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**In the Court of Appeals
for the Fifth Judicial District
Dallas, Texas**

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

Relator.

On Petition for Writ of Mandamus
to the 116th Judicial District Court, Dallas County

PETITION FOR WRIT OF MANDAMUS

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TABLE OF CONTENTS

	Page
Identity of Parties and Counsel	i
Index of Authorities	iv
Record References	vii
Statement of the Case	vii
Issues Presented	vii
Introduction.....	1
Statement of Facts	2
Argument.....	6
I. The Trial Court Clearly Abused Its Discretion by Granting a Temporary Restraining Order.....	6
A. The Legislature Deputized the Governor, Not a County Judge, to Manage Statewide Disasters.....	6
B. Judge Jenkins May Only Act as the Governor’s Agent Under the Disaster Act.	8
C. The Governor Suspended the Statutory Provision upon which Judge Jenkins Relies to Craft Local Rules for a Statewide Disaster.	11
D. The Temporary Restraining Order is Overbroad.....	15
II. The Governor Has No Adequate Appellate Remedy as Time is of the Essence.....	16
Prayer	17
Certificate of Service.....	17
Certificate of Compliance	17

INDEX OF AUTHORITIES

	Page(s)
Cases:	
<i>Abbott v. Anti-Defamation League Austin, S.W., & Texoma Regions</i> , 610 S.W.3d 911 (Tex. 2020)	14, 15
<i>Childress County v. State</i> , 92 S.W.2d 1011 (Tex. 1936).....	10, 13
<i>City of San Antonio v. City of Boerne</i> , 111 S.W. 3d 22 (Tex. 2003)	7
<i>Cnty. Health Sys. Prof'l Servs. Corp. v. Hansen</i> , 525 S.W.3d 671 (Tex. 2017)	8
<i>In re D & J Alexander Mgmt.</i> , 2014 WL 4723136 (Tex. App.—San Antonio Sept. 24, 2014, no pet.).....	16
<i>Exxon Mobil Corp. v. Rincones</i> , 520 S.W.3d 572 (Tex. 2017)	8
<i>Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.</i> , 561 U.S. 477 (2010).....	10
<i>Fuqua v. Taylor</i> 683 S.W.2d 735 (Tex. App.—Dallas 1984, writ ref'd n.r.e.).....	16
<i>Jaster v. Comet II Constr., Inc.</i> , 438 S.W.3d 556 (Tex. 2014).....	12
<i>Liverman v. State</i> , 448 S.W.3d 155 (Tex. App.—Fort Worth 2014), <i>aff'd</i> , 470 S.W.3d 831 (Tex. Crim. App. 2015).....	14
<i>Mapco, Inc. v. Carter</i> , 817 S.W.2d 686 (Tex. 1991)	16
<i>State v. Atwood</i> , 16 S.W.3d 192 (Tex. App.—Beaumont 2000, pet. ref'd)	9
<i>State v. El Paso County</i> , 618 S.W.3d 812 (Tex. App.—El Paso 2020, no pet.).....	7, 8, 9, 10, 12, 13, 15
<i>Super Starr Int'l, LLC v. Fresh Tex Produce, LLC</i> 531 S.W.3d 829 (Tex. App.—Corpus Christi-Edinburg, 2017, no pet.).....	15
<i>TGS-NOPEC Geophysical Co. v. Combs</i> , 340 S.W.3d 432 (Tex. 2011).....	8

Walker v. Packer,
827 S.W.2d 833 (Tex. 1992).....6

In re Woodfill,
470 S.W.3d 473 (Tex. 2015)..... 16

Statutes:

Tex. Gov’t Code:

§ 22.221(b)(1) viii

§ 352.051..... 9

§ 418.002(3)2

§ 418.002(4)2

§ 418.002(7)2

§ 418.011(1) 3, 10

§ 418.012 1, 3

§ 418.013(b) 13

§ 418.014(a)2

§ 418.014(c) 11

§ 418.015(c)1, 2, 6, 9

§ 418.016(a) 3, 11, 12

§ 418.017(a) 3, 10

§ 418.017(b)3

§ 418.018 11

§ 418.018(c)3, 6, 7, 9

§ 418.020(e)9

§ 418.108 5, 8, 11, 12

§ 418.108(i).....9

§ 418.108(i)(1)9

§ 418.108(2).....9

§ 418.108(a).....3

§ 418.108(d).....4

§ 418.108(f)..... 4, 9

§ 418.108(g)..... 4, 7, 8, 9

§ 418.108(h).....9

§ 418.108(h)(2).....9

§ 418.1807

Tex. Gov't Code:

§ 418.1015 10
§ 418.1015(a)..... 3, 8
§ 418.1015(b) 3, 5, 8

Other Authorities:

Business, Oxford Dictionaries, <https://tinyurl.com/2xwhk38v>..... 13
Restatement (Third) of Agency § 1.01 cmt. f (2006).....8

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: Dallas County Judge Clay Jenkins filed a counterclaim suit against the Relator Governor Greg Abbott seeking injunctive and declaratory relief prohibiting the Governor from enforcing Executive Order GA-38, which forbids local government entities from requiring individuals to wear face coverings. MR.9-82.

Respondents: The Honorable Tonya Parker, 116th Civil District Court, Dallas County

Respondents’ challenged actions: The trial court issued a temporary restraining order enjoining the Governor from enforcing GA-38 anywhere in the State. MR.1-9.

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

Dallas County's petition and the trial court's temporary restraining order depend on the premise that when Governor Greg Abbott and Dallas County Judge Clay Jenkins issue contradictory emergency orders, Jenkins's controls. The Legislature has mandated precisely the opposite. The Texas Disaster Act of 1975 definitively 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.84, 86. GA-38 further suspends the authority of local officials to issue orders which contradict GA-38—including Judge Jenkins. And the Disaster Act only empowers local officials, including Judge Jenkins, to act as an agent of the Governor in addressing a disaster. No agent may contradict the direction of his principal.

Nonetheless, Dallas County Judge Clay Jenkins has unilaterally taken it on himself to not only exercise powers proper belonging to the Governor, but to do so on a statewide basis through a temporary restraining order that blocks the Governor from implementing various provisions of GA-38 anywhere in the State. This order vests local officials in each Texas's 254 counties with the authority to decide if and how they will respond to a statewide emergency, which is precisely the opposite of the

hierarchy the Disaster Act contemplates. This was a clear abuse of discretion over which the Governor has no adequate remedy on appeal.

If not vacated, the district court's order will cause severe and irreparable harm to the State. The order reaches far beyond the parties to this lawsuit by purporting to enjoin the Governor on a statewide basis. And the Governor lacks an adequate remedy on appeal: the hearing on Judge Jenkins's temporary injunction is two weeks away, by which point innumerable local officials and school districts across the State will have ignored 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 extraordinary powers to meet that responsibility. The Governor may issue executive orders “the force and effect of law.” *Id.* § 418.012. He may suspend “any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency” 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 re-sources of state government and of political subdivisions 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 section 418.1015(a)’s directive that such an officer

acts as the Governor's agent, declaring such a local disaster triggers local or inter-jurisdictional 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 the light of the wide availability of COVID-19 vaccines. MR.84. 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.84, 86. 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.84, 86. 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.86.

To ensure "uniformity" in the State's response to the COVID-19 pandemic, GA-38 also 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.” MR.87.¹ This provision explicitly “supersede[s] any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided.” MR.87. 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 requirement.” MR.87.

C. Though GA-38 has existed for weeks—and analogous predecessor orders have been in place for months—Dallas County Judge Clay Jenkins filed the counterclaim underlying the current order on August 10. He requested a temporary restraining order, a temporary injunction, and a declaration that Judge Jenkins “has the full authority and discretion . . . to order mask mandates in the Commissioners court or in public”; that GA-38 “exceed[s] the authority delegated” to the Governor; and that Governor Abbott lacks the statutory authority to “prevent[] county judges or mayors from issuing orders . . . requiring face coverings.” MR.17.

Late in the evening on August 10, the 116th District Court issued a temporary restraining order forbidding the Governor from enforcing “paragraphs (3)(b), (3)(g), and (4)” of GA-38, which together prevent local governmental entities from imposing mask mandates in derogation of the Governor’s Executive Order. MR.7 (at 7). The trial court did not address the broad scope of the Governor’s powers under the

¹ There are exceptions in particular health care and criminal justice contexts, but they are not relevant here. MR.86-87.

Disaster Act. Instead, the trial court issued a statewide injunction based on its conclusion “[u]nder the Texas Disaster Act, *Judge Jenkins* is vested with authority to issue orders to protect the safety and welfare of Dallas County Citizens,” which includes “the option to mandate face coverings and masks in public.” MR.7 (emphasis added). The trial court justified this sweeping order on the ground that “[t]he harm of not being able to initiate such safeguards strongly outweighs the harm of complying with Governor Abbot’s Executive Order GA-38.” MR.7.

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 Trial Court Clearly Abused Its Discretion by Granting a Temporary Restraining Order.

A. The Legislature Deputized the Governor, Not a County Judge, to Manage Statewide Disasters.

The trial court’s order concludes that a County Judge’s view of how best to manage the COVID-19 pandemic should trump the Governor’s on a statewide basis. This holding cannot be reconciled with the Disaster Act. The Governor—not a county judge—“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 plainly and 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, Dallas County, no less than Texas’s other 253 counties, falls within the “disaster area”: GA-38 “renew[s] the disaster declaration for *all* Texas counties.” MR.84 (emphasis added). And GA-38’s prohibition on mask mandates controls “ingress and egress” to the locations in which Judge Jenkins wishes to implement a mask mandate, MR.17, and the “occupancy of those premises” because it authorizes the entry of individuals and occupancy of premises that would be otherwise prohibited under Judge Jenkins’s preferred regime.

Judge Jenkins cannot rely on similar language in Government Code, section 418.108(g)—which permits a county judge to “control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge”—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 2020, 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. “[N]o similar power [is] accorded to county judges.” *Id.* And were Judge Jenkins to try to assert such power by promulgating a mask mandate, the Governor’s Executive Order would control because “state law will eclipse inconsistent local law.” *Id.* (citing *City of San Antonio v. City of Boerne*, 111 S.W. 3d 22, 28 (Tex. 2003)).

B. Judge Jenkins May Only Act as the Governor’s Agent Under the Disaster Act.

Judge Jenkins cannot arrogate to himself the power to manage the response to a statewide emergency falters for an additional reason: to the extent that he may act under section 418.108 to address a locally-declared disaster, he can only do so as the Governor’s agent. Basic principles of agency law prohibit Judge Jenkins from contradicting GA-38.

To resolve any uncertainty as to the chain-of-command and scope of local officials’ power during a statewide disaster like the COVID-19 pandemic, the Disaster Act directs 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 are powerless to countermand the Governor’s emergency orders: “black letter law teaches that 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” are also consistent with the understanding 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). That section provides a textual limit on the scope of local officials' emergency power: an official 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). But that limit does not apply to their principal, 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) (describing shelter for persons “evacuated by . . . order of the governor”); *id.* § 418.018(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.”); *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. It is a political subdivision thereof. In view of the relation of a county to the state, the 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. Again, the Texas Disaster Act creates a chain of command with the Governor at its apex; it 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 accountable to voters for failing to do so. Gov’t Code § 418.011(1) (emphasis added). By statute, he has a broad range of powers to satisfy this responsibility, some of which overlap with the emergency power of local officials. *Supra* at 2-4, 6-7. 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 the President cannot fulfil his constitutional obligation to “take Care that the Laws be faithfully executed” if he is unable to supervise the officers who execute them). After all, under the Act, it is the “*legislature by law*” —

not a county judge and city mayor by local order—that may terminate the Governor’s use of his emergency powers. Gov’t Code § 418.014(c) (emphasis added).

Whether the subordinate nature of local officials’ emergency powers is textual, structural, or both, it prevents local officials’ attempts to issue orders that conflict with those of the Governor. For these reasons, § 418.108 does not give Judge Jenkins the power to issue any orders contrary to GA-38.

C. The Governor Suspended the Statutory Provision upon which Judge Jenkins Relies to Craft Local Rules for a Statewide Disaster.

Section 418.018 also cannot give Judge Jenkins 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. That provision—suspended here—is what authorizes “the governing body of a political subdivision” to declare and manage a local state of disaster in the first place. MR.87-88. Because Judge Jenkins wishes to rely on section 418.108 to impose mask mandates “in the Commissioners Court or in public,” he asked the trial court to countermand the Governor by holding that the Governor lacked the statutory authority to suspend section 418.108. MR.17, 21. The trial court did so based on its view that Judge Jenkins’s order is “sound, reliable, and backed by scientific evidence” and thus must be consistent with the Disaster Act, which “vest[s]

him with authority to issue orders to protect the safety and welfare of Dallas County Citizens,” MR.6.

But the Legislature did not empower the trial court to sit in judgment of the comparative worth of the Governor’s and County Judge’s policies. 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). It is the Governor, not the trial court, which the Legislature has empowered to decide whether a given order—or the decision to suspend a given law—is “sound” or “reliable.”

Though the trial court did not grapple with the Governor’s suspension authority, Judge Jenkins’s petition offered two arguments why it would not apply: (1) that GA-38’s provisions forbidding local governments from imposing mask mandates do not qualify as a law about “*state* business or rules of *state agencies*,” MR.14 (emphasis original); (2) that a mask-mandate prohibition does not “directly impact efforts to fight a disaster,” MR.15. Neither argument has merit.

1. Section 418.108 is a law addressing the conduct of “state business”—particularly when invoked to justify a statewide 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.) (giving “government business” as an example of “[w]ork that has to be done or matters that have to be attended to”). GA-38’s mask-mandate prohibition easily “fits the classic definition of” state business, *El Paso Cnty.*, 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.84, 86.

It is of no moment that GA-38’s mask-mandate prohibition applies at the local level: as the Eighth Court recently explained, the term “state business” does not “mean only the activities of state agencies and actors.” *El Paso Cnty.*, 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 8-11. 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 Cnty.*, 618 S.W.3d at 824 (collecting statutes); *see id.* at 824 (looking to “the use and definitions of the word in other statutes and ordinances”). 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).

2. Likewise, there is no merit to Judge Jenkins’s suggestion that GA-38’s mask mandate prohibition does not “directly impact efforts to fight a disaster,” MR.15 (Pet. at 7). The Texas Supreme Court has already rejected this argument as taking too narrow a view of the Governor’s power: In *Abbott v. Anti-Defamation League Austin, S.W., & Texoma Regions*, it 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 may “prevent, hinder, or delay necessary action in coping with a disaster.” 610 S.W.3d 911, 918 (Tex. 2020). There, 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, moving only in the direction of alleviating the disaster.” *Id.* Instead, the Governor may also consider “other important goals, such as promoting economic welfare [and] protecting constitutional rights.” *Id.* “Nothing in the Act suggests any limitation on the Governor’s ability to consider valid policy goals” when issuing or amending executive orders. *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.84, 86. And the Governor has decided that allowing hundreds of different local government entities to craft their own rules would imperil the “uniformity” of 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 Cnty.*, 618 S.W.3d at 819). As described above, the Governor holds that obligation—not a single County Judge or district court.

D. The Temporary Restraining Order is Overbroad.

Even if the order were otherwise lawful—and it is not—the breathtaking geographic scope of the injunction is reason enough to grant mandamus relief: at the behest of a single Dallas County official, the trial court issued a sweeping temporary restraining order blocking provisions of the Governor’s Executive Order *statewide*. “A trial court abuses its discretion by entering an overly-broad injunction which grants more relief than a plaintiff is entitled to by enjoining a defendant from conducting lawful activities or from exercising legal rights.” *Super Starr Int’l, LLC v. Fresh Tex Produce, LLC* 531 S.W.3d 829, 849 (Tex. App.—Corpus Christi-Edinburg, 2017, no pet.) (citation omitted). There can be no question here that the trial court

lacked the authority to issue statewide relief on behalf of governmental parties who are not even before the court. *See In re D & J Alexander Mgmt.*, 2014 WL 4723136, at * 3 (Tex. App.—San Antonio Sept. 24, 2014, no pet.) (citing *Mapco, Inc. v. Carter*, 817 S.W.2d 686, 687 (Tex. 1991)); *Fuqua v. Taylor* 683 S.W.2d 735, 738 (Tex. App.—Dallas 1984, writ ref'd n.r.e.).

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, a single trial court judge has—at the request of a single County Judge—declared that the Governor cannot act anywhere in the State to manage a statewide disaster for *at minimum* two weeks (when it has set a hearing on the larger temporary injunction). Even if it were to issue a temporary injunction immediately, 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.

KEN PAXTON
Attorney General of Texas

/s/ Judd E. Stone II
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CERTIFICATE OF SERVICE

On August 11, 2021, this document was served electronically on Charla G. Aldous, lead counsel for Clay Jenkins, via caldous@aldouslaw.com.

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

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this brief contains 4458 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 Fifth Judicial District
Dallas, 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 116th Judicial District Court, Dallas County

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

KEN PAXTON
Attorney General of Texas

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Assistant Solicitor General

Counsel for Relator

CERTIFICATE OF SERVICE

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

TABLE OF CONTENTS

	Tab
Temporary Restraining Order	1
Executive Order GA-38	2
Texas Gov't Code § 418.012.....	3
Texas Gov't Code § 418.015.....	4
Texas Gov't Code § 418.016.....	5
Texas Gov't Code § 418.018.....	6
Texas Gov't Code § 418.108.....	7
Texas Gov't Code § 418.1015	8

TAB 1:
TEMPORARY RESTRAINING ORDER

J.J. Koch,

Plaintiff,

v.

Clay Jenkins, in his Official Capacity

Counter-Plaintiff and Defendant,

v.

Greg Abbott, in his Official Capacity as

Governor of the State of Texas,

Counter-Defendant.

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

116th JUDICIAL DISTRICT

TEMPORARY RESTRAINING ORDER

This Court, having heard the Application for Temporary Restraining Order filed by Counter-Plaintiff and Defendant Clay Jenkins in his official capacity as County Judge of Dallas (referred to as “Judge Jenkins”) and all evidence and arguments of counsel with notice properly provided to Plaintiff J.J. Koch and Counter-Defendant Greg Abbott in his official capacity as Governor of the State of Texas, finds that (1) Counter-Plaintiff and Defendant Clay Jenkins has shown a probable right to the relief sought in his First Supplemental Counterclaim, Request for Declaratory Judgment, and Request for Temporary Restraining Order and Temporary Injunction (“Application”); and (2) Judge Jenkins and the Citizens of Dallas will suffer immediate, imminent, and irreparable harm for which there is no adequate remedy at law if a temporary restraining order does not issue against Counter-Defendant Governor Abbott.

The Court is of the opinion that immediate and irreparable injury, loss, or damage will result to Judge Jenkins and the citizens of Dallas County if Judge Jenkins is not allowed to exercise his statutory authority under Texas Government Code §418.108(g) and the Dallas County Declaration of Local Disaster to mandate face coverings and other mitigation strategies within

Dallas County, including within the Commissioners Court and other public places. Judge Jenkins and the citizens of Dallas County have and will continue to be damaged and injured by Governor Abbott's conduct, including, but not limited to Governor Abbott's enforcement of his Executive Order GA-38. These findings are based on the following facts¹:

1. Clay Jenkins is the duly elected Dallas County Judge. Judge Jenkins serves as the County chief-executive and presiding officer of its governing body. In his role, Judge Jenkins leads the County government in providing, among other services, safety protection for all citizens of Dallas County. As the chief presiding officer of Dallas County, Judge Jenkins is authorized to take certain actions as provided in the Texas Disaster Act for the safety and welfare of Dallas County citizens. Judge Jenkins has standing to bring this suit and to assert all claims.

2. The Texas Disaster Act clarifies the roles of various governmental authorities in responding to disasters. The COVID-19 epidemic falls within the purview of the Texas Disaster Act which sets forward the following among the purposes of the Act:

- (1) to reduce vulnerability of people and communities of this state to damage, injury, and loss of life...resulting from natural or man-made catastrophes;
- (2) to prepare prompt and efficient...care, and treatment of persons... victimized or threatened by disaster;
- (3) provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons...affected by disasters;
- (4) to clarify and strengthen the roles of the governor...and local governments in prevention of, preparation for, response to and recovery from disasters;

¹ The Court's findings of fact, in large part, are based on the Affidavit of Philip Huang, MD, MPH, the Director and Health Authority for the Dallas County Health and Human Services Department, together with the attachments thereto.

(5) authorize and provide for cooperation in disaster mitigation, preparedness, response, and recovery; and

(6) authorize and provide for coordination of activities relating to disaster mitigation, preparedness, response, and recovery by agencies and officers of this state, and similar state-local...activities in which the state and its political subdivisions may participate....²

3. County Judge Jenkins declared a local disaster on March 12, 2020. This declaration provided Judge Jenkins with legislative authority to perform certain acts under §418.108 of the Texas Government Code, including to control whether people are required to wear face coverings in public or in the Commissioners' Court.

4. On July 29, 2021, Greg Abbott issued "Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster." ("GA-38"). In that Order, Governor Abbott relied, in part, on Sections 418.016 (a) and 418.018 (c) of the Texas Government Code as authority for the issuance of GA-38.

5. In GA-38, Governor Abbott ordered, among others, that "...no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering" and that "...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." Counter-Defendant Abbott's Executive Order No. 38 also provided: "...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..." Counter-Defendant Abbott further ordered that any face-covering requirements (absent limited exceptions)

² See Tex.Gov't Code Ann. § 418.002.

imposed by any local governmental entity or official be superseded by his Order and that any laws that allow local government officials from enacting their own emergency declarations be suspended.

6. Dallas County is currently experiencing a surge in infections of 2019 novel coronavirus (COVID-19). As of August 6, 2021, Dallas County Health and Human Services is reporting a cumulative total of 276,813 confirmed cases of COVID-19 in Dallas County. The cumulative total probable case count in Dallas County is 46,060 cases. The total number of COVID-19 cases or probable cases is 322,873. Dallas County has experienced 4,224 deaths from COVID-19 as of August 6th.

7. Beginning in July of 2021, the number of positive PCR tests reported to Dallas County Health and Human Services began to rise dramatically. During the month of July 2021, positive PCR tests climbed from near 5% to almost 25%. Since the end of July and into August, the positive tests rate continues to climb.

8. The number of cases is growing quickly in Dallas County. From July 18, 2021, to July 31, 2021, Dallas County experienced approximately 360 cumulative COVID-19 cases per 100,000 individuals. The total new cases reported during that same period in Dallas County was 9,484. The provisional seven-day average of daily new confirmed and probable cases (by date of test collection) for CDC week 30 (week ending 7/31/2021), was 806, which is a rate of 30.6 daily new cases per 100,000 residents.

9. There continues to be risk to unvaccinated populations in Dallas County from the COVID-19 pandemic. For example, as of July 31, 2021, about 84% of COVID-19 cases diagnosed were Dallas County residents not fully vaccinated.

10. Dallas County medical infrastructure and hospitals are beginning to experience the strain of the surge of infections. As of August 8, 2021, Dallas County had 16 available staffed

adult ICU beds. As of August 9, 2021, Dallas County has approximately 682 confirmed COVID 14 inpatient hospitalizations with only 14 available staffed adult ICU beds.

11. According to UT Southwestern 's most recent COVID- 19 forecast and modeling as of August 9, 2021, the rate of COVID- 19 infections in Dallas County is reaching or has reached exponential growth rates. COVID-19 hospitalizations have increased in Dallas County by over 101% over the past two weeks and it is estimated that total COVID-19 hospitalizations are predicted to reach over 1,500 hospitalized cases by August 26.

12. Judge Jenkins regularly relies on information provided to him by various business leaders, community activists, healthcare providers and scientists including Philip Huang, MD, MPH, the Director and Health Authority for the Dallas County Health and Human Services Department. In making decisions to protect the safety and well-being of Dallas County Citizens, Judge Jenkins bases his decisions on sound medical evidence and is driven by the most up to date public and non-public data from, among others, the Dallas County Health and Human Services department, the University of Texas Southwestern Medical Center, and North Central Texas Trauma Regional Advisory Council.

13. As a result of the information shared with Judge Jenkins, on August 3, 2021, Judge Jenkins moved the county-wide risk level from color-coded Orange: Extreme Caution to the most serious color-coded risk level of Red: High Risk of Transmission. This move was made to assist in fighting the escalating trajectory or cases and the spread of the Delta-variant of COVID-19, which appears to account for approximately 78% of sequenced strains of COVID-19 in the last two weeks from the UT Southwestern Medical Center.

14. Judge Jenkins is deeply concerned about the health and safety and welfare of the citizens, including the unvaccinated and children, of Dallas County based on UT Southwestern 's

most recent COVID- 19 forecast and modeling and the reported exponential growth rates. According to information on which Judge Jenkins relies, COVID-19 hospitalizations have increased in Dallas County by over 101% over the past two weeks and it is estimated that total COVID-19 hospitalizations are predicted to reach over 1,500 hospitalized cases by August 26.

15. Governor Abbott also remains concerned about the impact of the current surge of COVID-19 infections as evidenced by his directive to state agencies to use staffing agencies to find additional medical staff from outside of Texas and his request to the Texas Hospital Association that hospitals postpone elective medical procedures. These actions are inconsistent with a refusal to permit local governmental authorities to implement reasonable mitigation measures such as face mask requirements and establish that GA-38 is not necessary action to combat the pandemic.

16. Dallas County has higher infection and transmission rates than other counties and a localized response in Dallas County must be different than in a county that is not experiencing the exponential growth of COVID-19 infections and transmission rates that Dallas County experiencing.

17. Judge Jenkins cannot be precluded from implementing the mitigation strategies he believes are sound, reliable, and backed by scientific evidence on which he relies and must be able to mitigate the damage, injury, and potential loss of life related to the COVID-19 virus. Judge Jenkins and the Citizens of Dallas County will be irreparably harmed if Judge Jenkins is barred from engaging in mandatory mitigation practices, including face covering and mask mandates. Face coverings and masks are an effective mitigation strategy and can further reduce the spread of COVID-19.

18. Under the Texas Disaster Act, County Judge Jenkins is vested with authority to issue orders to protect the safety and welfare of Dallas County Citizens, which includes among other mitigation strategies, the option to mandate face coverings and masks in public. Fighting the virus is a public health crisis that threatens the lives and safety of Dallas County citizens. Dallas County citizens will be irreparably harmed if Judge Jenkins cannot initiate appropriate mitigation strategies, including the initiation of face covering and mask mandates to stop the transmission of COVID-19. The harm of not being able to initiate such safeguards strongly outweighs the harm of complying with Governor Abbott's Executive Order GA-38.

It is, therefore, **ORDERED, ADJUDGED, and DECREED** that that the Clerk of this Court issue a Temporary Restraining Order, operative until August 24, 2021, and pending the hearing ordered below, restraining Counter-Defendant Greg Abbott in his official capacity as Governor of the State of Texas or any of his agents, servants, employees, attorneys, representatives, or any persons in active concert or participation with Counter-Defendant Abbott who receive actual notice of this Order from:

Enforcing of Governor Abbott's Executive Order No. GA-38, paragraphs (3)(b), (3)(g), and (4).


The Court hereby sets the hearing on Plaintiff's application for temporary injunction for the 24th day of August 2021 at 1:00 p.m. in this Court. The purpose of the hearing shall be to determine whether this Temporary Restraining Order should be made a temporary injunction pending a full trial on the merits; and

Bond is set at FIVE HUNDRED DOLLARS (\$500.00). This Temporary Restraining Order shall enter upon Counter-Plaintiff and Defendant Clay Jenkins posting said bond with the clerk of this Court and shall expire as set forth below.

This Order expires on the 24TH day of August 2021, unless otherwise agreed by the parties or ordered by the Court.

IT IS SO ORDERED.

SIGNED this the 10th day of August 2021 at 6:43 p.m.



JUDGE PRESIDING

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

A handwritten signature in black ink, appearing to be "John H. Henshaw", written over a horizontal line. Below the line, the text "Secretary of State" is printed.

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 be "Gregory S. Davidson", written in a cursive style.

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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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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SECRETARY OF STATE
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JUL 29 2021

- 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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JUL 29 2021

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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- 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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SECRETARY OF STATE
3:15pm O'CLOCK

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.

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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.](#)

§ 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.

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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,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 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 (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

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 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

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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