

No. 04-21-00336-CV

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**In the Court of Appeals  
for the Fourth Judicial District  
San Antonio, Texas**

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4th COURT OF APPEALS  
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Clerk

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

*Relator.*

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On Petition for Writ of Mandamus  
to the 45th Judicial District Court, Bexar County

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**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 filed a suit against the Relator Governor Greg Abbott seeking injunctive relief prohibiting the Governor from enforcing Executive Order GA-38, which forbids local government entities from requiring individuals to wear face coverings. MR.7, 17.

*Respondent:* The Honorable Antonia Arteaga, 45th Civil District Court, Bexar County

*Respondents’ challenged actions:* The trial court issued a temporary restraining order enjoining the Governor from enforcing GA-38 to the extent that it prohibits City of San Antonio or Bexar County officials from requiring certain individuals to wear face coverings. MR.2-3.

## STATEMENT OF JURISDICTION

This Court has jurisdiction under Texas Government Code section 22.221(b)(1).

## ISSUES PRESENTED

Whether the respondent clearly abused its discretion in enjoining the enforcement of Governor Abbott’s Executive Order GA-38 issued pursuant to his authority under the Texas Disaster Act.



## INTRODUCTION

The City of San Antonio and Bexar County's petition and the trial court's temporary restraining order depend on the premise that when Governor Greg Abbott and localities issue contradictory emergency orders, the local orders control. The Texas Disaster Act of 1975 mandated the opposite; it makes the Governor the "commander in chief" of the State's response to a disaster, Gov't Code § 418.015(c), and empowers him to issue executive orders that have the "force and effect of law." *Id.* § 418.012.

Governor Abbott has done so. On July 29, Governor Abbott issued Executive Order GA-38, which aims to strike 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.21, 23. GA-38 further suspends the authority of local officials to issue orders which contradict GA-38. And the Disaster Act only empowers local officials, including the City and County, to act as agents of the Governor in addressing a disaster. No agent may contradict the direction of his principal. Nonetheless, the trial court has allowed the City and County to exercise powers properly belonging to the Governor through a temporary restraining order that blocks the Governor from implementing various provisions of GA-38.

The Governor lacks an adequate remedy on appeal because he cannot appeal a TRO, and innumerable local officials and school districts across the State will cite the TRO to ignore the Governor's pandemic response, imposing mandates on Texans that GA-38 has forbidden. Texas's effort to carry out an orderly, cohesive, and

uniform response to the COVID-19 pandemic will have shattered. Immediate relief is necessary to prevent this inversion of the Disaster Act.

## **STATEMENT OF FACTS**

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

True to its stated purpose, the Act charges the Governor with determining whether (and declaring that) a disaster has occurred. *Id.* § 418.014(a). “During a state of disaster and the following recovery period,” the Governor “is the commander in chief” of the State’s disaster response, *id.* § 418.015(c), “responsible for meeting . . . the dangers to the state and people presented by disasters.” *Id.* § 418.011(1).

The Act vests the Governor with the powers necessary to meet that responsibility. He may issue executive orders that have “the force and effect of law.” *Id.* § 418.012. He may suspend “any regulatory statute prescribing the procedures for conduct of state business” if these “provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.” *Id.* § 418.016(a). The Governor “may control ingress and egress to and from a disaster area and the movement of persons and occupancy of premises in the area.” *Id.*

§ 418.018(c). And he may “use all available resources” —state and local— “that are reasonably necessary to cope with a disaster,” *id.* § 418.017(a), including “temporarily reassign[ing] resources, personnel, or functions” of state executive departments or agencies. *Id.* § 418.017(b).

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

**B.** To discharge his statutory responsibilities under the Disaster Act, Governor Abbott 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. On July 29, the Governor issued Executive Order GA-38, which directs the State’s “continued response to the COVID-19 disaster” in light of the wide availability of COVID-19 vaccines. MR.21. This Executive Order strikes 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.21, 23. The Executive Order “strongly encourage[s] [Texans] as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices,” but it also provides that “no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.” MR.21, 23. This provision expressly “supersedes any conflicting local order in response to the COVID-19 disaster” and “suspend[s]” “all relevant laws . . . to the extent necessary to preclude any such inconsistent local orders.” MR.23.

To ensure “uniformity” in the State’s response to the COVID-19 pandemic, GA-38 also provides that “[n]o governmental entity . . . may require any person to wear a face covering or to mandate that another person wear a face covering.” MR.24.<sup>1</sup> This provision explicitly “supersede[s] any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided.” MR.24. GA-38 further suspends sections 418.1015(b) and 418.108 of the Government Code—sections designating local officials as the Governor’s agents and allowing for local emergency declarations— “[t]o the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements.” MR.24.

C. Though GA-38 has existed for weeks—and analogous predecessor orders have been in place for months—the City of San Antonio and Bexar County sought a

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<sup>1</sup> There are exceptions, but they are not relevant here. MR.24.

temporary restraining order on August 10, seeking to prohibit the Governor from enforcing GA-38 “to the extent it prohibits the City or County from adopting a mask mandate.” MR.17. They also sought a temporary injunction and 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 Disaster Act. MR.12. Further, they sought a declaration that the Disaster Act itself violates the nondelegation doctrine. MR.15.

The trial court issued a temporary restraining order forbidding the Governor from enforcing “Sections (3)(b), (3)(g), 4 and 5(a)” of GA-38 “to the extent that those provisions (1) prohibit [plaintiffs] 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.” MR.2. The Governor now seeks mandamus relief from that order.

## **ARGUMENT**

Mandamus relief is available where the trial 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 met here.

### **I. The Temporary Restraining Order Is an Abuse of Discretion.**

#### **A. The Legislature Deputized the Governor, Not Localities, to Manage Statewide Disasters.**

The trial court’s order effectively concludes that local officials’ views of how best to manage the COVID-19 pandemic should trump the Governor’s. This holding

cannot be reconciled with the language of the Disaster Act. The Governor—not local officials—“is the commander in chief” of the State’s disaster response. Gov’t Code. § 418.015(c). And as part of that authority section 418.018(c) of the Government Code unambiguously provides that “[t]he Governor may control ingress and egress to and from a disaster area and the movement of persons and occupancy of premises in the area.” Gov’t Code. § 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.” Gov’t Code § 418.018(c). After all, GA-38 “renew[s] the COVID-19 disaster declaration for *all* Texas counties,” including Bexar County. MR.21 (emphasis added). And a prohibition on mask mandates controls “ingress and egress” to and “occupancy of” the locations into which the order permits a mask mandate, MR.21-22, because it authorizes the entry of individuals that would be prohibited under plaintiffs’ preferred regime.

Plaintiffs cannot rely on similar language in Government Code, section 418.108(g)—which permits certain local officials to “control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge or mayor”—to supersede an order issued by the Governor under section 418.180. “Texas is faced with a statewide disaster, not simply a local one.” *State v. El Paso County*, 618 S.W.3d 812, 823 (Tex. App.—El Paso, no pet.). And in such a scenario,

“the Legislature inserted a tie breaker and gave it to the governor in that his or her declarations under [s]ection 418.012 have the force of law.” *Id.* at 822.

### **B. Plaintiffs Act as the Governor’s Agent 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 plaintiffs to do so as the Governor’s agent. It is black-letter law that an agent is subject to the control of the principal, meaning that plaintiffs are bound by GA-38.

To make clear the chain-of-command and scope of local officials’ power during a statewide disaster like this pandemic, 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,” Gov’t Code § 418.1015(a), and that those “emergency management director[s] serve[] as the governor’s designated agent 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.” *El Paso Cnty.*, 618 S.W.3d at 820-21; *see also Cnty. Health Sys. Prof’l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 697 (Tex. 2017); *Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 590 (Tex. 2017); Restatement (Third) of Agency § 1.01 cmt. f (2006).

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). Consider, for example, section 418.108(i), which expressly limits local officials’ emergency power: they may not “include a restriction that exceeds a restriction authorized by section 352.051 [of the] Local Government Code” that lasts more than “60 hours.” Gov’t Code § 418.108(i)(1). That limit does not apply to the Governor, who is empowered to grant them an extension. *See id.* § 418.108(i)(1), (2).

Or take section 418.108(h), which explains that “[f]or purposes of [s]ubsections (f) and (g),” “to the extent of a conflict between decisions of the county judge and the mayor, the decision of the county judge prevails.” *Id.* § 418.108(h)(2). Subsections (f) and (g) grant local officials authority to order evacuations and “control ingress to and egress from a disaster area,” *id.* § 418.108(f), (g)—powers that are also available to the Governor. *See id.* § 418.020(e); *id.* § 418.018(c); *El Paso Cnty.*, 618 S.W.3d at 820-23. Still, subsection (h) only deals with conflict between a county judge and the mayor—not with the Governor. That is because it would be superfluous—as the principal, the Governor’s decisions necessarily prevail.

The Governor’s duties confirm this result. He is “the commander in chief of state agencies, boards, and commissions having emergency responsibilities.” 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 Cnty.*, 92 S.W.2d at 1015; *accord El Paso Cnty.*, 618 S.W.3d at 820-23. The Texas 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.

Finally, 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. Gov’t Code § 418.011(1) (emphasis added). By statute, he has powers necessary to satisfy this responsibility, some of which overlap with the emergency power of local officials. *Supra* at 2-3, 5-7. 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 Cnty.*, 618 S.W.3d at 822; *cf. Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 484 (2010) (holding that to “take Care that the Laws be faithfully executed,” the President must be able to supervise the officers who execute them). After all, under the Act, it is the “*legislature by law*” — not localities — that may terminate the Governor’s use of his emergency powers. Gov’t Code § 418.014(c) (emphasis added).

By its text and structure, the Disaster Act prevents local officials from issuing orders that conflict with those of the Governor. For these reasons, § 418.108 does not give the city or county the power to issue any orders contrary to GA-38.

**C. GA-38 suspends the statutory provision upon which plaintiffs could rely to craft local rules for a statewide disaster.**

Section 418.108 also cannot give local officials authority to make local rules to manage a statewide disaster because GA-38 validly suspends that provision under these circumstances. “[I]n order to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with” the Governor’s Executive Order, section 5(a) of GA-38 invokes the Governor’s statutory power under section 418.016(a) of the Government Code to suspend section 418.108 of the Government Code.

The trial court’s order, which effectively holds that the Governor lacked the statutory authority to suspend section 418.108, *see* MR.2, cannot be squared with the Governor’s statutory text. 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.” Gov’t Code § 418.016(a).

1. Section 418.108 qualifies as a law addressing the conduct of “state business”—particularly when invoked to justify a temporary restraining order that permits local officials to deviate from the State’s response to a statewide emergency. 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 (citing *Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 563 (Tex. 2014)). 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, supra*, at 302; *see also, e.g., Business*, Oxford Dictionaries, <https://tinyurl.com/2xwhk38v> (online ed.). 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.21, 23.

It is of no moment that GA-38’s mask-mandate prohibition applies at the local level: as the Eighth Court 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 v. State*, 92 S.W.2d 1011, 1015 (Tex. 1936); *cf. supra* at 7-9. Thus, “had the Legislature meant to so limit the term, 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); *see id.* at 824 (looking at other uses of the term). It did not do so in the Disaster Act, which uses “state agency” when it means “state agency.” *See, e.g., Gov’t Code* §§ 418.013(b), .0155(b), .016(e). Therefore, a rule limiting the Governor’s authority to suspending actions by state agencies would ignore the “cardinal rule of statutory construction” that “different words used in the same . . . statute are

assigned different meanings whenever possible.” *Liverman v. State*, 448 S.W.3d 155, 158 (Tex. App.—Fort Worth 2014), *aff’d*, 470 S.W.3d 831 (Tex. Crim. App. 2015).

The provisions of the Health and Safety Code that plaintiffs cite are similarly not “regulatory statute[s]” about “state business.” MR.13 (citing Tex. Health & Safety Code §§ 121.003, .021, .024, 122.006). They argue 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 122.06 of the Health and Safety Code. MR.14. But section 122.06 merely permits home-rule municipalities (which do not include counties) to “adopt rules to protect the health of persons in the municipality,” —it says nothing of whether the Governor, in times of emergency, may suspend that authority or whether the health and safety of Texans statewide is “state business.” It plainly is. Giving that term a contrary reading would hamper the broad authority the Legislature granted to the Governor to act in times of crisis. *See El Paso County*, 618 S.W.3d at 824.

2. 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—in forming a statewide response to a disaster. Tex. Gov’t Code § 418.016(a). In *Abbott v. Anti-Defamation League Austin, S.W., & Texoma Regions*, the Texas Supreme Court expressly 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 what 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 this 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.21, 23. And the Governor has decided that allowing hundreds of different 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 “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, or even a district court.

#### **D. The Disaster Act is Constitutional.**

Finally, plaintiffs are wrong to contend that section 418.016 unconstitutionally delegates to the Governor the authority to suspend laws. MR.15. Unlike the federal

constitution, the Texas Constitution has an express separation-of-powers clause. Tex. Const. art. II, § 1. Unsurprisingly, the Texas Constitution vests “legislative power” in the Legislature. *See* Tex. Const. 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.

The Texas Supreme 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) (quoting *Mistretta v. United States*, 488 U.S. 361, 415 (1989) (Scalia, J., dissenting)). 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.*; *see Boll Weevil*, 952 S.W.2d at 467 (noting that “the nondelegation doctrine [is] sparingly applied”) (citations omitted).

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.* Subsections 418.014(d)-(e) describes what the declaration must include and how to disseminate it.

As plaintiffs acknowledge, section 418.016(a) further permits the Governor to suspend certain regulatory laws and rules. In effect, the Legislature decreed that certain regulatory laws or rules can be suspended 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. This standard protects against arbitrary executive action and ensures that any executive order is focused on ameliorating the disaster through a coordinated response. 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) (citing *Sproles v. Binford*, 286 U.S. 374 (1932)). 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 does not violate the Constitution. It 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 as Time Is of the Essence.**

The Governor is also entitled to a writ of mandamus because he lacks an adequate remedy for the trial court’s unlawful action by ordinary appeal. In this instance, the trial court has declared that the Governor cannot act anywhere in Bexar County or San Antonio to manage a statewide disaster. The trial court set a temporary injunction hearing for August 16, but even if it were to issue a temporary injunction on that date, by then, innumerable other counties, cities, and other political subdivisions will have issued their own disaster-response orders—splintering the State’s ability to achieve an orderly, cohesive, and uniform response to the COVID-19 pandemic. Assuming that these orders *can* be undone (which depending on their exact content may not be possible), it will require the investment of innumerable resources from the State—resources that are needed to respond to this and any future



disasters. The Governor's injury is therefore both immediate and ongoing, and any recourse to the regular channels of appellate review will come too late, as this injury grows more acute each passing day. 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 the petition for a writ of mandamus and either vacate or reverse the trial court's temporary restraining order.

Respectfully submitted.

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Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

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Counsel for Relator

## **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

## **CERTIFICATE OF SERVICE**

On August 12, 2021, this document was served electronically on Deborah Klein, Deborah.klein@sanantonio.gov; William Christian, wchristian@gdhm.com; Marianne Nitsch, mnitsch@gdhm.com; Larry Roberson, lroberson@bexar.org; and Joe Gonzales, Gonzales.joe@bexar.org.

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

## **CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this brief contains 4433 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

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

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

---

**In the Court of Appeals  
for the Fourth Judicial District  
San Antonio, 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 45th Judicial District Court, Bexar County

---

**APPENDIX  
TO  
THE PETITION FOR WRIT OF MANDAMUS**

---

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Counsel for Relator

---

## **CERTIFICATE OF SERVICE**

On August 12, 2021, this document was served electronically on Deborah Klein, Deborah.klein@sanantonio.gov; William Christian, wchristian@gdhm.com; Marianne Nitsch, mnitsch@gdhm.com; Larry Roberson, lroberson@bexar.org; and Joe Gonzales, Gonzales.joe@bexar.org .

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

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**TAB 1:**  
**TEMPORARY RESTRAINING ORDER**

CAUSE NO. 2021CI16133

CITY OF SAN ANTONIO and  
BEXAR COUNTY,  
Plaintiffs,

vs.

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

Defendant.

§  
§  
§  
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§  
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§

IN THE DISTRICT COURT

45<sup>th</sup> JUDICIAL DISTRICT

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.



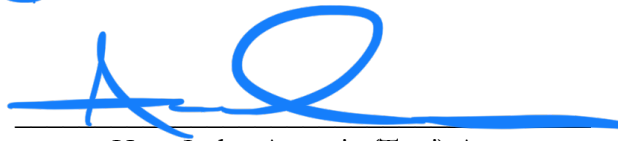
It is further ordered that Plaintiffs' application for a temporary injunction, as contained in the verified petition, be heard on the 16th day of August, 2021, at 9:00 a.m. The hearing will take place remotely on Zoom:

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:

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COUNSEL FOR DEFENDANT

**TAB 2:**  
**EXECUTIVE ORDER GA-38**



GOVERNOR GREG ABBOTT

July 29, 2021

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE

3:15 PM O'CLOCK

JUL 29 2021

Secretary of State

Mr. Joe A. Esparza  
Deputy Secretary of State  
State Capitol Room 1E.8  
Austin, Texas 78701

Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. Davidson", written over the typed name.

Gregory S. Davidson  
Executive Clerk to the Governor

GSD/gsd

Attachment

# 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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JUL 29 2021



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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- 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](http://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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JUL 29 2021

- 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, reading "Greg Abbott".

GREG ABBOTT  
Governor

ATTESTED BY:

A handwritten signature in black ink, reading "Joe A. Esparza".  
\_\_\_\_\_  
JOE A. ESPARZA  
Deputy Secretary of State

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SECRETARY OF STATE  
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JUL 29 2021

**TAB 3:**  
**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 4:  
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.](#)

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.


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TAB 5:  
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,<sup>1</sup> 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<sup>2</sup>, 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

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**TAB 6:**  
**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 7:  
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 (e), 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 (e), 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**

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

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**TAB 8:**  
**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 9:  
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 10:**  
**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

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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