

1. Defendants are deliberately violating state law. In flouting GA-38's ban on mask mandates, Defendants challenge the policy choices made by the State's

commander in chief during times of disaster.<sup>1</sup> But the Texas Legislature made the Governor—not a patchwork of county judges, city mayors, superintendents, or school boards—the leader of the State’s response to and recovery from a statewide emergency.<sup>2</sup>

2. GA-38 is a statewide order, issued using statewide emergency powers, with a statewide legal effect. It has the force and effect of state law, and state law preempts inconsistent local law. Defendants disagree with Governor Abbott’s policy choice. But Defendants must recognize the fact that they are not above the law. Longview ISD’s mask mandate should be immediately enjoined.

**REQUEST FOR AN EXPEDITED HEARING ON THE STATE’S APPLICATIONS FOR A  
TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION**

3. Given the important and urgent issues raised in this action, the State requests an expedited setting on its applications for a temporary restraining order and a temporary injunction.

4. The State is seeking non-monetary relief. Discovery is intended to be conducted under Level 1.

**PARTIES**

5. Plaintiff is the State of Texas.

6. Defendant Longview Independent School District (“Longview ISD”) has approximately 8,400 students enrolled from Pre-Kindergarten to Grade 12.

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<sup>1</sup> See Tex. Gov’t Code § 418.015(c).

<sup>2</sup> *Id.* § 418.011.

7. Defendant Board of Trustees of Longview ISD is the board of trustees for Longview ISD.

8. Defendant Dr. James Wilcox is the superintendent of Longview ISD.

9. Defendants Michael Tubb, Brett Miller, Dr. Samir Germanwala, Virginia Northcutt, Shandreka “Shan” Bauer, Ted Beard, and Dr. Troy Simmons are members of the Longview ISD Board of Trustees.

10. Defendants may be served with process through Shandreka “Shan” Bauer, the president of the Longview ISD Board of Trustees, or through Dr. James Wilcox, the Longview ISD superintendent.

#### **JURISDICTION AND VENUE**

11. The subject matter in controversy is within the jurisdictional limits of this Court, and the Court has jurisdiction over the action under Article V, Section 8 of the Texas Constitution and section 24.007 of the Texas Government Code, as well as under sections 37.001 and 37.003 of the Texas Uniform Declaratory Judgments Act and section 65.021 of the Texas Civil Practice and Remedies Code.

12. Venue is proper in Gregg County under section 15.002(a)(1), (a)(2), and (a)(3), and under § 15.0151 of the Texas Civil Practices and Remedies Code.

#### **BACKGROUND**

##### **I. The Texas Disaster Act of 1975 Makes the Governor the Leader of the State’s Emergency Response.**

13. Two core purposes of the Texas Disaster Act of 1975 (“TDA”) are to: (1) mitigate the “damage, injury, and loss of life and property” resulting from a disaster;

and (2) “provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters.”<sup>3</sup>

14. The TDA names the Governor the “commander in chief” of the State’s response to a disaster<sup>4</sup> and makes him “responsible for meeting . . . the dangers to the state and people presented by disasters.”<sup>5</sup>

15. The TDA grants the Governor vast powers to meet this obligation, which include the power to: (1) issue executive orders carrying “the force and effect of law”;<sup>6</sup> (2) control the movement of persons and occupancy of premises;<sup>7</sup> (3) suspend statutes, orders, or rules;<sup>8</sup> and (4) use all available public resources, including resources of cities and counties.<sup>9</sup>

16. The TDA makes certain local officials “agents” of the Governor and gives them powers subordinate to the Governor’s.<sup>10</sup> Local officials who preside over an incorporated city or a county—meaning city mayors and county judges—are deemed “emergency management directors.”<sup>11</sup> These directors “serve[] as the governor’s designated agent in the administration and supervision of duties under this chapter.”<sup>12</sup> When serving in this capacity, these directors “may exercise the powers granted to the governor under this chapter on an appropriate local scale.”<sup>13</sup>

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<sup>3</sup> Tex. Gov’t Code § 418.002(1), (3).

<sup>4</sup> *Id.* § 418.015(c).

<sup>5</sup> *Id.* § 418.011.

<sup>6</sup> *Id.* § 418.012.

<sup>7</sup> *Id.* § 418.018(c).

<sup>8</sup> *Id.* § 418.016(a).

<sup>9</sup> *Id.* § 418.017(a).

<sup>10</sup> *Id.* § 418.1015(b).

<sup>11</sup> *Id.* § 418.1015(a).

<sup>12</sup> *Id.* § 418.1015(b).

<sup>13</sup> *Id.*

17. The TDA also allows these same local officials the power to control the movement of persons and the occupancy of premises in a local disaster area.<sup>14</sup> But as a power under “this chapter,” emergency management directors can wield it only in their capacities as the Governor’s “designated agent[s].”<sup>15</sup>

18. The TDA does not confer on county judges, city mayors, or any other local officials an independent power to issue emergency orders carrying the force and effect of law.

19. School districts are included in the definition of “local government entities” applicable to the TDA.<sup>16</sup> Although recognizing that school districts are “local governmental entities” under the TDA, the Legislature did not delegate to those school districts specific authority to respond to disasters. Instead, that authority was delegated to the Governor.<sup>17</sup>

## **II. GA-38 Protects Individual Autonomy in Making Personal Health Decisions.**

20. On July 29, 2021, Governor Abbott issued executive order GA-38.<sup>18</sup>

21. GA-38 seeks to create a uniform response to the COVID-19 pandemic, one that gives individuals the autonomy to make personal health decisions free from government control.<sup>19</sup>

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<sup>14</sup> *Id.* § 418.108(g).

<sup>15</sup> *Id.* § 418.1015(b).

<sup>16</sup> *See* Tex. Gov’t. Code § 418.004(10).

<sup>17</sup> *See id.* at §§ 418.011–.026.

<sup>18</sup> Ex. A. GA-38 is publicly available at <https://tinyurl.com/eo-ga-38>.

<sup>19</sup> *See id.* at 1.

22. Towards this end, GA-38 enacts limits 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.”<sup>20</sup>

23. Also, GA-38 protects businesses and other establishments from “COVID-19-related operating limits.”<sup>21</sup>

24. Further, GA-38 bans most state and local officials from mandating the wearing of facemasks.<sup>22</sup> GA-38 contains an exception that allows certain institutions—state supported living centers, government-owned hospitals, and jails—to require the wearing of facemasks.<sup>23</sup>

25. To ensure individual autonomy and promote uniformity, GA-38 supersedes conflicting local emergency orders.<sup>24</sup> For the same reasons, GA-38 also suspends certain listed statutes and any others “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.”<sup>25</sup>

26. Importantly, under GA-38, any person who wants to wear a facemask, get a vaccine, or engage in social distancing can still do so.<sup>26</sup> GA-38 “strongly encourage[s]” such practices.<sup>27</sup> But GA-38 leaves individuals free to follow the safe practices they should have already mastered over the last 18 months.<sup>28</sup>

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<sup>20</sup> *Id.* at 2–3.

<sup>21</sup> *Id.* at 3.

<sup>22</sup> *Id.* at 3–4.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.* at 3–4.

<sup>25</sup> *Id.* at 3–5.

<sup>26</sup> *Id.* at 4.

<sup>27</sup> *Id.* at 1.

<sup>28</sup> *Id.* at 3.

27. GA-38's prohibition on local officials' facemask mandates falls comfortably within Governor Abbott's broad power to "control ingress and egress to and from a disaster area and the movement of persons and occupancy of premises in the area."<sup>29</sup>

28. Specifically, GA-38's ban on facemask mandates controls "ingress and egress" to, "movement" in, and "occupancy of" a disaster area as it authorizes the entry of students into schools who would be prohibited if a school district was to require the wearing of facemasks. GA-38 also controls the conditions individuals may be subjected to when "occupying" premises in a disaster area.

### **III. Longview ISD Issues a Facemask Mandate in Defiance of GA-38.**

29. On or about August 20, 2021, Longview ISD's Superintendent Dr. James Wilcox announced a mask mandate for all students, staff, and visitors at district facilities. ("Longview ISD Mask Mandate").<sup>30</sup>

30. Defendant Dr. Wilcox provides that, "Our goal is to try to help our community understand that the mask is just a piece of cloth, it is not a political statement."<sup>31</sup>

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<sup>29</sup> Tex. Gov't Code § 418.018(c).

<sup>30</sup> Exhibit E, LONGVIEW ISD TO ISSUE TEMPORARY MASK MANDATE, available at <https://w3.lisd.org/news/article/08202021-mask.html>.

<sup>31</sup> Exhibit F, Courtney Stern, Longview News Journal, IT'S NOT A POLITICAL STATEMENT: LONGVIEW ISD SUPERINTENDENT SAYS DISTRICT'S NEW MASK MANDATE WAS NECESSARY, available at [https://www.news-journal.com/news/local/its-not-a-political-statement-longview-isd-superintendent-says-districts-new-mask-mandate-was-necessary/article\\_f2a5b828-05d9-11ec-a834-6b1f442c42f8.html](https://www.news-journal.com/news/local/its-not-a-political-statement-longview-isd-superintendent-says-districts-new-mask-mandate-was-necessary/article_f2a5b828-05d9-11ec-a834-6b1f442c42f8.html).

31. Defendants’ Facemask Order is barred by GA-38, which explicitly prohibits local officials such as Defendants from issuing facemask mandates in response to COVID-19.

32. On September 3, 2021, the Office of Attorney General sent a letter to Longview ISD Superintendent Wilcox, warning that the imposition of the mask mandate exceeded his authority and violated GA-38. The letter requested that Superintendent Wilcox, “rescind [the] local policy requiring masks in public schools or, alternatively, not enforce it pending the Texas Supreme Court’s disposition of the cases before it involving this issue. Otherwise, you face potential legal action brought by this office.”<sup>32</sup>

33. As of September 13, 2021, Longview ISD and Superintendent Wilcox have not rescinded the mandatory masking policy in response to the letter from Attorney General Paxton’s office, and furthermore, they have indicated their intent to continue defying GA-38.

#### **CLAIMS FOR RELIEF**

34. Pursuant to Texas’s Uniform Declaratory Judgment Act and *ultra vires* and preemption principles, the State alleges as follows:

35. GA-38 has the force and effect of law. GA-38 preempts school district rules that are in direct conflict with its prohibition on mask mandates. School districts’ general statutory authority does not allow them to violate GA-38. In the event of a conflict between school districts’ general authority and GA-38’s specific

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<sup>32</sup> Exhibit G, (Sept. 3, 2021, Office of the Attorney General letter to Superintendent Wilcox).



prohibition, GA-38's specific prohibition controls. Therefore, the State requests a declaration that the enactment and enforcement of Defendants' Facemask Order is invalid, unlawful, and constitutes an *ultra vires* act.

**APPLICATIONS FOR A TEMPORARY RESTRAINING ORDER**  
**AND A TEMPORARY INJUNCTION**

36. A temporary restraining order serves to provide emergency relief and to preserve the status quo until a hearing may be held on a temporary injunction.<sup>33</sup> "A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits."<sup>34</sup> The applicant must prove three elements to obtain a temporary injunction: (1) a cause of action against the adverse party; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.<sup>35</sup> These requirements are readily met here.

**I. The State will Likely Succeed on the Merits.**

37. The State will likely succeed on the merits because (1) GA-38 expressly preempts Defendants' Facemask Order and (2) Governor Abbott lawfully suspended Defendants' statutory authority to issue their Facemask Order.

**A. GA-38 Expressly Preempts Defendants' Facemask Order.**

38. The point is simple. Governor Abbott's emergency orders carry the force and effect of law.<sup>36</sup> His emergency orders, which are issued using statewide powers and which have a statewide legal effect, are effectively "state laws." Traditional

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<sup>33</sup> *Texas Aeronautics Commission v. Betts*, 469 S.W.2d 394, 398 (Tex. 1971).

<sup>34</sup> *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

<sup>35</sup> *Id.*

<sup>36</sup> Tex. Gov't Code § 418.012.

preemption principles dictate that when a state law conflicts with a local law, the state law controls.<sup>37</sup>

39. Here, GA-38 supersedes and preempts any local orders or local requirements that are inconsistent with GA-38.<sup>38</sup> Defendants' Facemask Order imposes facemask requirements that are at odds with, and expressly prohibited by, GA-38. As such, Defendants' Facemask Order is expressly preempted by GA-38 and thus should be enjoined.

40. A review of the Legislature's intent, which is a focus of a preemption analysis,<sup>39</sup> supports this conclusion. Recently, an array of public officials—the Governor, city mayors, county judges, public health authorities, school board trustees, etc.—have been relying on different statutes to issue conflicting orders on the facemask issue. One of these orders *must* control.

41. Of these officials, the Governor is the only one with the authority to issue (1) *statewide* emergency orders<sup>40</sup> (2) that explicitly carry the force and effect of *state* laws.<sup>41</sup> Also, the Governor is the only official made explicitly responsible for meeting the dangers to the state and its people presented by a disaster.<sup>42</sup> Further, the Governor is the only one with the emergency powers to suspend laws;<sup>43</sup> use all

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<sup>37</sup> See, e.g., *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 18–19 (Tex. 2016); see also *City of Laredo v. Laredo Merchants Ass'n*, 550 S.W.3d 586, 593 (Tex. 2018); *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013).

<sup>38</sup> Ex. A at ¶¶ 3–5.

<sup>39</sup> *BCCA Appeal Group, Inc.*, 496 S.W.3d at 8.

<sup>40</sup> See Tex. Gov't Code §§ 418.014–.015.

<sup>41</sup> *Id.* § 418.012.

<sup>42</sup> *Id.* § 418.011.

<sup>43</sup> *Id.* § 418.016(a).

available public resources, including resources of cities and counties;<sup>44</sup> and control the movement of persons and occupancy of premises on a statewide level.<sup>45</sup> The Legislature's intent is clear. In the event of a conflict, Governor Abbott's emergency orders control; his orders *must* have preemptive effect or else they are meaningless.

42. This conclusion is further supported by the principle that specific statutes control over local ones when a conflict is irreconcilable.<sup>46</sup> But here harmonization *is* possible: school districts' general authority is not abolished, but merely circumscribed, by GA-38's prohibitions. Just as the general authority of a board of trustees does not exempt a school district from complying with a municipal building code,<sup>47</sup> so too does that general authority not exempt a school district from complying with GA-38. GA-38's ban on mask mandates functions as a particular limit on school districts' general authority.

43. The TDA reflects the Legislature's comprehensive allocation of powers and responsibilities during declared disasters. School districts are subject to the TDA and GA-38 just like any other state law.<sup>48</sup> In the context of conflicting orders targeted at the subject of a declared disaster, the TDA is what controls, not the general-authority statutes Defendants will likely rely on when opposing this Petition.

44. Further, any alternative conclusion would have absurd and potentially disastrous results. As noted above, the Legislature gave only the Governor the

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<sup>44</sup> *Id.* § 418.017.

<sup>45</sup> *Id.* § 418.018.

<sup>46</sup> *See, e.g.*, Tex. Gov't Code § 311.026.

<sup>47</sup> *See Port Arthur Indep. Sch. Dist. v. City of Groves*, 376 S.W.2d 330, 334 (Tex. 1964).

<sup>48</sup> *Univ. Interscholastic League v. Midwestern Univ.*, 152 Tex. 124, 134, 255 S.W.2d 177, 183 (Tex. 1953) ("Nobody can question that the public schools of this state 'are quasi public entities and are subject to direct statutory control' by the Legislature.").

emergency power to issue orders carrying the force and effect of law. City mayors and county judges are not granted this specific power—and school boards are certainly not included in this grant of emergency authority.<sup>49</sup> And if the Governor’s orders under the TDA could not preempt school district rules, then county judges’ and city mayors’ orders—orders that are *not* imbued with the force and effect of law—could not preempt either. This inversion of authority would turn dozens of state and local emergency orders into impotent non-binding recommendations. It would make school board trustees, superintendents, and other local officials—individuals who the TDA does not even meaningfully contemplate—the true leaders of the State’s response to a statewide emergency. This is not what the Legislature intended when it enacted the TDA and it is not the law.

45. In sum, GA-38 was a lawful use of Governor Abbott’s power to preempt inconsistent local orders. It has the force and effect of state law and must be followed, regardless of whether local officials agree with it. Defendants acted *ultra vires* when they issued a facemask mandate barred by GA-38.

**B. Governor Abbott Suspended Defendants’ Authority to Issue a Mandatory Facemask Requirement Under the Circumstances.**

46. Governor Abbott, using his TDA-granted power,<sup>50</sup> suspended “any . . . relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to this COVID-19 disaster that are inconsistent with this executive order . . . .”<sup>51</sup> Under the circumstances, Defendants had no authority to

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<sup>49</sup> See Tex. Gov’t Code § 418.108.

<sup>50</sup> TEX. GOV’T CODE § 418.016(a).

<sup>51</sup> Ex. A at ¶ 5.

issue and enforce a mandatory facemask requirement that is expressly barred by GA-38. This makes Defendants’ Facemask Order invalid and their conduct *ultra vires*.

47. In *State v. El Paso County*, the El Paso Court of Appeals found that this suspension power should be interpreted broadly.<sup>52</sup> The court noted that the common dictionary meaning for the term “regulate” included “to control or supervise by means of rules and regulations.”<sup>53</sup> The court found that § 418.018 and the local emergency order issued thereunder fit within the “classic definition of regulation.”<sup>54</sup>

48. The court then analyzed the term “state business.” The court found that “state business” did not “mean only the activities of state agencies and actors.”<sup>55</sup> The court reasoned that, “had the Legislature meant to so limit the term, it would have said ‘official state business,’ as it has done in many other statutes.”<sup>56</sup> The court found that the local emergency order’s restrictions readily qualified as matters of “state business” under this interpretation.<sup>57</sup> The El Paso Court of Appeals’ reasoning applies equally here.

49. Realistically, in the context of a worldwide pandemic, even local disaster responses are matters of “state business,” especially when local officials are undermining the Governor’s attempt to craft a uniform statewide response to that pandemic. GA-38’s suspensions are valid under § 418.016(a).

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<sup>52</sup> 618 S.W.3d 812, 823–25 (Tex. App.—El Paso 2020, no pet.), mandamus dismissed (Nov. 20, 2020).

<sup>53</sup> *Id.* at 824 (citing various dictionaries).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* (citing Tex. Gov’t Code §§ 660.009, 660.043, 1232.003).

<sup>57</sup> *Id.*

50. To be clear, GA-38 is supported by two independent gubernatorial powers—the power to preempt and the power to suspend. Knock out just one of these powers, and GA-38 is lawful under the other. Defendants will need to invalidate both powers to overcome the State’s claims. Defendants will not be able to do so.

## **II. The State will be Irreparably Injured Absent an Injunction.**

51. The State’s injuries are irreparable. The Supreme Court of Texas recently held as much in *State v. Hollins*.<sup>58</sup>

52. There, the Court explained that a century’s worth of precedent establishes “the State’s ‘justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporation in accordance with law.’”<sup>59</sup> The Court noted that an *ultra vires* suit is a necessary tool to reassert the State’s control over local officials who are misapplying or defying State laws.<sup>60</sup> The Court reasoned: “[This] tool would be useless . . . if the State were required to demonstrate additional, particularized harm arising from a local official’s specific unauthorized actions.”<sup>61</sup>

53. The Court continued that “[t]he [State] would be impotent to enforce its own laws if it could not temporarily enjoin those breaking them pending trial.”<sup>62</sup> The Court found that, “[w]hen the State files suit to enjoin *ultra vires* action by a local

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<sup>58</sup> 620 S.W.3d 400, 410 (Tex. 2020).

<sup>59</sup> *Id.* (quoting *Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926)).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction.”<sup>63</sup>

54. Per *Hollins*, the irreparable injury requirement favors the State.

55. The El Paso Court of Appeals rightly viewed *Hollins* “as controlling” on the irreparable injury issue.<sup>64</sup>

### **III. Emergency Injunctive Relief is Necessary to Preserve the Status Quo.**

56. “The status quo is the last actual, peaceable, noncontested status which preceded the pending controversy.”<sup>65</sup> There was no controversy over Defendants’ Facemask Order until they issued that order, which occurred after Governor Abbott enacted GA-38. The State is merely asking to bring Defendants back to their position prior to their facemask mandate.

57. The Texas Supreme Court has given unequivocal direction to lower courts who are considering local officials’ attempt to usurp the Governor’s power to control the direction of the State’s response to the COVID-19 pandemic. The status quo favors the State.

58. Recently, the Texas Supreme Court overturned two temporary restraining orders and one temporary injunction enjoining GA-38’s ban on facemask mandates.<sup>66</sup> Each time, the Court overturned these injunctions because they altered the status quo.<sup>67</sup>

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<sup>63</sup> *Id.*

<sup>64</sup> *El Paso County*, 618 S.W.3d at 826.

<sup>65</sup> *Sharma v. Vinmar Intern., Ltd.*, 231 S.W.3d 405, 419 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

<sup>66</sup> See Exhibits B–D.

<sup>67</sup> *Id.*

59. The Court spoke in particularly clear and unmistakable terms in its most recent order dated August 26, 2021.<sup>68</sup> The Court explained that these facemask cases turn on a pure legal question: “[W]hich government officials have the legal authority to decide what the government’s position on [facemasks] will be.”<sup>69</sup> The Court continued: “The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels.”<sup>70</sup> The Court held that the status quo of “gubernatorial oversight” of disaster-related decisions “should remain in place while the court of appeals, and potentially this Court, examine the parties’ merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.”<sup>71</sup>

60. Texas Supreme Court precedent requires that this Court enjoin Defendants’ Facemask Order and restore the status quo of gubernatorial control. Binding precedent still matters, even during a pandemic.

#### **APPLICATION FOR A PERMANENT INJUNCTION**

61. The State also asks the Court to set its request for a permanent injunction for a trial on the merits, and after the trial, issue a permanent injunction as set forth above.

#### **PRAYER**

62. For the reasons discussed above, the State respectfully prays that this Court:

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<sup>68</sup> Exhibit D.

<sup>69</sup> *Id.* at ¶ 2.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*



- A. Through counsel below, enter an appearance for the State in this cause;
- B. Issue a temporary restraining order, which will remain in force until a temporary injunction hearing is held, restraining Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any other persons in active concert or participation with them who receive actual notice of the Order from enforcing Defendants' Facemask Order for as long as GA-38 (or a future executive order containing the same prohibitions) remains in effect;
- C. Set a date and time for a hearing on the State's application for a temporary injunction;
- D. Declare Defendants' Facemask Order to be invalid and unlawful;
- E. Issue preliminary and permanent injunctions that order Defendants to: (1) stop, or order stopped, all enforcement efforts of their Facemask Order; (2) rescind their Facemask Order; and (3) refrain from issuing any new emergency restrictions that conflict with GA-38;
- F. Award Supplemental Relief under Tex. Civ. Prac. & Rem. Code § 37.011 as necessary to enforce the declaratory judgment issued by this Court;
- G. Award attorneys' fees and costs; and
- H. Award any further relief that the Court deems just and proper.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

GRANT DORFMAN  
Deputy First Assistant Attorney General

SHAWN COWLES  
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/s/ Halie E. Daniels

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**ATTORNEYS FOR THE STATE OF TEXAS**

CAUSE NO. \_\_\_\_\_

STATE OF TEXAS,

*Plaintiff,*

V.

LONGVIEW INDEPENDENT  
SCHOOL DISTRICT, BOARD OF  
TRUSTEES OF LONGVIEW  
INDEPENDENT SCHOOL  
DISTRICT, DR. JAMES WILCOX,  
in his official capacity as  
superintendent of the Longview  
Independent School District, and  
MICHAEL TUBB, BRETT  
MILLER, DR. SAMIR  
GERMANWALA, VIRGINIA  
NORTHCUTT, SHANDREKA  
“SHAN” BAUER, TED BEARD,  
and DR. TROY SIMMONS in  
their official capacities as trustees  
of the Longview Independent  
School District,

*Defendants.*

IN THE DISTRICT COURT

ANGELINA COUNTY, TEXAS

JUDICIAL DISTRICT

**DECLARATION OF HALIE DANIELS IN SUPPORT OF THE STATE OF TEXAS’S VERIFIED  
ORIGINAL PETITION AND APPLICATIONS FOR TEMPORARY  
AND PERMANENT INJUNCTIVE RELIEF**

State of Texas

County of Travis

My name is Halie E. Daniels, my date of birth is January 5, 1989, and my address is P.O. Box 12548, Capital Station Austin, Texas 78711, USA. I declare under penalty of perjury that the facts contained in the State of Texas's Verified Original Petition and Applications for Temporary and Permanent Injunctive Relief are true and

correct. This verification is based on my review of the State and local emergency orders in question and other publicly available materials which this Court will be able to take judicial notice of.

Executed in Travis County, State of Texas, on the 13th day of September 2021.

/s/ Halie E. Daniels  
Declarant



GOVERNOR GREG ABBOTT

July 29, 2021

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
3:15pm O'CLOCK

JUL 29 2021

Secretary of State

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

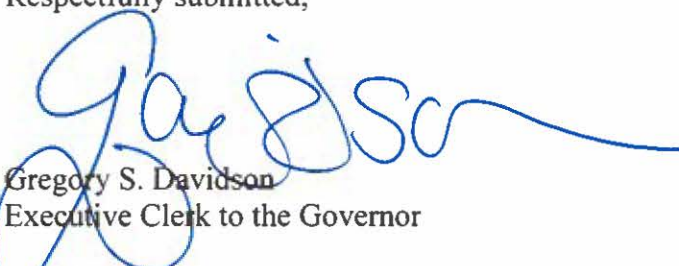
Dear Deputy Secretary Esparza:

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,

  
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.*

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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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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](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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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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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 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

**IN THE SUPREME COURT OF TEXAS**

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No. 21-0687

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

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ON PETITION FOR WRIT OF MANDAMUS

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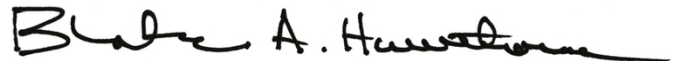
**ORDERED:**

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

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

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

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



BLAKE A. HAWTHORNE, CLERK  
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

**IN THE SUPREME COURT OF TEXAS**

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No. 21-0686

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

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ON PETITION FOR WRIT OF MANDAMUS

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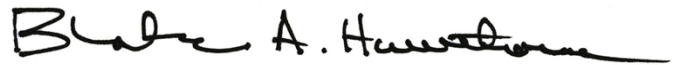
**ORDERED:**

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The Temporary Restraining Order, dated August 10, 2021, in Cause No. DC-21-10101, styled *Clay Jenkins, in his Official Capacity v. Greg Abbott, in his Official Capacity as Governor of the State of Texas*, in the 116th District Court of Dallas County, Texas, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

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

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

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



BLAKE A. HAWTHORNE, CLERK  
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

**IN THE SUPREME COURT OF TEXAS**

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No. 21-0720

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

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ON PETITION FOR WRIT OF MANDAMUS

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**ORDERED:**

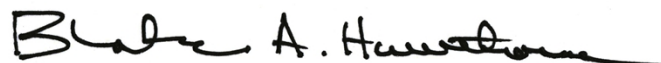
1. Relator's emergency motion for temporary relief, filed August 23, 2021, is granted. The order on Appellees' Rule 29.3 Emergency Motion for Temporary Order to Maintain Temporary Injunction in Effect Pending Disposition of Interlocutory Appeal, filed August 17, 2021, in Cause No. 04-21-00342-CV, styled *Greg Abbott, in his official capacity as Governor of Texas v. City of San Antonio and County of Bexar*, in the Court of Appeals for the Fourth Judicial District, dated August 19, 2021, is stayed pending further order of this Court.

2. As we previously held in staying the trial court's temporary restraining order in the underlying case, the court of appeals' order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's decision on the merits of the appeal. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). This case, and others like it, are not about whether people should wear masks or whether the government should make them do it. Rather, these cases ask courts to determine which government officials have the legal authority to decide what the government's position on such questions will be. The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels. That status quo should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.

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

EXHIBIT D

Done at the City of Austin, this Thursday, August 26, 2021.

A handwritten signature in black ink, appearing to read "Blake A. Hawthorne". The signature is fluid and cursive, with a long horizontal stroke at the end.

BLAKE A. HAWTHORNE, CLERK  
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK





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Let's Talk!, Longview ISD

# Longview ISD to issue temporary mask mandate

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Fri Aug 20, 2021

**In response to the current rise in COVID-19 cases in our district and surrounding community, Longview Independent School District will be issuing a mask mandate, effective Monday, Aug. 23rd.**

Beginning Monday, all students, staff, and visitors at Longview ISD must wear face coverings at district facilities.

Known cases of COVID-19 among Longview ISD students and staff are currently higher than they were last year and positive cases are emerging at alarming rates. As of 3 p.m. Friday, Aug. 20 there are **28** active student cases (0.35 percent) and **38** active employee cases (1.52 percent) of COVID-19 in Longview ISD.

**[Click here to see the full COVID-19 report.](#)**

The safety of our students and staff is our first priority. So, to help mitigate the spread in our district as successfully as we did during the 2020-21 school year, a mask mandate is necessary at this time. The combination of face covering, handwashing, and social distancing is proven to reduce the spread, and our hope is that the same measures will render positive results this year.

All COVID-related protocols are subject to change as directives are provided by governing authorities and/or health officials or as circumstances evolve. We will be sure to keep you informed on our district website, social media, and through all-calls/emails.

FAMILY/PARENT

STUDENT

COMMUNITY

EMPLOYEE

Connect with us

**Longview Independent School District**

1301 East Young Street

Longview, TX 75602

(903) 381-2200

Longview Independent School District does not discriminate on the basis of race, religion, color, national origin, sex, disability or genetic information in providing educational services, activities and programs, including vocational programs, in accordance with Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Educational Amendment of 1972. The Deputy Superintendent of District Services has been designated to coordinate compliance with the non-discrimination requirements of Title IX of the Education Amendments of 1972, as amended. The Director of State Assessments coordinates compliance with the requirements of Section 504 of the Rehabilitation Act of 1972.



Let's Talk!, Longview ISD

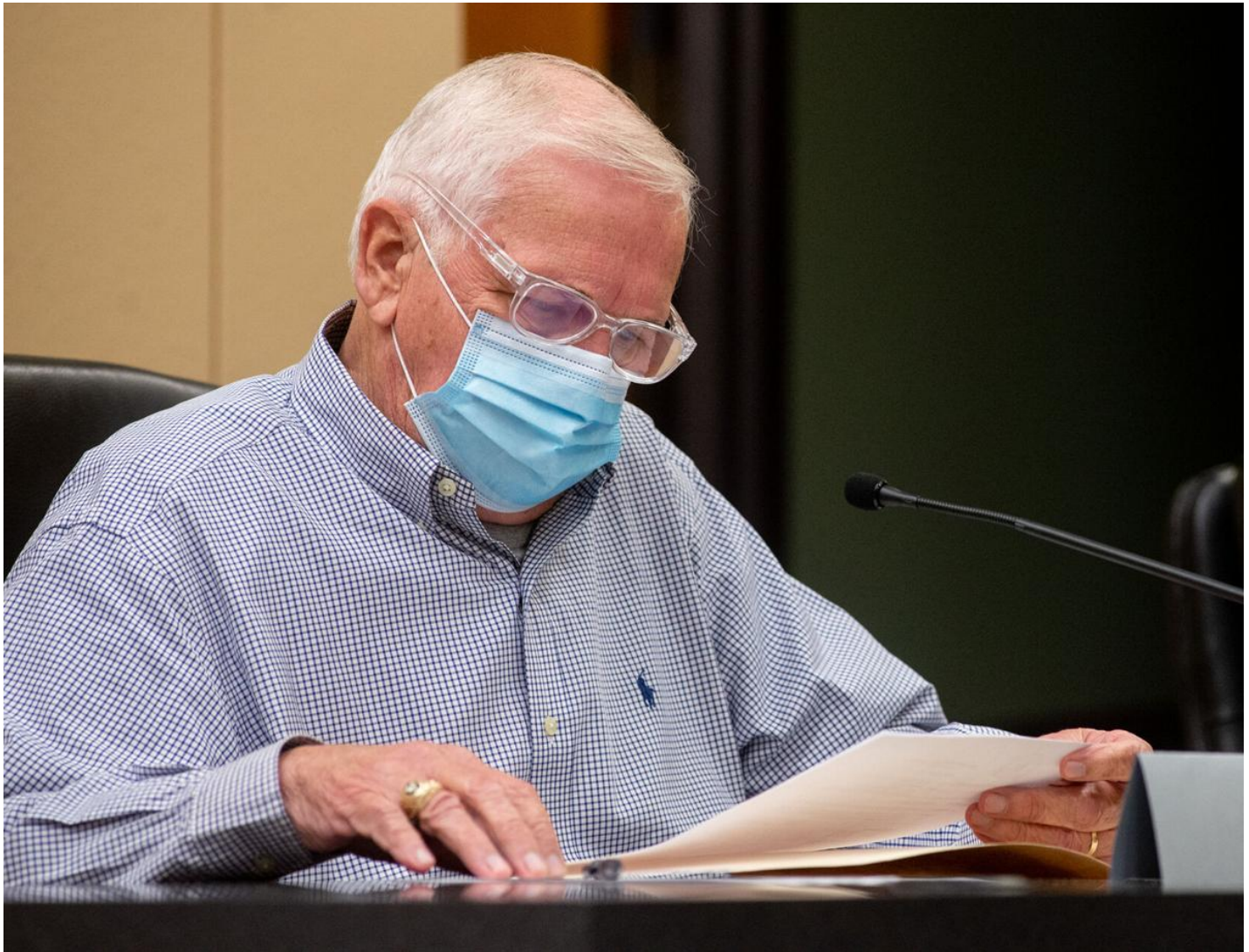


[https://www.news-journal.com/news/local/its-not-a-political-statement-longview-isd-superintendent-says-districts-new-mask-mandate-was-necessary/article\\_f2a5b828-05d9-11ec-a834-6b1f442c42f8.html](https://www.news-journal.com/news/local/its-not-a-political-statement-longview-isd-superintendent-says-districts-new-mask-mandate-was-necessary/article_f2a5b828-05d9-11ec-a834-6b1f442c42f8.html)

## 'It's not a political statement': Longview ISD superintendent says district's new mask mandate was necessary

By Courtney Stern [csfern@news-journal.com](mailto:csfern@news-journal.com)

Aug 25, 2021



Superintendent James Wilcox is seen in November during a Longview ISD board meeting.

Michael Cavazos/News-Journal File Photo

Longview ISD Superintendent James Wilcox said Wednesday that the district's recently implemented mask mandate isn't political.

“Our goal is to try to help our community understand that the mask is just a piece of cloth, it’s not a political statement,” Wilcox said at Wednesday’s board meeting. “We are asking our students, our staff to work to show respect to the person next to them, the person down the hall, the person that might have whatever in their life or in their family.”

The district issued the mandate, which began Monday, in response to a rise in COVID-19 cases among its campuses.

“We have multiple times over, more students and more faculty contract COVID after one week than we had at any point last year during the pandemic,” Wilcox said. “Our desire is to maintain open school, face-to-face learning.”

According to a statement released Friday by the district, all students, staff and visitors must wear face coverings at district facilities.

Cases of COVID-19 among students and staff are higher than this past year, the statement said, and “cases are emerging at an alarming rate.”

“We felt like this was something we did not have a choice in,” Wilcox said.

Through the 2020-21 school year, Wilcox said the district had one of the lowest COVID-19 absentee rates in the area, and the district would like to maintain that.

He said the decision to mandate masks was not taken lightly.

“It was with a great deal of deliberation, and this is something that the leadership team will continue to review,” Wilcox said.

He added that as of Wednesday, masks are not required for outdoor activities, including sporting events.

As of 2 p.m. Wednesday, the district has reported 99 active student COVID-19 cases and 41 active staff cases, which is an increase from Friday’s totals. On Friday, 28 active student COVID-19 cases and 38 active employee cases were reported through the district’s dashboard.

Since school started, there have been 104 total student cases and 60 staff cases across Longview ISD.

During Wednesday’s board meeting, several staff shortages were mentioned connected to COVID-19, including a lack of food service workers.

Wilcox said a virtual learning plan is being considered for students who must quarantine due to COVID-19 and for students who are ill.

He said the district would like to provide options for students to keep them from falling behind throughout the school year should they need to stay home.

State funding has not yet been made available for virtual learning, although a Texas House committee recently advanced a bill that would provide money to districts with certain conditions, The Texas Tribune reported.

Longview ISD's move on face coverings no longer defies a statewide ban on mask mandates previously issued by Gov. Greg Abbott after the Texas Supreme Court declined this past week to block restraining orders against the ban.

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## How Dogs Cry For Help: 3 Warning Signs Your Dog Is Crying For Help

By DogFoodExpose.com

How Dogs Cry For Help: 3 Warning Signs Your Dog Is Crying For Help

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### Courtney Stern

Courtney Stern is a public safety reporter covering a wide range of topics. She grew up in Baltimore and later earned a journalism degree from the University of Miami. Stern moved to East Texas from Iowa with her husband and two dogs, Pebbles and Bam Bam.



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 3, 2021

***VIA EMAIL***

Dr. James E. Wilcox  
Superintendent, Longview ISD  
PO BOX 3268  
Longview, TX 75606  
jewilcox@lisd.org

Dear Dr. Wilcox:

Your district recently enacted a local policy mandating that students and faculty wear face masks while at school. This mandate exceeds your district'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[.]"<sup>1</sup>

The Governor's executive orders "have the force and effect of law" and supersede local regulations.<sup>2</sup> Courts have previously agreed.<sup>3</sup> Moreover, the Texas Supreme Court has now issued three orders staying lower court orders seeking to enjoin the Governor from asserting his authority to preempt local face-mask mandates.<sup>4</sup> Most recently, the Court stated that its stay order applies to "[t]his case, and others like it" and 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[.]"<sup>5</sup>

The Texas Supreme Court has spoken. Local court orders purporting to enjoin the Governor's authority may not be enforced while appellate courts consider the underlying merits of these cases. 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

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<sup>1</sup> 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](https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf).

<sup>2</sup> See, e.g., Tex. Gov't Code §§ 418.011-.012.

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

<sup>4</sup> <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/>.

<sup>5</sup> [https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/21-0720\\_STAY%20ORDER%20ISSUED\\_MAND\\_FILECOPY.pdf](https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/21-0720_STAY%20ORDER%20ISSUED_MAND_FILECOPY.pdf).

against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

I ask you to rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Texas Supreme Court's disposition of the cases before it involving this issue. Otherwise, you face potential legal action brought by this office.

Sincerely,

A handwritten signature in blue ink that reads "Austin Kinghorn". The signature is fluid and cursive, with the first name "Austin" and last name "Kinghorn" clearly legible.

Austin Kinghorn  
General Counsel

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Bonnie Chester on behalf of Christopher Hilton  
Bar No. 24087727  
bonnie.chester@oag.texas.gov  
Envelope ID: 57191369  
Status as of 9/14/2021 8:23 AM CST

#### **Case Contacts**

<b>Name</b>	<b>BarNumber</b>	<b>Email</b>	<b>TimestampSubmitted</b>	<b>Status</b>
Halie Daniels		Halie.Daniels@oag.texas.gov	9/13/2021 2:30:22 PM	SENT
Renee IGuerrero-Adams		Renee.Guerrero-Adams@oag.texas.gov	9/13/2021 2:30:22 PM	SENT
Christopher Hilton		christopher.hilton@oag.texas.gov	9/13/2021 2:30:22 PM	SENT