

D-1-GN-22-000895

Cause No. _____

City of Denton, Texas	§	In the District Court
Plaintiff	§	
	§	
v.	§	455TH, DISTRICT COURT
	§	_____ Judicial District
	§	
Ken Paxton in his official capacity	§	
as Attorney General and individually	§	
and Greg Abbott in his official capacity	§	
as Governor and individually	§	
Defendants	§	Travis County, Texas

Plaintiff's Original Petition

Plaintiff the City of Denton ("Denton") files this Original Petition complaining of Defendants as follows:

Jurisdiction and Venue

This Court has jurisdiction over Defendants because Defendants are residents of Texas and because the Court has general jurisdiction over claims made against state officials for *ultra vires* acts and to interpret state statutes under the Declaratory Judgment Act.

This Court is the proper venue because Defendants are residents of Travis County and the facts and circumstances giving rise to Denton's claims occurred in Travis County.

Discovery Level

The case is appropriate for expedited consideration; so discovery should be conducted under Level 1. Tex. R. Civ. P 190.2.

Parties

The City of Denton is a chartered home-rule municipality under Texas state law. Defendant Ken Paxton is the Attorney General of the State of Texas. He may be served at 300 W. 15th St., Austin, Texas 78701. Defendant Greg Abbott is the Governor of the State of Texas. He may be served at 1010 Colorado St., Austin, Texas 78701

Facts

The Texas Attorney General's office sent the letter attached as Exhibit A to Denton's interim city manager threatening litigation if Denton did not reverse its policy requiring its employees to wear masks in certain circumstances. Denton's policy arises from its city council's emergency order generally prescribing the use of masks in the city.

Denton is tasked under the Texas Government Code with issuing emergency orders in the interest of public health anytime a disaster is declared by 1) the governor, 2) the county judge, or 3) the mayor. The emergency provisions of the Government Code make it clear that emergency orders from these three levels of government operate like a ratchet – the order mandating the highest degree of public health protection is superior to any others.

Furthermore, Denton is an employer of a great many people and **bears a responsibility** to care for the health and safety of its workforce. Denton employees with immune system conditions and those who care for vulnerable family members have expressed concern for their health to city management and **could request a reasonable accommodation of workplace masking** in the absence of a workforce mask requirement.

Defendant has created an **illegal interpretation** of the Government Code for the purpose of giving effect to the governor's order, GA-38, that purports to invalidate local mask ordinances among other things. GA-38 is directly contrary the emergency provisions of the Government Code. Defendant's threat to sue Denton **creates a justiciable controversy and compels Denton to seek this Court's assistance in maintaining the health and safety of its employees.**

Additionally, the Equal Employment Opportunity Commission ("EEOC") and the federal courts have explicitly approved mask mandates to create safe workplaces.

Cause of Action

Denton seeks the Court's ruling under the Texas Declaratory Judgment Act that GA-38 violates the emergency provisions of the Government Code and that Denton's local emergency orders are enforceable.

Denton further seeks the Court's ruling that Defendants exceeded their authority making them liable for *ultra vires* acts.

Denton prays for this and all other relief to which it is entitled including attorneys' fees.

Respectfully submitted,

/s/Philip Kingston
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For email contact and service regarding this case, please include email addresses for all listed attorneys in the To: field, and include amy.hoffee@cityofdenton.com in the Cc: field, until requested otherwise.

ATTORNEYS FOR PLAINTIFF
CITY OF DENTON, TEXAS



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 17, 2021

VIA EMAIL

Sara Hensley
Interim City Manager
City of Denton, Texas
215 E. McKinney St.
Denton, Texas 76201
Sara.Hensley@cityofdenton.com

Dear Ms. Hensley:

This week, City of Denton officials announced a local policy requiring individuals who work for the City of Denton to wear face masks in all common areas or suffer corrective action. This policy exceeds your city's authority as restricted by Governor Abbott's Executive Order GA-38, which states 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[.]"¹

The Governor's executive orders "have the force and effect of law" and supersede local regulations.² Courts have previously agreed.³ Moreover, the Texas Supreme Court has issued multiple orders staying lower court orders seeking to enjoin the Governor from asserting his authority to preempt local face-mask mandates.⁴ In particular, the Court has held that the status quo of gubernatorial oversight over the wearing of masks at both the state and local levels "should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments[.]"⁵ Importantly, the Court noted that its rationale applied to "[t]his case, and others like it."⁶

¹ See Executive Order GA-38, issued July 29, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.

² See, e.g., Tex. Gov't Code §§ 418.011-.012.

³ See, e.g., *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.—El Paso 2020, no pet.).

⁴ <https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-15-2021.aspx>;
<https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-26-2021/>.

⁵ https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/21-0720_STAY%20ORDER%20ISSUED_MAND_FILECOPY.pdf.

⁶ *Id.*

This office will pursue further legal action, including any available injunctive relief, costs and attorney's fees, penalties, and sanctions—including contempt of court—available at law against any local jurisdiction and its governing officials that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order. You are accordingly requested to rescind your policy by 12:00 p.m. February 22nd.

Sincerely,

A handwritten signature in blue ink that reads "Austin Kinghorn". The signature is written in a cursive, flowing style.

Austin Kinghorn
General Counsel