

CAUSE NO. 2021-2775-5

STATE OF TEXAS,  
*Plaintiff,*

v.

WACO INDEPENDENT  
SCHOOL DISTRICT; BOARD OF  
TRUSTEES OF WACO  
INDEPENDENT SCHOOL  
DISTRICT; DR. SUSAN  
KINCANNON in her official  
capacity as superintendent of the  
Waco Independent School District;  
and ANGELA TEKELL,  
STEPHANIE KORTEWEG, JOSE  
VIDAÑA, CARY DUPUY, KEITH  
GUILLORY, JEREMY DAVIS,  
and EMILY IAZZETTI in their  
official capacities as trustees of  
the Waco Independent School  
District;

MIDWAY INDEPENDENT  
SCHOOL DISTRICT; BOARD OF  
TRUSTEES OF MIDWAY  
INDEPENDENT SCHOOL  
DISTRICT; DR. GEORGE  
KAZANAS in his official capacity  
as superintendent of the Midway  
Independent School District; and  
PETE RUSEK, BRAD ALFORD,  
DR. ANDY POPEJOY, SUSAN  
VICK, PAM WATTS, RICK  
TULLIS, and COLIN WITT, in  
their official capacities as trustees  
of the Midway Independent School  
District;

IN THE DISTRICT COURT

MCLENNAN COUNTY, TEXAS

414TH JUDICIAL DISTRICT



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**STATE OF TEXAS'S VERIFIED ORIGINAL PETITION AND APPLICATIONS FOR  
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

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**INTRODUCTION**

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. Waco ISD's, Midway ISD's, McGregor ISD's, and La Vega ISD's mask mandates 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.

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

<sup>2</sup> *Id.* § 418.011.

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.

#### Waco ISD Defendants

6. Defendant Waco Independent School District (“Waco ISD”) has approximately 14,854 students enrolled from Pre-Kindergarten to Grade 12.

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

8. Defendant Dr. Susan Kincannon is the superintendent of Waco ISD.

9. Defendants Angela Tekell, Stephanie Korteweg, Jose Vidaña, Cary DuPuy, Keith Guillory, Jeremy Davis, and Emily Iazzetti are members of the Waco ISD Board of Trustees.

10. Defendants may be served with process through Angela Tekell, the president of the Waco ISD Board of Trustees, or through Dr. Susan Kincannon, the Waco ISD superintendent.

#### Midway ISD Defendants

11. Defendant Midway Independent School District (“Midway ISD”) has approximately 8,348 students enrolled from Pre-Kindergarten to Grade 12.

12. Defendant Board of Trustees of Midway ISD is the board of trustees for Midway ISD.

13. Defendant Dr. George Kazanas is the superintendent of Midway ISD.

14. Defendants Pete Rusek, Brad Alford, Dr. Andy Popejoy, Susan Vick, Pam Watts, Rick Tullis, and Colin Watt are members of the Midway ISD Board of Trustees.

15. Defendants may be served with process through Pete Rusek, the president of the Midway ISD Board of Trustees, or through Dr. George Kazanas, the Midway ISD superintendent.

**McGregor ISD Defendants**

16. Defendant McGregor Independent School District (“McGregor ISD”) has approximately 1,490 students enrolled from Pre-Kindergarten to Grade 12.

17. Defendant Board of Trustees of McGregor ISD is the board of trustees for McGregor ISD.

18. Defendant James Lenamon is the superintendent of McGregor ISD.

19. Defendants Kyle Paschall, Trenton Rice, Mary Jo Williams, Robbie Jo Allison, Frank Graves, Chad Miller, and David Lillard are members of the McGregor ISD Board of Trustees.

20. Defendants may be served with process through Kyle Paschall, the president of the McGregor ISD Board of Trustees, or through James Lenamon, the McGregor ISD superintendent.

**LaVega ISD Defendants**

21. Defendant La Vega Independent School District (“La Vega ISD”) has approximately 3,196 students enrolled from Pre-Kindergarten to Grade 12.

22. Defendant Board of Trustees of La Vega ISD is the board of trustees for La Vega ISD.

23. Defendant Dr. Sharon M. Shields is the superintendent of La Vega ISD.

24. Defendants Mildred Watkins, Henry C. Jennings, Raymond Koon, Phil Banacle, Rev. Larry Carpenter, Randy Devorsky, and Brenda Rocha are members of the La Vega ISD Board of Trustees.

25. Defendants may be served with process through Mildred Watkins, the president of the La Vega ISD Board of Trustees, or through Dr. Sharon M. Shields, the La Vega ISD superintendent.

#### JURISDICTION AND VENUE

26. 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.

27. Venue is proper in McLennan 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.**

28. 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>

29. 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>

30. 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>

31. 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.*

32. 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>

33. 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.

34. 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.**

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

36. 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> A copy of GA-38 is attached hereto as Exhibit A. GA-38 is publicly available at <https://tinyurl.com/eo-ga-38>.

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



37. 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>

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

39. 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>

40. 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>

41. 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 pp. 2–3.

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

<sup>22</sup> *Id.* at pp. 3–4.

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

<sup>24</sup> *Id.* at pp. 3–4.

<sup>25</sup> *Id.* at pp. 3–5.

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

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

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

