

21-DCV-286148

NO. _____

COUNTY OF FORT BEND, TEXAS

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IN THE DISTRICT COURT

Fort Bend County - 434th Judicial District Court

vs.

___ JUDICIAL DISTRICT

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

FORT BEND COUNTY, TEXAS

TEMPORARY RESTRAINING ORDER

This Court, having heard the Application for Temporary Restraining Order filed by Fort Bend County and all evidence contained therein. Finds that (1) Plaintiff Fort Bend County has shown a probable right to the relief sought in Plaintiff's Verified Original Petition and Application for Temporary Restraining Order, Temporary Injunction and Declaratory Judgment ("Application"); and (2) Fort Bend County and its citizens will suffer immediate, imminent, and irreparable harm for which there is no adequate remedy at law if a temporary restraining order does not issue against Defendant Greg Abbott in his official capacity as Governor of Texas.

The Court is of the opinion that immediate and irreparable injury, loss, or damage will result to Fort Bend County and its citizens if local governmental officials including the County Judge of Fort Bend County as well as the Fort Bend County Local Health Authority are not allowed to exercise their statutory authority under Texas Government Code §418.108(g) and the Fort Bend County Declaration of Local Disaster to mandate face coverings and other mitigation strategies to its employees as well as within the facilities owned or operated by Fort Bend County.

ROUTED TO COURT 08-11-21 AA
RTD TO D. CLERK 8-11-21 AA



Fort Bend County and its citizens have and will continue to be damaged and injured by Governor Abbott's conduct, including, but not limited to Governor Abbott's enforcement of his Executive Order GA-38. These findings are based on the following facts¹:

1. Fort Bend County has standing to bring this suit and to assert all claims.

2. The Texas Disaster Act clarifies the roles of various governmental authorities in responding to disasters. The COVID-19 epidemic falls within the purview of the Texas Disaster Act which sets forward the following among the purposes of the Act:

- (1) to reduce vulnerability of people and communities of this state to damage, injury, and loss of life... resulting from natural or man-made catastrophes;
- (2) to prepare prompt and efficient... care, and treatment of persons... victimized or threatened by disaster;
- (3) provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons... affected by disasters;
- (4) to clarify and strengthen the roles of the governor... and local governments in prevention of, preparation for, response to and recovery from disasters;

¹. The Court's findings of fact, in large part, are based on the Declaration Jacquelyn Johnson-Minter, MD, MPH, MBA Local Health Authority for Fort Bend County



(5) authorize and provide for cooperation in disaster mitigation, preparedness, response, and recovery; and

(6) authorize and provide for coordination of activities relating to disaster mitigation, preparedness, response, and recovery by agencies and officers of this state, and similar state-local... activities in which the state and its political subdivisions may participate ²

3. County Judge Georges^{12 H} declared a local disaster on March ~~32~~¹³, 2020. This declaration provided Judge George with legislative authority to perform certain acts under §418.108 of the Texas Government Code, including to control whether people are required to wear face coverings in public facilities ^{12 H}

4. On July 29, 2021, Greg Abbott issued "Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster." ("GA-38"). In that Order, Governor Abbott relied, in part, on Sections 418.016 (a) and 418.018 (c) of the Texas Government Code as authority for the issuance of GA-38.

5. In GA-38, Governor Abbott ordered, among others, that "... no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering" and that "...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." Defendant Abbott's Executive Order No. 38 also provided: "... 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..." Defendant Abbott further ordered that any face-covering requirements (absent limited exceptions) imposed by any local governmental

² See Tex.Gov't Code Ann.§ 418.002.



entity or official be superseded by his Order and that any laws that allow local government officials from enacting their own emergency declarations be suspended.

6. Fort Bend County is currently experiencing a surge in infections of 2019 novel coronavirus (COVID-19). Fort Bend County hospitals have 24% of ICU beds occupied by persons suffering with COVID. Approximately 93% of the COVID cases now reported in Fort Bend County are of the Delta variant. Fort Bend County has had a sustained substantial increase in cases resulting in triple the daily average for new cases reported over the previous month and our average reported daily new case count stands at 294. Over the past weekend, Fort Bend County hospitals reported having just 5 operational ICU beds available for our 800,000 county residents. Additionally, two days ago, our trauma service area (TSA Q) reported having just 27 operational ICU beds available in a region home to millions of residents.

7. Judge George and the Local Health Authority cannot be precluded from implementing the mitigation strategies they believe are sound, reliable, and backed by scientific evidence on which he relies and must be able to mitigate the damage, injury, and potential loss of life related to the COVID-19 virus. Fort Bend County and its citizens will be irreparably harmed if Fort Bend County and its local governmental officials are barred from engaging in mandatory mitigation practices, including face covering and mask mandates.

8. Under the Texas Disaster Act, Fort Bend County Judge George and the is vested with authority to issue orders to protect the safety and welfare of Fort Bend County citizens, which includes among other mitigation strategies, the option to mandate face coverings and masks in public. Fighting the virus is a public health crisis that threatens the lives and safety of Fort Bend County citizens. Fort Bend County citizens will be irreparably harmed if Judge George and/or the

Local Health authority cannot initiate appropriate mitigation strategies, including the initiation of



face covering and mask mandates to stop the transmission of COVID-19. The harm of not being able to initiate such safeguards strongly outweighs the harm of complying with Governor Abbott's Executive Order GA-38.

It is, therefore, **ORDERED, ADJUDGED, and DECREED** that that the Clerk of this Court issue a Temporary Restraining Order, operative until August 25th and pending the hearing ordered below, restraining Counter-Defendant Greg Abbott in his official capacity as Governor of the State of Texas or any of his agents, servants, employees, attorneys, representatives, or any persons in active concert or participation with Defendant Abbott who receive actual notice of this Order from:

Enforcing of Governor Abbott's Executive Order No. GA-38, paragraphs (3)(b), (3)(g), and (4).

The Court hereby sets the hearing on Plaintiff's application for temporary injunction for the 19 day of August 2021 at 1:00 p.m. in this Court. The purpose of the hearing shall be to determine whether this Temporary Restraining Order should be made a temporary injunction pending a full trial on the merits; and

Bond is waived pursuant to the provisions of Texas Civil Practice & Remedies Code Section 6.001(c)

This Order expires on the 25TH day of August 2021, unless otherwise agreed by the parties or ordered by the Court.

IT IS SO ORDERED.

SIGNED this the 11th day of August 2021 at 6:06 p.m.



JUDGE PRESIDING



THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

ORDER AUTHORIZING SUIT AND EXEMPTING COUNTY
FROM CERTAIN BOND REQUIREMENTS

On this 11th day of August, 2021, the Commissioners Court of Fort Bend County, Texas, being convened at a regular meeting of the Court, sitting as the governing body of Fort Bend County, upon motion of Commissioner Grady Prestage, seconded by Commissioner Ken DeMerchant, duly put and carried,

IT IS HEREBY ORDERED that:

The County Attorney is hereby authorized to file, on behalf of Fort Bend County, any and all legal actions necessary for the preservation of life or other disaster mitigation, response, or recovery due to the public health risks related to the recent extraordinary rise in COVID-19 cases in Fort Bend County, including the pursuit of a judicial declaration that the suspension of all laws allowing governmental entities such as counties, cities, school districts and public health authorities, and governmental officials to impose masking requirements in Governor Abbott's Executive Order GA-38 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 GA-38 violates the Suspension Clause and the Separation of Powers Clause of the Texas Constitution.

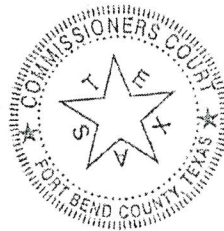
Pursuant to Texas Civil Practice & Remedies Code Section 6.001(c), Commissioners Court Approves the exemption of the Fort Bend County Attorney from filing a bond to take out an extraordinary writ in cases brought on behalf of Fort Bend County as an action necessary for the preservation of life or other disaster mitigation, response, or recovery due to the public health risks related to the recent extraordinary rise in COVID-19 cases in Fort Bend County.

FORT BEND COUNTY, TEXAS

KP George
KP George, County Judge

ATTEST:

Laura Richard
Laura Richard, County Clerk



FILED FOR RECORD
NO _____ TIME 3:33 A.M.

AUG 11 2021

Laura Richard
County Clerk Fort Bend Co. Texas

STATE OF TEXAS
COUNTY OF FORT BEND
I, Laura Richard, County Clerk of Fort Bend County, Texas, do hereby certify that the foregoing is a true and correct copy as the same appears on file and recorded in the appropriate records. Note: A portion of a personal identifying number may have been redacted as allowed by law. 8-11-2021 Date



Laura Richard
Laura Richard, County Clerk
Fort Bend County, Texas

I, BEVERLEY MCGREW WALKER, District Clerk of Fort Bend County, Texas, do hereby certify that the foregoing is a true, correct and full copy of the instrument herein set out as appears of record in the District Court of Fort Bend County, Texas.

This 11 day of August 20 21



BEVERLEY MCGREW WALKER

By [Signature] Deputy