

CAUSE NO. _____

CITY OF SAN ANTONIO and
COUNTY OF BEXAR

Plaintiffs,

vs.

GREG ABBOTT, in his official capacity
as Governor of Texas,

Defendant.

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IN THE DISTRICT COURT

____JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**PLAINTIFFS' VERIFIED ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION, AND DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs the City of San Antonio, through its Mayor Ron Nirenberg, and the County of Bexar, through its County Judge, acting in their status and through their authority as Emergency Management Directors in and for each of the City of San Antonio and County of Bexar, authorize and direct legal counsel to file this Original Petition as an action necessary for the preservation of life or other disaster mitigation, response, or recovery and shows the Court as follows:

I. Discovery Control Plan

1. Plaintiffs intend that a Level 3 Discovery Control Plan govern this action under Rule 190.4, Texas Rules of Civil Procedure.

II. Parties

2. The City of San Antonio is a home-rule city, located in Bexar County, Texas. TEX. CONST. art. XI, § 5. The County of Bexar through its Commissioners Court is the administrative head of Bexar County. TEX. CONST. art. IX, § 1 (Collectively, "Plaintiff" or "Plaintiffs").

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

III. Jurisdiction and Venue

4. The subject matter in controversy is within the jurisdictional limits of this Court. TEX. CONST. art. V, § 8; TEX. GOV'T CODE § 24.007; TEX. CIV. PRAC. & REM. CODE § 37.003.

5. Venue is proper in Bexar County, Texas because all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred there. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

6. Pursuant to Rule 47(c)(2), Texas Rules of Civil Procedure, Plaintiffs state they seek non-monetary relief only.

IV. Facts

7. Almost a year and half after it began, the COVID-19 pandemic remains a public health emergency. As of the date of this filing, over 52,000 Texans have died due to COVID-19, including 3,700 in Bexar County.

8. The City of San Antonio through its Mayor Ron Nirenberg ("City") first declared a public health emergency regarding COVID-19 on March 2, 2020 and the County of Bexar through Bexar County Judge Nelson W. Wolff ("County") declared a state of local disaster on March 13, 2020. The City issued seven subsequent declarations of a public health emergency, six declarations and one addendum, until the eighth declaration was issued on June 4, 2020, and County Judge Nelson Wolff issued approximately twenty similar emergency orders. Faced with rising hospitalizations and cases in the weeks the initial orders, the City adopted the first addendum to the eighth emergency declaration requiring face coverings for individuals over 10 years old when unable to maintain social distancing. June 17, 2020 Addendum ("1st Addendum"); Executive Order NW-10. In light of the ongoing emergency, both the County and the City maintained their face covering requirements in all subsequent addendums or executive orders through February 5, 2021. *See* 1st – 12th Addendums; Executive Orders NW 1 – 19. On March 9, 2021, San Antonio issued the current

addendum to the initial COVID-19 emergency declaration. (“13th Addendum”). The 13th Addendum issued by Mayor Nirenberg encourages the consideration of face coverings as a COVID-19 mitigation strategy but only includes a requirement for face coverings on public transportation. The most recent executive order NW-20 issued by County Judge Nelson Wolff adopted similar measures.

9. Junda Woo, M.D. serves as the local Public Health Authority for the City of San Antonio and Bexar County, with the authority “to administer state and local laws relating to public health within the appointing body’s jurisdiction.” TEX. HEALTH & SAFETY CODE § 121.021. In her capacity as Public Health Authority, she has issued directives throughout the pandemic, including previously requiring masks in schools in the San Antonio and Bexar County area.

10. The virus has mutated and developed more contagious strains, such as the Delta variant. The advent of the Delta variant has resulted in the fastest rise in hospitalizations throughout the state since the beginning of the pandemic. Hospitals and medical professionals in the San Antonio area report dwindling ICU and hospital capacities. Meanwhile, schools in San Antonio and Bexar County are preparing for the beginning of a new school year.

11. While vaccination remains the most powerful tool to prevent severe disease from COVID-19 and reduce transmission, appropriate face coverings are also an effective tool to reduce transmission of the virus. Currently less than 50% of the Texas population is fully vaccinated, and vaccines are not yet available to children under 12 years old and are less effective in individuals with certain health conditions, like those undergoing cancer treatment or organ transplant recipients.

12. City and County officials have determined that the rising number of COVID-19 cases in the City and County have created a public-health emergency that requires that the City’s employees and visitors to City facilities and County employees and visitors to County facilities wear masks or other face coverings. The San Antonio and Bexar County Health Authority has also

determined that masks are needed in public schools to minimize virus transmission. The Governor, however, has entered an Executive Order prohibiting the City and County from adopting or enforcing these masking requirements.

13. On July 29, 2021, Governor Abbott issued Executive Order GA-38 (“Executive Order 38”), which prohibits cities, counties, public schools, and health districts from enacting masking requirements to protect the health of their communities. A true and correct copy of Executive Order 38 is attached as Exhibit 1.

14. Executive Order 38 provides that (with the exception of state living centers, government hospitals, prisons, and jails): “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 . . .” ¶ 4.a.

15. Executive Order 38 further provides that 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.” ¶ 4.b.

16. Executive Order 38 suspends the following laws “[t]o the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements”:

- a. Sections 418.1015(b) and 418.108 of the Texas Government Code. Section 418.1015(b) allows the emergency management director of city or county to exercise the same emergency management powers as the governor “on an appropriate local scale” during a state of disaster. Section 418.108 allows the declaration of a local state of disaster.
- b. Chapter 81, Subchapter E of the Texas Health and Safety Code. In general, Chapter 81, Subchapter E gives local health authorities “supervisory authority and control over the administration of communicable disease control measures in the health authority’s jurisdiction,” § 81.082, and includes various provisions for the implementation of appropriate control measures like: quarantine, isolation, testing, and education.
- c. Chapters 121, 122, and 341 of the Texas Health and Safety Code. Chapter 121 concerns local health departments and districts, and specifically provides that the governing body of a municipality or county “may enforce any law

that is reasonably necessary to protect the public health.” § 121.003(a). Chapter 122 likewise contains explicit powers and rights for home-rule municipalities to protect public health. Section 122.06 states: “A home-rule municipality may: (1) adopt rules to protect the health of persons in the municipality, including quarantine rules to protect the residents against communicable disease; and (2) provide for the establishment of quarantine stations, emergency hospitals, and other hospitals.” Chapter 341 prescribes the minimum requirements of sanitation and health protection in this state but expressly allows a home rule municipality to enact “more stringent ordinances.” § 341.081.

- d. Chapter 54 of the Texas Local Government Code. Chapter 54 allows the enforcement of municipal ordinances, including health and safety ordinances.
- e. In addition to suspending these specific laws, GA-038 includes a catch-all provision, suspending “[a]ny other statute invoked by any local governmental entity or official in support of a face-covering requirement.”

17. The City of San Antonio has over 12,000 employees and the County of Bexar has approximately 5,000 employees. All City personnel report to the City Manager, who is responsible for implementing policies at the direction of the Mayor and City Council. County personnel report to the various elected officials comprising County government or to the County Manager acting on behalf of Commissioners Court, and who is responsible for implementing policies at the direction of the County Judge and Bexar County Commissioners Court. These City and County employees include public-facing employees like librarians, community health workers, and first-responders. The City and County have determined that it is necessary for all City and County employees to wear masks to contain the spread of the virus in the City and County. But for Executive Order 38, the City and County would implement mandatory face covering requirements for all City and County employees.

18. The City and County each own and operate various public facilities. Some facilities, such as senior centers and early education and child care assistance sites or similar County facilities, serve vulnerable populations or children who are too young to receive a vaccine. In the City and County’s judgment, it is imperative that visitors to these facilities wear masks to contain the spread

of the virus in the City and County. But for Executive Order 38, the City and County would implement mandatory face covering requirements at all City and County-owned properties. Exhibit 3 (Declaration of City Manager); Exhibit 4 (Declaration of County Judge).

19. The San Antonio and Bexar County Health Authority has also determined that requiring masks in public schools is necessary to prevent further spread of COVID-19 during the current increase in cases due to the spread of the highly contagious delta variant. With students in San Antonio-area schools returning to classrooms in coming days, the Health Authority needs to put in place an appropriate masking directive to ensure the safety of the community. But for Executive Order 38, the City and County's Public Health Authority would issue a directive requiring masks in local schools. Exhibit 2 (Declaration of Public Health Authority).

20. The City and County therefore jointly bring this action seeking a judicial declaration that Executive Order 38's suspension of all laws allowing the City and County to impose masking requirements exceeds the Governor's authority to suspend laws under the Texas Disaster Act of 1973, or in the alternative, that the suspension of laws in Executive Order 38 violates the Suspension Clause and the Separation of Powers Clause of the Texas Constitution.

V. Causes of Action

A. The City and County jointly seek a declaratory judgment that the Governor's suspension of laws allowing local governments to impose mask requirements is *ultra vires* and outside the scope of his authority under the Texas Disaster Act of 1975.

21. The City of San Antonio and the County of Bexar seek a declaratory judgment that Executive Order 38 exceeds the Governor's authority under the Texas Disaster Act of 1975. In particular, the Governor's power to suspend laws during a disaster under the statute does not extend to the public health laws that allow the City and County to impose masking requirements on its own employees and members of the public who visit City and County-owned facilities.

22. In Executive Order 38, the Governor identifies the following provision in the Texas Disaster Act of 1975 as the source of his legal authority to suspend all laws that allow local governments to impose masking requirements:

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.

TEX. GOV'T CODE § 418.016(a).

23. This statute gives the governor authority to suspend statutes and regulations governing state officials and agencies, but not the statutes giving local governments the authority to manage public health within their own jurisdictions. None of the statutes suspended by the Governor in Executive Order 38 related to masking requirements is a “regulatory statute prescribing the procedures for the conduct of *state business* or the orders or rules of a *state agency*.” (emphases added); *see also KMS Retail Rowlett, LP v. City of Rowlett*, 593 S.W.3d 175, 183 (Tex. 2019) (“When interpreting statutes, we look to the plain meaning of the enacted text.”). The City and County’s ability to set the conditions of the workplace of their own employees is not state business. The City and County’s right to place conditions on the public’s use of City and County-owned property is not state business. The City and County’s Public Health Authority does not prescribe procedures for the conduct of state business, either; instead issuing directives to slow the spread of disease in the local community. And of course, neither the City nor the County is a state agency. This provision therefore provides the Governor with no statutory authority to suspend the laws in that allow the City and County to impose masking requirements on its employees or visitors to City and County-owned buildings, nor to strip the authority of the City and County’s Public Health Authority to require masks in local public schools. *See, e.g.*, TEX. HEALTH & SAFETY CODE §§ 121.003, 121.021, 121.024, 122.006.

24. In *State v. El Paso County*, 618 S.W.3d 812 (Tex. App.—El Paso 2020, no pet.), the El Paso court of appeals reached a contrary interpretation of the statute, holding, with one justice dissenting, that the suspension statute was not limited to “state agencies and actors,” but included a county’s adoption of an emergency order limiting the capacity of restaurants. *Id.* at 823–24. The City and County respectfully submit, however, that the dissenting justice’s interpretation of the statute is the correct one: Properly read, the statute does not allow the Governor to suspend statutes authorizing local governments to respond to public health disasters, but instead leaves “local authorities the leeway to act in their best independent judgment within the confines of their own jurisdictions.” *Id.* at 840 (Rodriguez, J., dissenting).

25. By limiting the Governor’s power to suspend laws to the procedures “for the conduct of state business” or the “orders or rules of a state agency,” TEX. GOV’T CODE § 418.016(a), the Legislature gave “the Governor the ability to clear state-level bureaucratic logjams, expedite administrative action at state-level agencies, and depart from the regular order of state-level business if doing so would help facilitate a disaster response.” *Id.* at 838 (Rodriguez, J., dissenting). But the plain text of the statute says nothing about the suspension of laws authorizing local governments to adopt public-health measures in their jurisdictions, such as Section 122.06 of the Health and Safety Code, which expressly states that “[a] home-rule municipality may adopt rules to protect the health of persons in the municipality, including quarantine rules to protect the residents against communicable disease.”

26. Here, the limited grant of the authority to suspend laws in the Texas Disaster Act does not give the Governor the authority to suspend public-health statutes that grant home-rule municipalities the authority to adopt masking requirements or suspend authority of Counties to impose similar requirements. To the extent that Executive Order 38 purports to do so, it is an *ultra vires* act of the Governor. “The statutory text of the [Disaster] Act as written sets the parameters of

the Governor's power here, and the Governor's actions must comport with the conditions set on him by the Legislature. If they do not, he acts without any authority and his actions are *ultra vires* and without legal effect." *Id.* at 831 (Rodriguez, J., dissenting).

27. The City and County therefore respectfully request that Executive Order 38 exceeds the Governor's authority to suspend laws under the Texas Disaster Act of 1975 and that Executive Order 38's prohibition on local governments' adoption of mask mandates is therefore invalid.

B. In the alternative, the City and County seek a declaratory judgment that the Texas Disaster Act of 1975 Violates the Suspension Clause and the Separation of Powers Clause of the Texas Constitution

28. In the alternative, the City and County seek a declaratory judgment that Section 418.016 of the Texas Government Code is unconstitutional under the Suspension Clause and the Separation of Powers Clause of the Texas Constitution. If the Texas Disaster Act of 1975 allows the Governor to suspend any and all laws that authorize the City and County to impose a mask requirement, then the statute itself unconstitutional, because only the Legislature has the nondelegable power to suspend laws.

29. The Suspension Clause states: "No power of suspending laws in this State shall be exercised except by the Legislature." TEX. CONST. art. I, § 28.

30. The Separation of Powers Clause states that no branch of government "shall exercise any power properly attached to either of the others shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted." TEX. CONST. art. 2, § 1.

31. The Texas Supreme Court has held that the Suspension Clause does not permit the Legislature to "delegate to a municipal corporation or to anyone else, authority to suspend a statute law of the State." *Brown Cracker & Candy Co. v. City of Dallas*, 137 S.W. 342, 343 (Tex. 1910); *see also Arroyo v. State*, 69 S.W. 503, 504 (Tex. Crim. App. 1902) ("Under the constitution, the legislature ha[s] no right to delegate its authority . . . to set aside, vacate, suspend, or repeal the general laws of

this state.”). “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).

32. Thus, the legislature’s grant of authority to the Governor to suspend laws is unconstitutional, including the suspension of any laws that authorize the City or County to impose a masking requirement. The City and County respectfully request that this Court declare Section 418.016 of the Texas Government Code unconstitutional under Suspension Clause and the Separation of Powers Clause and that Executive Order 38 is therefore invalid to the extent it purports to suspend the laws authorizing the City and County to adopt masking requirements.

VI. Application for Temporary Restraining Order and Temporary Injunction

33. The City of San Antonio through its Mayor and the County of Bexar through its County Judge seek temporary injunctive relief to restrain the enforcement of Executive Order 38’s prohibition on mask mandates against the City or County pending a final judgment.

34. To obtain temporary injunctive relief, an applicant must show it has a cause of action, that it has a probable right to relief, and that it is faced with imminent irreparable harm. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). An applicant has a probable right to relief if it has 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.).

35. A temporary restraining order and injunction’s purposes are to maintain the status quo pending trial. The status quo is the “last actual, peaceable, noncontested status which preceded the pending controversy.” *City of San Antonio v. Vakey*, 123 S.W.3d 497, 502 (Tex. App.—San Antonio 2003, no pet.). However, “[w]here the acts sought to be enjoined violate an expressed law, the status quo to be preserved could never be a condition of affairs where the respondent would be permitted to continue the acts constituting that violation.” *Id.*; *see also In re Newton*, 146 S.W.3d 648,

651 (Tex. 2004) (“the continuation of illegal conduct cannot be justified as preservation of the status quo”). The City and County seek to preserve the last *status quo* lawfully authorized by the Texas Disaster Act of 1975.

36. As detailed above, The City and County have well-supported causes of action that Executive Order 38’s suspension of laws authorizing the City and County’s imposition of mask mandates is unlawful and therefore can show a probable right of recovery.

37. The City and County are faced with imminent irreparable harm, including the unmitigated spread of COVID-19 throughout the San Antonio and larger Bexar County community, which threatens to overwhelm the area’s healthcare system capacity, and for which no remedy at law exists without the protections of a temporary restraining order and injunctive relief.

38. Plaintiffs are ready and willing to post a bond, and requests that the Court set the bond for a nominal amount not to exceed \$1,000.00.

VII. Conditions Precedent

39. All conditions precedents have been performed or have occurred.

VIII. Prayer

40. Plaintiffs the City of San Antonio and Bexar County pray that this Court issue a Temporary Restraining Order and Temporary Injunction prohibiting Defendant and all those acting in concert with him from enforcing Executive Order 38 to the extent it prohibits the City or County from adopting a mask mandate. On final hearing, Plaintiffs pray that this Court enter final judgment awarding the City and County the declaratory relief described above and costs of court. Plaintiffs prays for such other relief, whether at law or in equity, to which they may show themselves to be justly entitled.

Respectfully submitted,

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ATTORNEYS FOR BEXAR COUNTY

VERIFICATION

STATE OF TEXAS

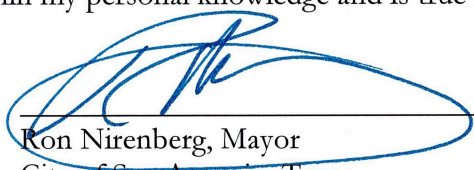
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COUNTY OF BEXAR

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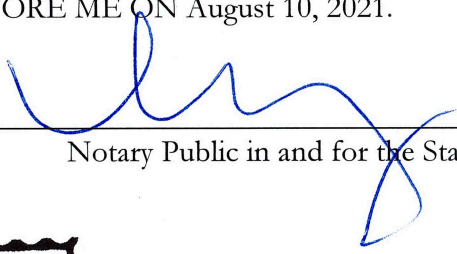
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I, Ron Nirenberg, hereby certify that I am the Mayor of the City of San Antonio, and that I am authorized to make this verification on its behalf. I have read the above petition, and certify that every statement contained in it is within my personal knowledge and is true and correct.



Ron Nirenberg, Mayor
City of San Antonio, Texas

SUBSCRIBED AND SWORN TO BEFORE ME ON August 10, 2021.



Notary Public in and for the State of Texas

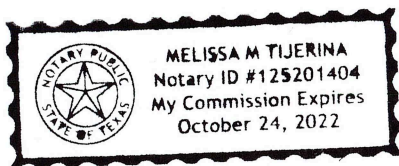


Exhibit 1
Executive Order GA 38

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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SECRETARY OF STATE
3:15pm O'CLOCK

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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Exhibit 2

Declaration of Junda Woo, MD

STATE of TEXAS

§

COUNTY OF BEXAR

§

My name is Dr. Junda Woo. I am a medical doctor and the San Antonio and Bexar County Public Health Authority. I am over the age of 18 and competent to make this declaration. The facts stated within it are within my personal knowledge and are true and correct.

1. I received my medical degree from the State University of New York and Masters in Public Health from the University of Texas School of Public Health. I have an active license to practice medicine in Texas and have served as Local Public Health Authority for San Antonio since 2018 and for Bexar County since 2019.
2. As San Antonio and Bexar County Public Health Authority, it is my job and sworn duty to implement and enforce laws to protect the public health; establish, maintain and enforce quarantine; aid in disease suppression and prevention, and report and manage contagious, infectious, and dangerous epidemic diseases within my jurisdiction.
3. I am one of the leaders of the City of San Antonio and Bexar County's public health response to the COVID-19 pandemic, in coordination with partners including healthcare providers, long-term care providers, hospitals and school districts. Additionally, I review and interpret health statistics for our jurisdiction, including the vaccination rate, number of hospitalized cases, testing capacity, available hospital beds, and use of intensive care beds and ventilators.
4. As the local health authority, I am responsible for enforcing public health law and implementing rules and guidelines to slow the spread of disease in the local community. Within and outside of the COVID-19 context, I monitor many threats to the public health and must respond based on quickly evolving situations on the ground. Thus, it is important that I am able to use the tools the state law gives me to protect the public health. This includes, but is not limited to, Texas Health and Safety Code Sections 121.003 and 122.006, as well as other statutes in the Code that authorize me to respond to local conditions and to prevent the spread of disease in many contexts. Due to the rapid rate of spread of the delta variant of SARS-CoV-2, I need to be able to enforce public health laws and take quick actions to address risks to the community and suppress the spread of disease. This includes the ability to require masks where and when appropriate and to quarantine close contacts of schoolchildren who have COVID-19, to quickly stop transmission within congregate settings such as schools.
5. Bexar County is currently at a "severe" level under our risk guidelines, with a hospital stress score that is approaching critical levels. We have more than 1,197 hospital COVID patients, compared to a peak of 1,267 in June 2020 and 1,520 in January 2021. Unlike at those times, our community no longer has an additional 1,600 healthcare staff deployed at local hospitals by the Texas Department of State Health Services.

6. In the next week, local hospitals are likely to surpass the number of patients they had during June 2020. This situation is due to the contagiousness of the Delta variant and the fact that significant pockets of the population remain unvaccinated in our marginalized communities. Unlike last year when each person with COVID would typically infect two others, each person with the now-ubiquitous delta variant is believed to infect 8 or 9 people.
7. Hospitals already had been under strain due to a large number of pediatric patients with respiratory syncytial virus (RSV). RSV, the most common cause of bronchiolitis and pneumonia in children younger than 1 year of age, is transmitted through respiratory droplets and touching surfaces that have respiratory droplets or secretions. RSV is easily spread in school and child care settings.
8. Public school districts in Bexar County begin their semesters, in person, as early as August 9, 2021. San Antonio schools used multiple, layered mitigation strategies last year to successfully minimize outbreaks. With the Delta variant, schools need every tool at their disposal, including the ability to require masks and/or quarantine. Metro Health investigations have identified incorrect and/or inconsistent masking as the most common source of local outbreaks. Masks work through the combination of source control and protection for the mask wearer. Most studies that have shown success in limiting transmission in schools have involved staff and/or students wearing masks as one of the school's prevention strategies ^{1,2,3,4}. The Governor's Executive Order GA-38, however, has suspended Chapters 121, 122, and 341 of the Texas Health and Safety Code which provides my authority to take action to prevent the spread of communicable diseases. In the absence of the suspension of these laws, I would exercise my authority as Public Health Authority to direct actions to abate the spread of COVID-19, to include requiring the use of masks in public schools to wear masks or face coverings.
9. The highly contagious nature of the delta variant is also impacting City of San Antonio and Bexar County operations. The number of City and County employees who have had to quarantine due to the delta variant has increased over the past few weeks, reaching levels near those at the height of the pandemic. The City and County provide a number of services which require the interaction of their employees with the public and operate a number of facilities that attract large crowds of visitors where social distancing is impracticable.

¹ ABC Science Collaborative. (2021). "The Reopen Our Schools Act of 2021" (S.L. 2021-4) [Report.]. <https://abcsciencecollaborative.org/wp-content/uploads/2021/06/ABCs-Final-Report-June-2021.06-esig-DB-KZ-6-29-21.pdf>

² Hershov RB et al. (2021). Low SARS-CoV-2 Transmission in Elementary Schools - Salt Lake County, Utah, December 3, 2020-January 31, 2021. *MMWR Morb Mortal Wkly Rep.* Mar 26;70(12):442-448.

³ Volpp KG et al. (2021). Minimal SARS-CoV-2 Transmission After Implementation of a Comprehensive Mitigation Strategy at a School — New Jersey, August 20–November 27, 2020. *MMWR Morb Mortal Wkly Rep.* Mar 26; 70(11):377–381.

⁴ Centers for Disease Prevention & Control. (2021). Science Brief: Transmission of SARS-CoV-2 in K-12 Schools and Early Care and Education Programs – Updated. https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html

10. The spread of the delta variant among City and County employees as well as among visitors to City and County facilities can be significantly decreased by the required use of masks.⁵ In my opinion as Public Health Authority, I believe that a mask mandate is warranted for City and County employees and visitors to City and County facilities in order to protect the public health. Under the Governor's Executive Order GA-38, however, local governments are prohibited from requiring "any person to wear a face covering or to mandate that another person wear a face covering."

My name is Dr. Junda Woo and I am an employee of the City of San Antonio, a government entity. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.



Dr. Junda Woo
City of San Antonio Public Health Authority
Bexar County Public Health Authority

Executed in Bexar County, State of Texas, on the 9th day of August, 2021.

⁵ Centers for Disease Control & Prevention. (2021). Science Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2. <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>

Exhibit 3
Declaration of Erik Walsh

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

My name is Erik Walsh. I am the City Manager for the City of San Antonio. I am over the age of 18 and competent to make this declaration. The facts stated within it are within my personal knowledge and are true and correct.

1. My name is Erik Walsh. I am the City Manager for the City of San Antonio. I am over the age of 18 and competent to make this affidavit. The facts stated within it are within my personal knowledge and are true and correct.
2. I have been employed by the City of San Antonio in various capacities since 1994 and have held the position of City Manager since 2019. As City Manager, I oversee over 13,000 City of San Antonio employees. These employees work at city owned buildings and facilities located through San Antonio. Many of these City facilities are open to provide services to the public, such as City libraries, Development Services offices, Metropolitan Health Services and senior centers. Additionally, many City employees' job duties require them to be out in the public on a daily basis to provide services, to include but not limited to police and fire personnel, animal care officers, code enforcement officers and solid waste personnel. Part of my job duties as the City Manager is to assure that city operations are provided in an efficient and effective manner to assure that services to city residents continue.
3. The City owns and operates various facilities open to the public essential for the delivery of City services. Some facilities, such as senior centers and early education and child care assistance sites, serve vulnerable populations or children who are too young to receive a COVID-19 vaccine. Many of these facilities were closed last year to help curtail the spread of the virus.
4. The City of San Antonio, as with most of the nation, has been impacted by the pandemic. Due to the quick spread of the disease, in accordance with state and national guidelines, the City had to shut down many of its services to the public, and placed many of its employees on remote work and furlough in 2020. COVID led to increased costs in operations combined with loss of revenues. With the roll out of vaccinations this past Spring, the City has strongly encouraged its employees to be vaccinated, providing convenient vaccination locations. Infection numbers decreased in late Spring and early Summer. However, with the onset of the Delta variant, infection rates have increased to levels consistent with the height of the pandemic. I have been advised by the local Public Health Authority that the Delta variant is significantly more contagious than the original COVID strain and that using masks is necessary to help curtail its spread.
5. Accordingly, in my capacity as City Manager for the City of San Antonio, I believe it is necessary for the public health and the best interests of the City to require all City employees and all visitors to City-owned facilities delivering City services to wear a mask

or other face covering. Without a mask mandate for City employees and people visiting to City facilities for services, I fear that the spread of the virus will cause the City further disruptions.

6. Under the Governor's Executive Order GA-38, local governments are prohibited from requiring "any person to wear a face covering or to mandate that another person wear a face covering." Executive Order GA-38 ostensibly prohibits me from issuing the mask mandate for City employees and visitors to public buildings that I believe is necessary to protect the public's health and the interests of the City. In the absence of Executive Order GA-38, I would issue a directive in my capacity as City Manager that all City employees and all visitors to City-owned buildings delivering City services must wear masks. Executive Order GA-38 prevents me from taking this necessary step to protect the City's employees and its residents receiving services from the City and from determining what is in the best interest of keeping the City operating in an efficient and effective manner. With the virulent spread of the Delta variant, this prohibition, which does not apply to private businesses, is and will impact the ability of the City to operate and to provide necessary services to its citizens.

My name is Erik Walsh and I am an employee of the City of San Antonio, a government entity. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.



ERIK WALSH
CITY MANAGER
CITY OF SAN ANTONIO

Executed in Bexar County, State of Texas, on the 9th day of August, 2021.

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

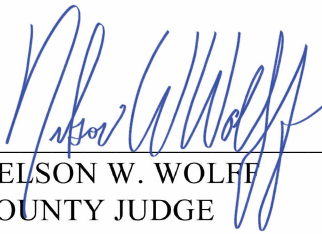
My name is Nelson W. Wolff. I am the County Judge for the County of Bexar. I am over the age of 18 and competent to make this declaration. The facts stated within it are within my personal knowledge and are true and correct.

1. I have served as County Judge of Bexar County since appointed in 2001. As County Judge, I along with my fellow commissioners, oversee a large number of County operations and employees who report directly to the Bexar County Commissioners Court, though we have a County Manager to assist in the handling of day-to-day issues. During the COVID-19 pandemic, I have been significantly involved in leading Bexar County's COVID-19 response along with other members of the Bexar County Commissioners Court.
2. Bexar County has been significantly impacted by the COVID-19 pandemic. As a result of the quick spread of COVID-19, and in accordance with state and national guidelines, Bexar County previously had to minimize many of its direct services to the public, and place many of its employees on remote work in 2020. To mitigate the effects of COVID-19 for those employees who were deemed essential personnel or who could not perform their functions remotely, the County invested heavily in personal protective equipment and environmental controls which led to increased operating costs. When vaccinations became available, the County strongly encouraged all of its employees to get vaccinated. Commissioners Court worked with local health providers to provide convenient vaccination locations.
3. Throughout the nation and in Bexar County, infection numbers decreased in late spring and early summer. Unfortunately, the appearance of the Delta variant in Bexar County has caused infection rates to increase to levels consistent with the height of the pandemic. Through my position as County Judge, I have received advice from time to time from local health experts and through my participation in meetings with the Local Health Authority and other community leaders. The Local Health Authority has recently indicated that Bexar County is currently at a "severe" level under local risk guidelines, with a hospital stress score that is approaching a critical level. I have also been advised by medical professionals that the Delta variant is significantly more contagious than the original COVID strain and that using masks can help to mitigate the spread and protect employees and visitors.
4. The information I have learned about the Delta variant from medical professionals and current infection trends is significant to the Bexar County workforce. The Bexar County Commissioners Court is ultimately responsible for the safety and security of those County employees reporting to Commissioners Court and working at County-owned facilities throughout Bexar County. Many of these County facilities provide services directly to the public, such as Bibliotech digital libraries, Bexar Heritage and Parks Department, Economic and Community Development, Emergency Management, the Fire Marshall's

Office, Human Resources, as well as several other County service providers. Additionally, many County employees' job duties require them to interact with a significant number of members of the public daily in order to provide services, such as animal care officers, code enforcement officers, members of the Fire Marshall's Office and Facilities Management.

5. As County Judge, I along with my fellow County Commissioners are responsible for ensuring that County operations are provided in a safe and efficient manner and that County residents continue to receive County services without interruption. This would include the safe operation of County facilities located throughout Bexar County which are open to the public. Some of these facilities regularly attract large crowds where effective social distancing is not possible or provide services in such a way that social distancing is not possible. Importantly, some of these Bexar County facilities serve vulnerable populations and through the pandemic, have been essential for providing badly needed resources such as food and rental assistance to community members most severely impacted.
6. I believe it is necessary for the public health and the health and safety of County employees and visitors to require County employees and visitors to wear a mask or other face covering when in County-owned facilities. Without a mask mandate for County employees and visitors, I believe the spread of the virus will quickly cause the County to have to return to a reduction of County services, the closing of some County buildings and possible interruption of a workforce which is sufficient to effectively carry out the critical functions of Bexar County government and serve those members of the community most in need.
7. Though a mask mandate would help protect County employees and visitors as well as reduce the risk of transmission of COVID-19, under the Governor's current executive order GA-38, local governments are prohibited from requiring "any person to wear a face covering or to mandate that another person wear a face covering." Executive order GA-38 prohibits me from issuing the mask mandate for County employees and visitors to public buildings that I believe is critically necessary to protect the health and safety of County employees, the health and safety of visitors to County facilities and ultimately, protection of the interests of the broader Bexar County community. In short, Bexar County provides critical services to the local community and must often do so through repeated in-person contact which substantially increases the risk of infection. Should an outbreak of the Delta variant occur in County facilities, Bexar County may be left unable to fully provide those critical, necessary services to members of the surrounding Bexar County community.
8. The current status of COVID-19 risk in our community is rated as "severe" yet GA-38 attempts to restrict local government officials from implementing basic public health and safety measures. In the absence of executive order GA-38, I would issue a directive in my capacity as County Judge that all County employees and all visitors to County-owned facilities must wear face coverings. Executive order GA-38 prevents me from taking this necessary step to protect County employees and those visitors receiving services from the County and further, from making decisions about what is in the best interests of the County and its operations. If left in place in light of the highly infectious Delta variant, the prohibition contained in GA-38 will impact the ability of the County to operate safely and

limit County staff's ability to provide necessary and oftentimes critical services to the citizens of Bexar County.



NELSON W. WOLFF
COUNTY JUDGE
COUNTY OF BEXAR

Executed in Bexar County, State of Texas, on the 10th day of August, 2021.