

CAUSE NO. ____

LA JOYA INDEPENDENT SCHOOL	§	IN THE DISTRICT COURT
DISTRICT, EDINBURG	§	
CONSOLIDATED INDEPENDENT	§	
SCHOOL DISTRICT, HIDALGO	§	
INDEPENDENT SCHOOL DISTRICT,	§	
BROWNSVILLE INDEPENDENT	§	
SCHOOL DISTRICT, CROWLEY	§	
INDEPENDENT SCHOOL DISTRICT,	§	
AND EDCOUCH-ELSA INDEPENDENT	§	____ JUDICIAL DISTRICT
SCHOOL DISTRICT	§	
Plaintiffs	§	
	§	
v.	§	
	§	
GREG ABBOTT, in his official capacity	§	
as Governor of Texas	§	TRAVIS COUNTY, TEXAS
Defendant	§	

PLAINTIFFS’ ORIGINAL VERIFIED PETITION FOR DECLARATORY JUDGMENT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs La Joya ISD, Edinburg CISD, Hidalgo ISD, Brownsville ISD, Edcouch-Elsa ISD, and Crowley ISD bring this action against Defendant Greg Abbott, in his official capacity as Governor of Texas and would show the Court that Governor Abbott’s attempt to prevent school districts in Texas from safely providing in-person classroom instruction to their students is an *ultra vires* and unlawful act that exceeds his authority under the Texas Disaster Act and violates the limits of his authority under the Texas Constitution.

**I.
FACTS**

1. School districts across Texas have been on the front lines of the coronavirus (COVID-19) pandemic. For the past year and a half, local school districts have risen to the occasion and taken seriously their obligation to provide quality education to Texas schoolchildren

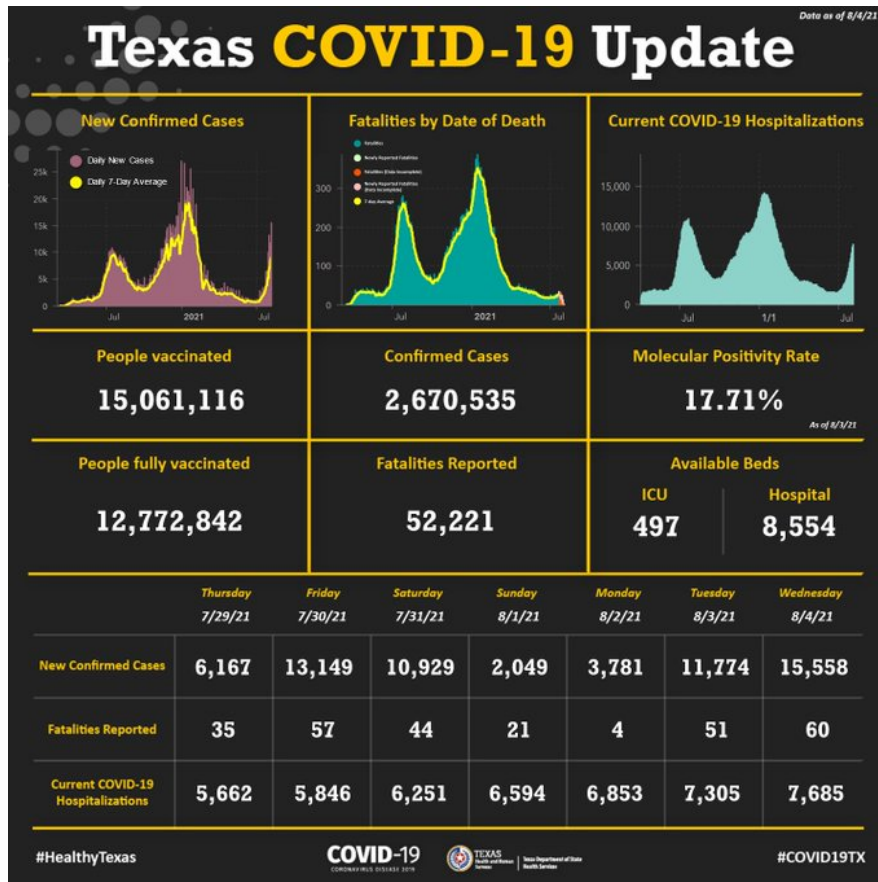
while also protecting the health and safety of their students, teachers, staff, and local communities in the midst of this pandemic. Although COVID-19 continues to pose an imminent threat of disaster for all counties in the State of Texas, the Governor has recently issued an executive order that prevents school districts from taking a basic safety precaution — recommended by the Center for Disease Control and Prevention, the Texas Department of State Health Services, and the American Academy of Pediatrics — that would allow school districts to provide in-person instruction to their students.

2. The Governor has no authority to prevent local school districts from adopting local mask mandates that protect health and safety and allow in-person learning. And it is vital for local school boards to be able to adopt basic safety measures on a local level to allow in-person education.

3. On March 13, 2020, the Governor issued a disaster proclamation based on the imminent threat posed by the COVID-19 pandemic. Every month since then, the Governor has renewed his proclamation recognizing that COVID-19 poses an imminent threat of disaster for all counties in the State of Texas. Since the Governor's initial proclamation, more than 50,000 Texans have died of COVID-19 and in January 2021 approximately 15,000 Texans were lying in hospital beds due to COVID-19.

4. With the introduction of the COVID-19 vaccines earlier this year, it seemed that there might be a light at the end of the tunnel. The number of deaths, hospitalizations, and infections began declining in early 2021 once vaccines became available in Texas. And by June 2021 the number of COVID-19 hospitalizations had decreased to fewer than 1,500 Texans. That all changed with the arrival of the highly-contagious and virulent delta variant of COVID-19.

5. Despite the benefits provided by the COVID-19 vaccine, the number of hospitalizations due to COVID-19 began to sharply increase in July 2021 as a result of the delta variant, and the number of hospitalizations is only continuing to grow as shown by the following data from the Texas Department of State Health Services:



6. This data is particularly troubling for school districts because Texas schoolchildren under the age of 12 cannot currently be vaccinated. Based on data from the Texas Department of State Health Services, 99.5% of the COVID-19 deaths since February 2021 have been people who were unvaccinated. For these vulnerable, young children in our schools, who cannot be vaccinated, simple safety precautions like face coverings and social distancing are vital to protecting their health and safety.

7. This data is also troubling because currently less than 50% of the Texas population is fully vaccinated, which means that providing in-person classroom instruction without appropriate safety measures threatens the health and safety of the broader community. And it also threatens the ability of school districts to provide a quality education because students who have or are suspected of having COVID-19 must be excluded from attending school for at least ten days under guidance from the Texas Department of State Health Services.¹

8. The Centers for Disease Control and Prevention has issued guidance to prevent the spread of COVID-19 in schools because the CDC recognizes that students “benefit from in-person learning” and that “safely returning to in person instruction in the fall 2021 is a priority.”² In light

¹ See <https://dshs.texas.gov/covid19readmission/>. This guidance currently states the following:

Coronavirus disease 2019 commonly referred to as COVID-19 is a disease requiring exclusion from school under 25 Tex. Admin. Code § 97.7.

A school administrator shall exclude from attendance any child having or suspected of having COVID-19. Exclusion shall continue until the readmission criteria for the conditions are met. The readmission criteria for COVID-19 is as follows:

If symptomatic, exclude until at least 10 days have passed since symptom onset, and fever free*, and other symptoms have improved. Children who test positive for COVID-19 but do not have any symptoms must stay home until at least 10 days after the day they were tested.

*Fever free for 24 hours without the use of fever suppressing medications. Fever is a temperature of 100° Fahrenheit (37.8° Celsius) or higher.

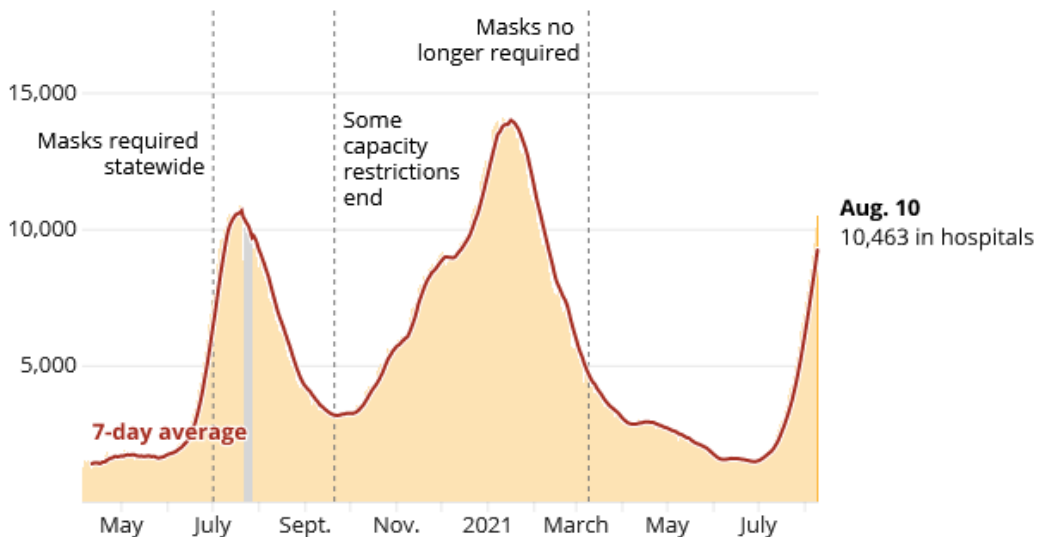
For a complete list of all disease requiring exclusion from school and the readmission criteria, please visit [DSHS School Health Recommendations for the Prevention and Control of Communicable Diseases in a Group-Care Setting](#).

² See <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>.

of this priority, the CDC recommends “universal indoor masking by all students (age 2 and older), staff, teachers, and visitors to K-12 schools,” in addition to other safety measures such as physical distancing.

9. Like the CDC, the Texas Department of State Health Services also recommends indoor masking to prevent spread of COVID-19: “Vaccination is the best tool we have to protect people and communities from COVID-19. But vaccinated or not, wearing a mask in indoor public spaces can help protect you and everyone close to you.”³

10. The last time Texas suffered from a sharp increase in COVID-19 hospitalizations, the Governor issued a statewide mask mandate:⁴



A year later, in a head-scratching decision given the disturbing surge of COVID-19

³ See <https://www.dshs.texas.gov/coronavirus/faq.aspx#mask>.

⁴ Texas Tribune, *With the delta variant spreading, Texas hospitalizations are increasing quicker than at Any Other Point in the Pandemic* (updated August 11, 2021), available at <https://apps.texastribune.org/features/2020/texas-coronavirus-cases-map/>.

hospitalizations, the Governor has not only failed to issue any statewide mask mandate, he is attempting to prevent local governmental entities — including local school districts — from adopting mask mandates.

11. Ignoring guidance from the CDC and Texas DSHS, Governor Abbot issued Executive Order GA-38 on July 29, 2021 and declared that no governmental entity is allowed to “require any person to wear a face covering or to mandate that another person wear a face covering.”⁵ The Governor’s executive order allows hospitals to adopt mask mandates to protect the health and safety of their patients and staff members. And the Governor’s executive order allows prisons and jails to adopt mask mandates to protect the health and safety of their inmates and jailers. But in that same executive order, the Governor declares that school districts cannot adopt mask mandates to protect the health and safety of our schoolchildren, teachers, staff, and communities. This is especially troubling when schoolchildren cannot protect themselves by getting vaccinated. Since July 1, 2021, more than 783 children were admitted to Texas hospitals due to COVID-19.⁶

12. Since August 9, 2021, many school districts in Texas have determined that requiring masks in public schools is necessary to prevent further spread of COVID-19 during the

⁵ A true and correct copy of the Governor’s executive order is attached as Exhibit 1.

⁶ Texas Tribune, *Texas children and children’s hospitals are under siege from two viruses: RSV and COVID-19* (updated August 12, 2021), available at <https://www.texastribune.org/2021/08/12/texas-rsv-covid-19-childrens-hospitals/>.

current, exponential increase of cases and hospitalizations and to provide a quality education in those local school districts:

- In North Texas, Fort Worth ISD and Dallas ISD have adopted mask mandates to protect their students, staff, and communities.
- In South Texas, Pharr-San Juan-Alamo ISD's Board of Trustees unanimously adopted a resolution asking the Governor to allow local school districts to make local decisions regarding COVID-19 safety protocols.
- In Central Texas, Austin ISD and numerous Bexar County school districts (i.e., San Antonio ISD, North East ISD, Edgewood ISD, Harlandale ISD, and Alamo Heights ISD) have adopted mask mandates to be able to safely provide in-person instruction to their students.
- In East Texas, Spring ISD's superintendent announced that they have implemented a mask mandate "to ensure the safety of our students and our staff."

None of these school districts made this decision lightly. All of them have acted because it is paramount for school districts to be able to follow the CDC and Texas DSHS guidance to protect the health and safety of their students, staff, and communities.

13. Like their sister school districts, Plaintiffs decided to file this lawsuit because it is vital they be allowed to provide in-person classroom instruction to their students without endangering the safety of our schoolchildren, our teachers and staff, and our local communities. Plaintiffs have either adopted mask mandates to protect the health and safety of their children, staff, and local communities or they intend to adopt a mask mandate in light of the recent surge in COVID-19 hospitalizations.

II. CAUSES OF ACTION

A. **First Cause of Action — Declaratory Judgment: The Governor has no authority under the Texas Disaster Act to prevent school districts from adopting mask mandates.**

14. Plaintiffs seek a declaratory judgment that the Governor has no authority to prohibit school districts from adopting mask mandates because the Texas Disaster Act does not delegate any authority to the Governor that would allow him to issue such a prohibition.

15. The Texas Disaster Act gives the Governor the authority to issue executive orders, Tex. Gov't Code § 418.012, but this delegation of authority is not absolute and unlimited. The Legislature delegated limited authority to the Governor to issue specific types of executive orders necessary to respond to disasters.⁷ See Tex. Gov't Code §§ 418.033 (“The governor by executive order may establish an emergency management council to advise and assist the governor in all matters relating to disaster mitigation, preparedness, response, and recovery.”), 418.014(a) (“The governor by executive order or proclamation may declare a state of disaster if the governor finds a disaster has occurred or that the occurrence or threat of disaster is imminent.”), 418.014(b)(2) (stating that the governor may issue an executive order that “terminates the state of disaster”),

⁷ Indeed, if the Legislature had not limited the Governor’s authority to issue executive orders that have the force of law, section 418.012 would run afoul of the nondelegation doctrine and would be an unlawful delegation of authority. The Legislature cannot delegate its power to pass laws without violating the Texas Constitution’s separation of powers clause. Tex. Const. art. II, § 1; art. III, § 1; *Brown v. Humble Oil Refining Co.*, 83 S.W.2d 935, 941 (Tex. 1935). Whenever the Legislature delegates authority to another branch of government, the Legislature must establish “reasonable standards to guide the entity to which the powers are delegated.” *Edgewood Ind. Sch. Dist. v. Meno*, 917 S.W.2d 717, 740–41 (Tex. 1995). A delegation of authority must be “reasonably clear” to avoid violating the Texas Constitution’s separation of powers clause. *Id.* at 741. When the Legislature delegates authority, the delegation only includes “such powers as are [s]pecifically delegated.” *Railroad Comm’n of Tex. v. City of Austin*, 524 S.W.2d 262, 267 (Tex. 1975).

418.015 (giving the governor the authority to issue executive orders that “delegate or assign command authority” during a state of disaster), 418.042 (authorizing the governor to issue executive orders that incorporate “[a]ll or part of the state emergency management plan”), 418.043 (allowing the governor to issue executive orders “necessary or appropriate in coping with disasters” that are prepared by the Texas Division of Emergency Management), 418.128 (broadly authorizing the governor to issue an executive order that ensures that certain state agencies are “able to respond to a hurricane”). There is no provision in the Act that gives the Governor authority to issue an executive order that prohibits local school boards from adopting a local mask mandate or otherwise governing or overseeing their local school districts.

16. The Texas Disaster Act also provides the Governor with limited powers during a disaster. *See* Tex. Gov’t Code §§ 418.016(a) (allowing the governor to “suspend the provisions of any regulatory statute prescribing 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”), 418.017(b) (“The Governor may temporarily reassign resources, personnel, or functions of state executive departments and agencies or their units for the purpose of performing or facilitating emergency services.”), 418.018 (allowing the governor to “recommend the evacuation of all or part of the population” of an area and to prescribe routes for the evacuation and control “ingress and egress to and from the disaster area”), 418.019 (authorizing the governor to “suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles”), 418.0185 (allowing the governor to order the “Department of Information Resources to disconnect a computer network from the Internet in the event of a substantial external threat to the computer network”), 418.020 (allowing the governor to take certain actions to provide temporary housing

and emergency shelters), 418.021–.022 (authorizing the governor to apply for and accept federal aid to assist local governments or individuals), 418.023 (empowering the governor to use state agencies to “clear or remove debris or wreckage from public or private land or water”), 418.1075 (allowing the governor to suspend certain deadlines imposed by local laws on political subdivisions), 418.121 (authorizing the governor to “make recommendations to the legislature, local governments, and other appropriate public and private entities as may facilitate measures to mitigate the harmful consequences of disasters”). There is no provision in the Act that gives the Governor the authority to prevent local school boards from protecting their students, staff, and communities by adopting a mask mandate.

17. In Executive Order GA-38, the Governor claims that the Texas Disaster Act gives him the power to prohibit school districts from adopting mask mandates to protect the health and safety of their students, staff, and communities in order to ensure that they are able to provide quality education to the children entrusted to their care. But the Texas Disaster Act does not give the Governor the “authority to legislate all by himself.” *Tex. League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136, 154 (5th Cir. 2020) (Judge Ho, concurring). Accordingly, Governor Abbott’s attempt to prohibit school districts from adopting mask mandates is an unlawful, *ultra vires* act because he has exceeded the authority granted to him by the Legislature. *See Houston Belt & Terminal Railway Co. v. City of Houston*, 487 S.W.3d 154, 158, 158 n.1 (Tex. 2016).

18. Accordingly, Plaintiffs respectfully request the Court declare that the Governor’s declaration in Executive Order GA-38 that school districts cannot adopt masking requirements is *ultra vires* and invalid because the Texas Disaster Act conveys no such power to the Governor.

B. Second Cause of Action — Declaratory Judgment: The Governor has no authority to suspend the statutes that give local school boards the authority to govern and oversee the management of public schools.

19. Plaintiffs seek a declaratory judgment that the Governor has no authority to prohibit school districts from adopting mask mandates because the Legislature has given school boards the authority to govern and oversee the management of public schools and those statutes have not been suspended and cannot be suspended under the limited suspension authority delegated under the Texas Disaster Act.

20. Local school boards “have the exclusive power and duty to govern and oversee the management of the public schools of the district.” Tex. Educ. Code § 11.151(b). “All powers and duties not specifically delegated by statute to the [Texas Education Agency] or to the State Board of Education are reserved for the trustees.” *Id.*

21. The Texas Disaster Act gives the Governor the authority to “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.” Tex. Gov’t Code § 418.016(a). The Governor’s office is required to compile and maintain a comprehensive list of the regulatory statutes that may require suspension during a disaster. *Id.* § 418.0155.

22. In Executive Order GA-38, Governor Abbot lists various statutes that are suspended “[t]o the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements”:⁸ Texas Government Code §§ 418.1015(b),

⁸ It is unclear what the executive order means in stating that these statutes are suspended “to the extent necessary.” The statutes are either suspended or they are not.

418.108; Chapter 81, Subchapter E of the Texas Health and Safety Code; Chapters 121, 122, and 341 of the Texas Health and Safety Code; Chapter 54 of the Texas Local Government Code; and “[a]ny other statute invoked by any local governmental entity or official in support of a face-covering requirement.” The Governor’s attempt to suspend any and all laws that interfere with his executive edict that school districts cannot adopt mask mandates is not authorized by the plain text of section 418.016 for four separate and independent reasons.

23. First, none of the identified statutes that the Governor claims to suspend affect a school district’s authority to adopt a mask mandate to allow it to provide a quality education to its students and to protect the health and safety of students, staff, and the broader community. Moreover, the Governor’s catchall statement attempting to suspend any unidentified statute that might conflict with his executive order is inconsistent with the plain text of the Act. The Act allows the Governor to suspend regulatory statutes. But if the Governor is going to suspend a statute under this provision of the Act, he must identify the regulatory statute he is suspending. In fact, even before a disaster, the Governor is required to compile and maintain a list of any regulatory statutes that might be subject to suspension under the Act.

24. Second, the Act does not give the Governor the authority to suspend any statute that interferes with his preferred fiats during a disaster. Instead, the Legislature expressly limited his suspension authority to “regulatory” statutes that prescribe “procedures for conduct of state business.” *See* Tex. Gov’t Code § 418.016(a). None of the statutes that provide local school boards with the authority to oversee and govern their public schools could be plausibly characterized as regulatory statutes that prescribe procedures for conduct of state business. *See* Tex. Educ. Code § 11.151(b); *see also id.* §§ 37.102, 37.105.

25. Third, the Act does not give the Governor the authority to suspend a statute unless strict compliance with the statute would “prevent hinder, or delay necessary action in coping with a disaster.” Tex. Gov’t Code § 418.016(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.”) (emphasis added). In public statements, the Governor has proclaimed that his executive order is necessary because the “path forward relied on personal responsibility—not government mandates.”⁹ Putting aside the irony of the statement given that the Governor is defending his own government mandate attacking local control, the statement reveals that the emperor has no clothes. The Governor’s own statement reveals that he is not concerned that local mandates would in any way prevent, hinder, or delay necessary action in coping with the COVID-19 pandemic. Masks are often uncomfortable and inconvenient, but so are many things in life — seatbelts, bicycle helmets, etc. Personal responsibility is a good thing but so are federal, state, and local laws that keep us and our children safe. In any case, the Governor may disagree with local mask mandates, but he has offered no plausible reason that local mask mandates prevent, hinder, or delay any necessary action in coping with the COVID-19 pandemic.

26. Finally, as a practical matter, the Governor cannot suspend the statutes that give school districts “the exclusive power and duty to govern and oversee the management of the public

⁹ See <https://gov.texas.gov/news/post/governor-abbott-attorney-general-paxton-aligned-in-defense-of-executive-order-prohibiting-mask-mandates>.

schools of the district.” Tex. Educ. Code § 11.151(b). If those statutes are suspended, who currently has the authority to govern and oversee public schools?

27. Accordingly, Plaintiffs respectfully request the Court declare that the Governor’s declaration in Executive Order GA-38 that school districts cannot adopt masking requirements is *ultra vires* and invalid because the Governor has not — and cannot — suspend the statutes that confer local school boards with the exclusive authority to govern and oversee their public schools.

C. Third Cause of Action — Declaratory Judgment: Section 418.016 of the Texas Disaster Act violates the Texas Constitution.

28. In light of principles of constitutional avoidance, Plaintiffs argue in the alternative that Texas Government Code § 418.016 violates the Separation of Powers Clause, Tex. Const. art. 2, § 1, and the Suspension Clause, which expressly states: “No power of suspending laws in this State shall be exercised except by the Legislature.” Tex. Const. art. I, § 28.

29. One Texas Supreme Court justice recently noted that the Suspension Clause is clear: “This provision means what it says. The judiciary may not suspend laws. Nor may the executive. Only the Legislature.” *In re Hotze*, No. 20-0430, 2020 WL 4046034 (Tex. July 17, 2020) (Devine, J., concurring). The Texas Supreme Court has long recognized that the power to suspend a statute is vested solely and firmly with the Legislature — it is a power that cannot be exercised by anyone other than the Legislature, Tex. Const. art. I, § 28, and it cannot be delegated “to a municipal corporation *or to anyone else.*” *Brown Cracker & Candy Co. v. City of Dallas*, 137 S.W. 342 (Tex. 1910); *see also Arroyo v. State*, 69 S.W. 503, 504 (Tex. Crim. App. 1902); *McDonald v. Denton*, 63 Tex. Civ. App. 421, 132 S.W. 823, 824–25 (1910) writ ref’d, 104 Tex. 206, 135 S.W. 1148 (1911).

30. “The Constitution is not suspended when the government declares a state of disaster.” *In re Abbott*, 601 S.W.3d 802, 805 (Tex. 2020). Accordingly, in the alternative to the

above-requested relief, Plaintiffs respectfully request the Court declare that the Governor's declaration in Executive Order GA-38 that school districts cannot adopt masking requirements is *ultra vires* and invalid because section 418.016 of the Texas Government Code violates the Texas Constitution, which means the Governor has no authority to suspend the statutes that give local school boards the exclusive authority to govern and oversee their public schools.

III.
REQUEST FOR TEMPORARY RESTRAINING ORDER PURSUANT TO RULE 680
AND TEMPORARY INJUNCTION PURSUANT TO RULE 681

31. Plaintiffs request that the Court enter temporary injunctive relief to maintain the status quo by temporarily restraining Governor Greg Abbott, in his official capacity as Governor of Texas, and all those acting in concert with him, from enforcing Executive Order GA-38 to prevent any Texas school district from adopting a local mask mandate for its public schools or retaliating against any Texas school district that adopts a local mask mandate.

32. To obtain temporary injunctive relief, a plaintiff must have a cause of action, show a probable right to relief, and demonstrate that it is faced with imminent irreparable harm. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). A plaintiff has a probable right to relief if they have a cause of action for which relief may be granted. *See Universal Health Services, Inc. v. Thompson*, 24 S.W.3d 570, 577–78 (Tex. App.—Austin 2008, no pet.). A plaintiff alleging *ultra vires* conduct satisfies the irreparable-injury requirement by showing likely success on the merits. *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020).

33. Plaintiffs will probably prevail on the merits because the provisions of Executive Order GA-38 relating to school districts exceed his authority under the Texas Disaster Act and rely on a statutory delegation of authority that violates the Texas Constitution.

34. A showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary restraining order or temporary injunction when the merits

involve *ultra vires* conduct of a state official. Additionally, Plaintiffs will suffer probable, irreparable injury if the Governor's actions are not prevented because the first day of school for Plaintiffs' students begins as early as August 16, 2021. Without the ability to adopt local mask mandates, the students, staff, and local communities in Texas school districts will be exposed to an increased risk of infection, hospitalization, and death as a result of COVID-19. In addition to the obvious health and safety threat posed by this spread of COVID-19, the Governor's mask mandate prohibition also presents a threat that students will be unable to receive a quality education during the 2021–22 school year because students who have or are suspected of having COVID-19 must be excluded from attending school in person for at least ten days based on guidance from the Texas Department of State Health Services.

35. Granting Plaintiffs' requested injunctive relief will not result in any harm to the public welfare or to Governor Abbott.

36. Plaintiffs agree to post security in the amount and by the means to be determined by the Court. Because temporary injunctive relief will not present any injury to Defendant or the public, Plaintiffs request the Court set the bond for a nominal amount not to exceed \$200.

IV. PERMANENT INJUNCTION

37. After full trial on the merits, Plaintiffs request the Court enter a permanent injunction prohibiting Governor Greg Abbott, in his official capacity as Governor of Texas, and all those acting in concert with him, from enforcing Executive Order GA-38 to prevent any Texas school district from adopting a local mask mandate for its public schools or retaliating against any Texas school district that adopts a local mask mandate.

V.
PARTIES

38. La Joya Independent School District is an independent school district in the state of Texas located in Hidalgo County and can be contacted through undersigned counsel.

39. Edinburg Consolidated Independent School District is an independent school district in the state of Texas located in Hidalgo County and can be contacted through undersigned counsel.

40. Hidalgo Independent School District is an independent school district in the state of Texas located in Hidalgo County and can be contacted through undersigned counsel.

41. Brownsville Independent School District is an independent school district in the state of Texas located in Cameron County and can be contacted through undersigned counsel.

42. Edcouch-Elsa Independent School District is an independent school district in the state of Texas located in Hidalgo County and can be contacted through undersigned counsel.

43. Crowley ISD Independent School District is an independent school district in the state of Texas located in Johnson County and can be contacted through undersigned counsel.

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

45. Pursuant to Texas Civil Practice & Remedies Code § 37.006, the Attorney General of the State of Texas will also be served with a copy of this petition.

VI.
JURISDICTION AND VENUE

46. Texas courts have jurisdiction to declare the rights, status, and other legal relations whether or not further relief is or could be claimed. TEX. CIV. PRAC. & REM. CODE §§ 37.002–.003. Lawsuits against governmental entities are permitted in Texas courts when a pleading alleges (1) a statutory grant of judicial authority, (2) a violation of the Texas Constitution; or

(3) an *ultra vires* claim against a government official in his or her official capacity. *Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 599 (Tex. 2001); *Cont'l Cas. Ins. Co. v. Functional Restoration Assocs.*, 19 S.W.3d 393, 397 (Tex. 2000); *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994). When governmental officers are sued for allegedly *ultra vires* acts (i.e., acts that exceed the bounds of their granted authority or that conflict with the law), governmental immunity does not apply from the outset of the lawsuit. *Houston Belt & Terminal Railway Co. v. City of Houston*, 487 S.W.3d 154, 158, 158 n.1 (Tex. 2016).

47. This court has jurisdiction to resolve the subject matter of this controversy pursuant to art. V, § 8, of the Texas Constitution, Texas Government Code § 24.007, and Texas Civil Practice and Remedies Code § 37.003.

48. Venue is proper in this Court pursuant to Texas Civil Practice and Remedies Code §§ 15.002, 65.023.

VII. DISCOVERY CONTROL PLAN

49. Plaintiffs intend to conduct discovery under Level 3 pursuant to Texas Rule of Civil Procedure 190.4.

VIII. CONCLUSION AND REQUESTS FOR RELIEF

For the foregoing reasons, Plaintiffs respectfully request that Defendant be cited to appear and answer and that the Court take the following actions and grant the following relief:

- A. Grant a temporary restraining order, pursuant to Rule 620 of the Texas Rules of Civil Procedure, temporarily restraining Defendant from taking the above-described actions;
- B. After notice and hearing on Plaintiffs' Request for Temporary Injunction, issue a temporary injunction pursuant to Rule 681 of the Texas Rules of Civil Procedure, temporarily prohibiting Defendant from taking the above-described actions;

C. Pursuant to Texas Rule of Civil Procedure 47(c)(2), Plaintiffs are seeking non-monetary relief only.

D. After trial on the merits:

1. Enter a declaratory judgment as described above;
2. Grant a permanent injunction preventing Defendant from taking the above-described actions;
3. Award Plaintiffs court costs and an amount that reflects the reasonable and necessary attorneys' fees incurred by Plaintiffs in an amount the Court finds to be equitable and just to be paid by Defendant to Plaintiffs; and
4. Any other or further relief, in law or equity, that the Court determines the Plaintiffs are entitled to receive.

Respectfully submitted,

By: /s/ David Campbell

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Counsel for Plaintiffs

Verification

STATE OF TEXAS

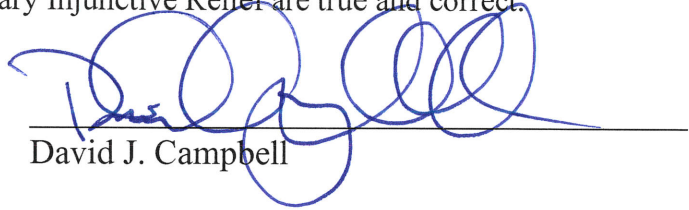
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COUNTY OF TRAVIS

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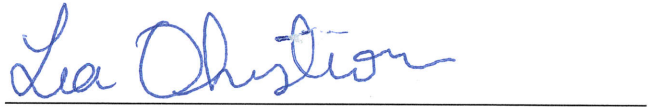
BEFORE ME, the undersigned authority, on this day personally appeared David J. Campbell known by me to be the person whose name and signature are subscribed hereto who, being first duly sworn and cautioned by me, did depose and state on oath that the factual statements contained in Plaintiffs' Original Verified Petition for Declaratory Judgment and Application for Temporary Restraining Order and Temporary Injunctive Relief are true and correct.



David J. Campbell

SUBSCRIBED AND SWORN TO before me, this 12th day of August, 2021.





Notary Public in and for the State of Texas

CAUSE NO. ____

**LA JOYA INDEPENDENT SCHOOL
DISTRICT, EDINBURG §
CONSOLIDATED INDEPENDENT §
SCHOOL DISTRICT, HIDALGO §
INDEPENDENT SCHOOL DISTRICT, §
BROWNSVILLE INDEPENDENT §
SCHOOL DISTRICT, CROWLEY §
INDEPENDENT SCHOOL DISTRICT, §
AND EDCOUCH-ELSA INDEPENDENT §
SCHOOL DISTRICT §
Plaintiffs §**

IN THE DISTRICT COURT

____ JUDICIAL DISTRICT

v.

**GREG ABBOTT, in his official capacity §
as Governor of Texas §
Defendant §**

TRAVIS COUNTY, TEXAS

**PLAINTIFFS' ORIGINAL VERIFIED PETITION FOR DECLARATORY
JUDGMENT AND APPLICATION FOR TEMPORARY RESTRAINING
ORDER AND TEMPORARY INJUNCTIVE RELIEF**

Exhibit 1



GOVERNOR GREG ABBOTT

July 29, 2021

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

JUL 29 2021

Secretary of State

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

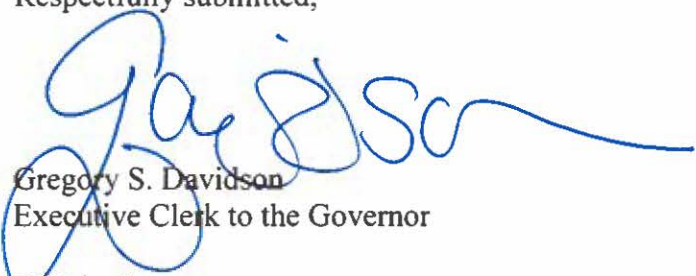
Dear Deputy Secretary Esparza:

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

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

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

Respectfully submitted,


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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- in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization.
- d. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
 - e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.
3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:
- a. There are no COVID-19-related operating limits for any business or other establishment.
 - b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.
 - c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
 - d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
 - e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
 - f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
 - g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

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

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

 - c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.
5. To further ensure uniformity statewide:
 - a. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the

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- 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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