COVID Litigation: Update

School Law Conference
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Overview

Three main categories of litigation:

- Masks (*e.g.*, GA-38)
- Vaccines (*e.g.*, GA-39/40, Religious Freedom, ADA)
- Occupancy Limits (*e.g.*, GA-32, Religious Freedom)





Masks Mandates (or Prohibitions on Mandates)

GA-38 purports to prohibit local governmental entities from issuing mask mandates.

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.

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.

Masks Mandates (or Prohibitions on Mandates)

On the federal front, the leading Texas case is *E.T. v. Paxton*.

- Students sued the Attorney General, seeking a permanent injunction barring enforcement of GA-38. They argued that GA-38 violated federal laws (ADA, Rehabilitation Act, etc.) and was preempted.
- District Court, after a bench trial, issued a permanent injunction.
- Fifth Circuit stayed the permanent injunction pending appeal.
- Fifth Circuit heard oral arguments on February 2, 2022.

Masks Mandates (or Prohibitions on Mandates)

On the state front, the litigation revolves around the Disaster Act.

"This case, and others like it, are not about whether people should wear masks or whether the government should make them do it. Rather, these cases ask courts to determine which government officials have the legal authority to decide what the government's position on such questions will be."

Texas Supreme Court, *In re Abbott*, No. 21-0720 (Aug. 26, 2021) (orig. proceeding)

The Disaster Act

During declared states of disaster, the Disaster Act purports to give the Governor the power to issue executive orders with the "force and effect of law."

Tex. Gov't Code § 418.012

According to the Act, 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 ... would in any way prevent, hinder, or delay necessary action in coping with a disaster."

Tex. Gov't Code § 418.016

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