the relief sought in the emergency motion. “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 and may require appropriate security.” TEX. R. APP. P. 29.3. Under Rule 29.3, Texas intermediate appellate courts have inherent judicial power to preserve the parties’ rights during the pendency of an interlocutory appeal. *Tex. Educ. Agency v. Houston Indep. Sch. Dist.*, 609 S.W.3d 569, 577 (Tex. App.—Austin 2020, order). The Texas Supreme Court has acknowledged this inherent judicial power, holding that one of our sister courts, the Austin court of appeals, had the authority under Rule 29.3 to provide relief from the state’s automatic right to suspend a temporary injunction. *In re Tex. Educ. Agency*, 619 S.W.3d 692 (Tex. 2021) (orig. proceeding) (holding “court of appeals was not without power to issue temporary relief” under Rule 29.3 from state’s automatic suspending of the trial court’s temporary injunction). In another case, the

³ The notice of appeal was filed in this court on August 16, 2021, at 7:23 p.m.

⁴ Rule 29.1(b) states: “Perfecting an appeal from an order granting interlocutory relief does not suspend the order appealed from unless . . . the appellant is entitled to supersede the order without security by filing a notice of appeal.” TEX. R. APP. P. 29.1(b).

⁵ Section 6.001(b) states: “The following are exempt from the bond requirements: (1) this state” TEX. CIV. PRAC. & REM. CODE ANN. § 6.001(b).

Texas Supreme Court confirmed that nothing prevents a party “from asking the court of appeals to protect it from irreparable harm. Rule 29.3 expressly contemplates that such relief is directly available in the court of appeals.” *In re Geomet Recycling LLC*, 578 S.W.3d 82, 89 (Tex. 2019) (orig. proceeding). We conclude that we have the authority to grant the emergency motion under Rule 29.3 and the relevant case law.

The Texas Supreme Court has also recognized that under Rule 29.3, Texas intermediate appellate courts have “great flexibility in preserving the status quo based on the unique facts and circumstances presented.” *Id.* The Texas Supreme Court defines “the status quo” as “the last, actual, peaceable, non-contested status which preceded the pending controversy.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (orig. proceeding) (citing *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589, 589 (Tex. 1962)).

The City and County’s authority to administer public health measures is established by the Texas Legislature. *See, e.g.*, TEX. HEALTH & SAFETY CODE ANN. §§ 81.082, 121.003, 122.006, 341.081; *see also* TEX. GOV’T CODE ANN. §§ 418.1015, 418.108; *see also* TEX. LOCAL GOV’T CODE Ch. 54. Effective July 29, 2021, Executive Order GA-38 suspended these and “[a]ny other statute invoked by any local governmental entity or official in support of a face-covering requirement.” By their suit, the City and County challenge the issuance of Executive Order GA-38, alleging that the Governor acted ultra vires and outside the scope of his authority under the Texas Disaster Act of 1975 and, alternatively, that the Texas Disaster Act of 1975 violates the Texas Constitution. In the present case, Executive Order GA-38, which was issued on July 29, 2021, altered the status quo, which had allowed local governmental entities to implement and enforce policies reasonably necessary to protect public health. The trial court’s temporary injunction restored the status quo. However, as previously mentioned, the filing of the notice of appeal automatically suspended the temporary injunction order and, once again, altered the status quo. *See In re Tex. Educ. Agency*, 619 S.W.3d at 683-84 (“Instead of preserving the

status quo, however, suspension of the temporary injunction would, in this case, have the contradictory effect of permitting the status quo to be altered.”).

In their emergency motion, the City and County argue that an order reinstating the trial court’s temporary injunction will prevent irreparable harm and preserve their rights. They emphasize that the trial court expressly found in its temporary injunction order that the City and County “will suffer irreparable injury before trial on the merits through the inability to impose masking requirements to control the spread of the COVID-19 virus that threatens to overwhelm the capacity of the healthcare system in the City and County and to cause the City and County to reduce services to the community and furlough workers.” They also point to a previous Executive Order, GA-29, in which the Governor recognized that “wearing face coverings is one of the most important and effective tools for reducing the spread of COVID-19.”

Additionally, attached to the emergency motion are affidavits from two of the witnesses who testified at the temporary injunction hearing. These affidavits include the affidavit of Dr. Junda Woo, a medical doctor and the San Antonio and Bexar County Public Health Authority, and Erik Walsh, the City Manager for the City of San Antonio.⁶

In her affidavit, which is dated August 9, 2021, Dr. Woo testifies that in her capacity as the local health authority, she is responsible for enforcing public health law and implementing rules and guidelines to slow the spread of the disease in the local community. Dr. Woo evaluates the effect of the delta variant of COVID-19 on local hospitals, public schools, and city and county operations. Specifically, Woo testifies that “Bexar County is currently at a ‘severe level’ under our risk guidelines, with a hospital stress score that is approaching critical levels”; that “[i]n the next week, local hospitals are likely to surpass the number of patients they had during June 2020”; that “[t]his situation is due to the contagiousness of the [d]elta variant and the fact that significant pockets of the population remain unvaccinated”; and that “[u]nlike last year when each person with COVID would typically infect two others, each person with the now-ubiquitous

⁶ Also attached to the emergency motion is the affidavit of County Judge Nelson W. Wolff. The emergency motion does not indicate that Judge Wolff testified at the temporary injunction hearing.

delta variant is believed to infect 8 or 9 people.” Dr. Woo further testifies that the public schools in Bexar County are beginning their semesters and with the delta variant schools need every tool at their disposal, including the ability to require masks. According to Dr. Woo, “Most studies that have shown success in limiting transmission in schools have involved staff and/or students wearing masks as one of the school’s prevention strategies.” And, Dr. Woo testifies that, absent the effect of GA-38 on her authority under state law, she “would exercise [her] authority as Public Health Authority to direct actions to abate the spread of COVID-19, to include requiring the use of masks in public schools.” Dr. Woo also testifies that “[t]he highly contagious nature of the delta variant is also impacting” City and County operations. “The number of City and County employees who have had to quarantine due to the delta variant has increased over the past few weeks, reaching levels near those at the height of the pandemic.” Finally, Dr. Woo testifies that “[t]he spread of the delta variant among City and County employees as well as among visitors to City and County facilities can be significantly decreased by the required use of masks.”


In his affidavit, which is dated August 9, 2021, San Antonio city manager, Walsh, testifies that he is responsible for ensuring that city operations are provided in an efficient and effective manner and that he oversees over 13,000 city employees who work at city-owned buildings or facilities. Walsh further testifies that the City owns and operates facilities, such as senior centers and child care assistance sites, that serve “vulnerable populations or children who are too young to receive a COVID-19 vaccine.” And, according to Walsh, “with the onset of the [d]elta variant, infection rates have increased to levels consistent with the height of the pandemic” and that he was “advised by the local Public Health Authority that the [d]elta variant is significantly more contagious than the original COVID strain and that using masks is necessary to help curtail its spread.” Finally, Walsh testifies that “[w]ith the virulent spread of the [d]elta variant” Executive Order GA-38’s prohibition against mask mandates “will impact the ability of the City to operate and to provide necessary services to its citizens.”

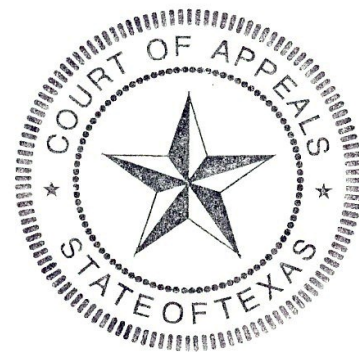
Based on the temporary injunction order and the evidence attached to the emergency motion, the City and County have demonstrated that reinstating the trial court's temporary injunction is necessary to prevent irreparable harm and preserve their rights during the pendency of this accelerated appeal. The circumstances of this case are unique and, quite frankly, unprecedented. As the Texas Supreme Court has recognized, this court has "great flexibility in preserving the status quo [when] unique facts and circumstances [are] presented." *See In re Geomet*, 578 S.W.3d at 89. Accordingly, we exercise our inherent authority under Rule 29.3, to maintain the status quo and preserve the parties' rights until the disposition of this accelerated appeal. *See Houston Indep. Sch. Dist.*, 609 S.W.3d at 577 (granting a Rule 29.3 motion and ordering the trial court's temporary injunction order to remain in effect until the disposition of the appeal); TEX. R. APP. P. 29.3. We grant the emergency motion and reinstate the trial court's temporary injunction pending final disposition of this appeal.

It is so **ORDERED** on August 19, 2021.

PER CURIAM

ATTESTED TO:


MICHAEL A. CRUZ,
CLERK OF COURT



TAB 7:
TEX. GOV'T CODE § 418.012



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

[Vernon's Texas Statutes and Codes Annotated](#)

[Government Code \(Refs & Annos\)](#)

[Title 4. Executive Branch \(Refs & Annos\)](#)

[Subtitle B. Law Enforcement and Public Protection](#)

[Chapter 418. Emergency Management \(Refs & Annos\)](#)

[Subchapter B. Powers and Duties of Governor \(Refs & Annos\)](#)

V.T.C.A., Government Code § 418.012

§ 418.012. Executive Orders

[Currentness](#)

Under this chapter, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.

Credits

[Acts 1987, 70th Leg., ch. 147, § 1, eff. Sept. 1, 1987.](#)


V. T. C. A., Government Code § 418.012, TX GOVT § 418.012

Current through legislation effective June 18, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

End of Document

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TAB 8:
TEX. GOV'T CODE § 418.015

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

[Vernon's Texas Statutes and Codes Annotated](#)

[Government Code \(Refs & Annos\)](#)

[Title 4. Executive Branch \(Refs & Annos\)](#)

[Subtitle B. Law Enforcement and Public Protection](#)

[Chapter 418. Emergency Management \(Refs & Annos\)](#)

[Subchapter B. Powers and Duties of Governor \(Refs & Annos\)](#)

V.T.C.A., Government Code § 418.015

§ 418.015. Effect of Disaster Declaration

Currentness

(a) An executive order or proclamation declaring a state of disaster:

(1) activates the disaster recovery and rehabilitation aspects of the state emergency management plan applicable to the area subject to the declaration; and

(2) authorizes the deployment and use of any forces to which the plan applies and the use or distribution of any supplies, equipment, and materials or facilities assembled, stockpiled, or arranged to be made available under this chapter or other law relating to disasters.

(b) The preparedness and response aspects of the state emergency management plan are activated as provided by that plan.

(c) During a state of disaster and the following recovery period, the governor is the commander in chief of state agencies, boards, and commissions having emergency responsibilities. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or plans, but this chapter does not restrict the governor's authority to do so by orders issued at the time of the disaster.

Credits

[Acts 1987, 70th Leg., ch. 147, § 1, eff. Sept. 1, 1987.](#)

§ 418.015. Effect of Disaster Declaration, TX GOVT § 418.015


V. T. C. A., Government Code § 418.015, TX GOVT § 418.015

Current through legislation effective June 18, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

End of Document

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TAB 9:
TEX. GOV'T CODE § 418.016

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated

Government Code (Refs & Annos)

Title 4. Executive Branch (Refs & Annos)

Subtitle B. Law Enforcement and Public Protection

Chapter 418. Emergency Management (Refs & Annos)

Subchapter B. Powers and Duties of Governor (Refs & Annos)

V.T.C.A., Government Code § 418.016

§ 418.016. Suspension of Certain Laws and Rules

Effective: September 1, 2013

[Currentness](#)

(a) The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

(b) Upon declaration of a state of disaster, enforcement of the regulation of on-premise outdoor signs under Subchapter A, Chapter 216, Local Government Code,¹ by a municipality that is located in a county within, or that is located in a county adjacent to a county within, the disaster area specified by the declaration is suspended to allow licensed or admitted insurance carriers or licensed agents acting on behalf of insurance carriers to erect temporary claims service signage for not more than 30 days or until the end of the declaration of disaster, whichever is earlier.

(c) A temporary claims service sign shall not:

(1) be larger than forty square feet in size;

(2) be more than five feet in height; and

(3) be placed in the right of way.

(d) At the end of the 30 days or the end of the declaration of disaster, whichever is earlier, the insurance carrier or its licensed

agents must remove the temporary claims service signage that was erected.

(e) On request of a political subdivision, the governor may waive or suspend a deadline imposed by a statute or the orders or rules of a state agency on the political subdivision, including a deadline relating to a budget or ad valorem tax, if the waiver or suspension is reasonably necessary to cope with a disaster.

(f) The governor may suspend any of the following requirements in response to an emergency or disaster declaration of another jurisdiction if strict compliance with the requirement would prevent, hinder, or delay necessary action in assisting another state with coping with an emergency or disaster:

(1) a registration requirement in an agreement entered into under the International Registration Plan under [Section 502.091, Transportation Code](#), to the extent authorized by federal law;

(2) a temporary registration permit requirement under [Section 502.094, Transportation Code](#);

(3) a provision of Subtitle E, Title 7, [Transportation Code](#)², to the extent authorized by federal law;

(4) a motor carrier registration requirement under Chapter 643, [Transportation Code](#);

(5) a registration requirement under Chapter 645, [Transportation Code](#), to the extent authorized by federal law; or

(6) a fuel tax requirement under the International Fuel Tax Agreement described by [49 U.S.C. Section 31701 et seq.](#), to the extent authorized by federal law.

(g) For the purposes of Subsection (f), “emergency or disaster declaration of another jurisdiction” means an emergency declaration, a major disaster declaration, a state of emergency declaration, a state of disaster declaration, or a similar declaration made by:

(1) the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. Section 5121 et seq.](#)); or

(2) the governor of another state.

(h) To the extent federal law requires this state to issue a special permit under [23 U.S.C. Section 127](#) or an executive order, a suspension issued under Subsection (f) is a special permit or an executive order.

Credits

Acts 1987, 70th Leg., ch. 147, § 1, eff. Sept. 1, 1987. Amended by Acts 2009, 81st Leg., ch. 990, § 1, eff. June 19, 2009; Acts 2009, 81st Leg., ch. 1280, § 1.03a, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 11.008, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., ch. 1135 (H.B. 2741), § 3, eff. Sept. 1, 2013.

Footnotes

1

[V.T.C.A., Local Government Code § 216.001 et seq.](#)

2

[V.T.C.A. Transportation Code § 621.001 et seq.](#)

V. T. C. A., Government Code § 418.016, TX GOVT § 418.016

Current through legislation effective June 18, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

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TAB 10:
TEX. GOV'T CODE § 418.018

[Vernon's Texas Statutes and Codes Annotated](#)

[Government Code \(Refs & Annos\)](#)

[Title 4. Executive Branch \(Refs & Annos\)](#)

[Subtitle B. Law Enforcement and Public Protection](#)

[Chapter 418. Emergency Management \(Refs & Annos\)](#)

[Subchapter B. Powers and Duties of Governor \(Refs & Annos\)](#)

V.T.C.A., Government Code § 418.018

§ 418.018. Movement of People

[Currentness](#)

- (a) The governor may recommend the evacuation of all or part of the population from a stricken or threatened area in the state if the governor considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery.
- (b) The governor may prescribe routes, modes of transportation, and destinations in connection with an evacuation.
- (c) The governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area.

Credits

[Acts 1987, 70th Leg., ch. 147, § 1, eff. Sept. 1, 1987.](#)


V. T. C. A., Government Code § 418.018, TX GOVT § 418.018

Current through legislation effective June 18, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

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TAB 11:
TEX. GOV'T CODE § 418.108

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated

Government Code (Refs & Annos)

Title 4. Executive Branch (Refs & Annos)

Subtitle B. Law Enforcement and Public Protection

Chapter 418. Emergency Management (Refs & Annos)

Subchapter E. Local and Interjurisdictional Emergency Management

V.T.C.A., Government Code § 418.108

§ 418.108. Declaration of Local Disaster

Effective: September 1, 2009

[Currentness](#)

<By executive order, Governor Abbott suspended V.T.C.A., Government Code §§ 418.1015(b) and 418.108 to the extent necessary to preclude any county judge or mayor of a municipality, or any emergency management director, from releasing persons under any circumstances inconsistent with Texas Executive Order 13 (GA-13). See [2019 TX EO 13](#), 45 TexReg 2368 (detention in county and municipal jails during COVID-19 disaster).>

<See Executive Order GA-38 ([2021 TX EO 38](#), dated July 29, 2021), which suspends this Section to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with the executive order, and to the extent necessary to ensure that local governmental entities or officials do not impose particular face-covering requirements.>

(a) Except as provided by Subsection (c), the presiding officer of the governing body of a political subdivision may declare a local state of disaster.

(b) A declaration of local disaster may not be continued or renewed for a period of more than seven days except with the consent of the governing body of the political subdivision or the joint board as provided by Subsection (c), as applicable.

(c) An order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the city secretary, the county clerk, or the joint board's official records, as applicable.

(d) A declaration of local disaster activates the appropriate recovery and rehabilitation aspects of all applicable local or interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration. The appropriate preparedness and response aspects of the plans are activated as provided in the plans and take effect

immediately after the local state of disaster is declared.

(e) The chief administrative officer of a joint board has exclusive authority to declare that a local state of disaster exists within the boundaries of an airport operated or controlled by the joint board, regardless of whether the airport is located in or outside the boundaries of a political subdivision.

(f) The county judge or the mayor of a municipality may order the evacuation of all or part of the population from a stricken or threatened area under the jurisdiction and authority of the county judge or mayor if the county judge or mayor considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery.

(g) The county judge or the mayor of a municipality may control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge or mayor and control the movement of persons and the occupancy of premises in that area.

(h) For purposes of Subsections (f) and (g):

(1) the jurisdiction and authority of the county judge includes the incorporated and unincorporated areas of the county; and

(2) to the extent of a conflict between decisions of the county judge and the mayor, the decision of the county judge prevails.

(i) A declaration under this section may include a restriction that exceeds a restriction authorized by [Section 352.051, Local Government Code](#). A restriction that exceeds a restriction authorized by [Section 352.051, Local Government Code](#), is effective only:

(1) for 60 hours unless extended by the governor; and

(2) if the county judge requests the governor to grant an extension of the restriction.

Credits

Acts 1987, 70th Leg., ch. 147, § 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 33, § 3, eff. May 14, 2003; Acts 2005, 79th Leg., ch. 274, § 1, eff. June 9, 2005; Acts 2007, 80th Leg., ch. 258, § 17.01, eff. Sept. 1, 2007; Acts 2009, 81st Leg., ch. 1280, § 1.13, eff. Sept. 1, 2009.

§ 418.108. Declaration of Local Disaster, TX GOVT § 418.108

V. T. C. A., Government Code § 418.108, TX GOVT § 418.108

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TAB 12:
TEX. GOV'T CODE § 418.1015

[Vernon's Texas Statutes and Codes Annotated](#)

[Government Code \(Refs & Annos\)](#)

[Title 4. Executive Branch \(Refs & Annos\)](#)

[Subtitle B. Law Enforcement and Public Protection](#)

[Chapter 418. Emergency Management \(Refs & Annos\)](#)

[Subchapter E. Local and Interjurisdictional Emergency Management](#)

V.T.C.A., Government Code § 418.1015

§ 418.1015. Emergency Management Directors

Effective: September 1, 2009

[Currentness](#)

<By executive order, Governor Abbott suspended V.T.C.A., Government Code §§ 418.1015(b) and 418.108 to the extent necessary to preclude any county judge or mayor of a municipality, or any emergency management director, from releasing persons under any circumstances inconsistent with Texas Executive Order 13 (GA-13). See [2019 TX EO 13](#), 45 TexReg 2368 (detention in county and municipal jails during COVID-19 disaster).>

<See Executive Order GA-38 ([2021 TX EO 38](#), dated July 29, 2021), which suspends [Section 418.1015\(b\) and 418.1015\(h\)](#) to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with the executive order, and to the extent necessary to ensure that local governmental entities or officials do not impose particular face-covering requirements.>

(a) The presiding officer of the governing body of an incorporated city or a county or the chief administrative officer of a joint board is designated as the emergency management director for the officer's political subdivision.

(b) An emergency management director serves as the governor's designated agent in the administration and supervision of duties under this chapter. An emergency management director may exercise the powers granted to the governor under this chapter on an appropriate local scale.

(c) An emergency management director may designate a person to serve as emergency management coordinator. The emergency management coordinator shall serve as an assistant to the emergency management director for emergency management purposes.

(d) A person, other than an emergency management director exercising under Subsection (b) a power granted to the governor, may not seize state or federal resources without prior authorization from the division or the state or federal agency having responsibility for those resources.

Credits

Added by Acts 2007, 80th Leg., ch. 258, § 1.02, eff. June 6, 2007; Acts 2007, 80th Leg., ch. 865, § 1.02, eff. June 15, 2007.
Amended by Acts 2009, 81st Leg., ch. 1280, § 1.11, eff. Sept. 1, 2009.


V. T. C. A., Government Code § 418.1015, TX GOVT § 418.1015

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TAB 13:
TEX. CONST. ART. I, § 28

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

[Vernon's Texas Statutes and Codes Annotated](#)

[Constitution of the State of Texas 1876 \(Refs & Annos\)](#)

[Article I. Bill of Rights \(Refs & Annos\)](#)

Vernon's Ann. Texas Const. Art. 1, § 28

§ 28. Suspension of laws

[Currentness](#)

Sec. 28. No power of suspending laws in this State shall be exercised except by the Legislature.

Sections 1 to 8 appear in this Volume

Vernon's Ann. Texas Const. Art. 1, § 28, TX CONST Art. 1, § 28

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TAB 14:
TEXAS CONST. ART. 2, § 1

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article II. The Powers of Government

Vernon's Ann. Texas Const. Art. 2, § 1

§ 1. Division of powers; three separate departments; exercise of power properly attached to other departments

[Currentness](#)

Sec. 1. 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.

Vernon's Ann. Texas Const. Art. 2, § 1, TX CONST Art. 2, § 1

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