St. Mary's Law Journal

Volume 54 | Number 2 Article 4

3-23-2023

Texas Disaster Act and the COVID-19 Pandemic: The Validity of School Mask Mandates and How the Texas Supreme Court Engaged in a Legal and Ethical Disaster

Ron Beal
Baylor University School of Law

ARTICLE

TEXAS DISASTER ACT AND THE COVID-19 PANDEMIC: THE VALIDITY OF SCHOOL MASK MANDATES AND HOW THE TEXAS SUPREME COURT ENGAGED IN A LEGAL AND ETHICAL DISASTER

RON BEAL

I. INTRODUCTION

The world population was confronted with the COVID-19 pandemic in 2020. Texans were first subjected to the illness on a mass scale in March of 2020.[1] On March 13, 2020, pursuant to the Texas Disaster Act of 1975,[2] Governor Abbott proclaimed[3] a state of disaster declaration due to the spread of COVID-19, which he believed affected all Texas counties.[4] On March 19, 2020, Governor Abbott issued his first executive order related to the pandemic disaster.[5] He proceeded to issue twenty-five additional executive orders during the next twelve months that regulated the conduct of persons, businesses, schools, and various governmental agencies.[6]

From March to June of 2021, the spread of the original COVID-19 virus was subsiding, but health authorities had already issued warnings that a new variant, named Delta, had become the dominant COVID-19 strain.[7] During that year, a second variant, named Omicron, became the second dominant strain.[8] Both of these variants were highly contagious and lethal, causing thousands of illnesses and deaths in Texas and throughout the United States.[9]

1. *See CDC Museum Covid-19 Timeline*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/museum/timeline/covid19.html [https://perma.cc/993M-LGR9] [hereinafter *Covid-19 Timeline*] (noting the World Health Organization declared COVID-19 a pandemic on March 11, 2020).

2. TEX. GOV'T CODE ANN. § 418.001.

3. *See id.* § 418.014(a) (permitting the Governor to declare a state of disaster by proclamation).

4. The Governor of the State of Tex., Proclamation No. 41-3720, 45 Tex. Reg. 2094, 2094–95 (2020).

5. The Governor of the State of Tex., Exec. Ord. GA-08, 45 Tex. Reg 2271, 2271 (2020).

6. *See, e.g.*, The Governor of the State of Tex., Exec. Ord. GA-09, 45 Tex. Reg 2271, 2271–72 (2020) (ordering for nonmedically necessary surgeries and procedures to be postponed in light of the pandemic).

7. *Covid-19 Timeline*, *supra* note 1.

8. *Id.*

9. *See* Kathy Katella, *Omicron, Delta, Alpha, and More: What to Know About the Coronavirus Variants*, YALE MED. (Aug. 31, 2022), https://www.yalemedicine.org/news/covid-19-variants-of-concern-omicron [https://perma.cc/H26T-5GWB] (reporting the Delta and Omicron variants' levels of severity and contagiousness from 2021 to 2022).

Despite the pandemic causing a massive number of COVID-19 illnesses and deaths throughout 2021, Governor Abbott's 2021 approach to fighting the lethal disease took a 180-degree turn beginning in March of that year. On March 2, 2021, Governor Abbott issued Executive Order GA-34, which stated that if an area did not have a high rate of hospitalizations, as he defined, there would no longer be any required COVID-19-related restrictions on businesses in that area.[10] Even though Governor Abbott strongly encouraged everyone to wear a mask, it would no longer be a requirement, and he precluded any governmental entity from mandating so.[11] However, he gave business owners discretion to decide whether masks would be required for employees or any other persons entering their establishment.[12]

To ensure that all governmental entities complied with his decision, Governor Abbott expressly suspended Sections 418.1015(b) and 418.108 of the Texas Disaster Act that vested certain disaster powers in local governments.[13] Although the Governor appeared to believe he had the power to suspend portions of the statute adopted by the state legislature, the statute expressly states its purpose is to "clarify and strengthen the roles of the [G]overnor" and local governments during a declared disaster.[14] The focus of this Article will be to determine whether the Governor was correct in his interpretation of Chapter 418.

The Governor's interpretation of his powers was very clear considering he issued two more executive orders restating his powers and the lack thereof in local governmental entities during the pandemic. On May 18, 2021, the Governor issued Executive Order GA-36, which stated that "[n]o governmental entity, including a county, city, school district, and public health authority" could issue a mask mandate, and that Sections 418.1015(b) and 418.108 were suspended.[15] GA-36 reminded all local government officers that, according to Chapter 418, a violation of the order could result in up to a $1,000 fine.[16] Finally, near the beginning of the fall 2021 school semester, the Governor issued Executive Order GA-38, which was similar

10. The Governor of the State of Tex., Exec. Ord. GA-34, 46 Tex. Reg. 1567, 1567–68 (2021).
11. *Id.*
12. *Id.*
13. *Id.*
14. GOV'T § 418.002(4).
15. The Governor of the State of Tex., Exec. Ord. GA-36, 46 Tex. Reg 3325, 3325–26 (2021).
16. *Id.*

to GA-36 in that it reminded local government officers of the $1,000 fine for violating the order.[17]

This Article will initially interpret and analyze the relevant provisions of Chapter 418 of the Texas Disaster Act of 1975 as it relates to the granted powers of the Governor and local governmental entities.

II. THE TEXAS DISASTER ACT OF 1975: THE POWERS GRANTED TO THE GOVERNOR AND LOCAL GOVERNMENTAL AUTHORITIES

A. *An Issue of Statutory Interpretation*

Governor Abbott, in issuing executive orders, and Attorney General Paxton, acting on Abbott's behalf in all of the briefs he submitted in courts across the state, have asserted that the issue of the Governor's power is simply an issue of statutory construction.[18] The Governor and Attorney General have not relied on any constitutional powers but simply the powers granted within the Texas Disaster Act of 1975.[19]

When an issue arises in a court of law regarding the powers of the Governor, and it is solely one of statutory construction, the judiciary has made clear that it has no power to legislate.[20] In considering such issues, the court must declare and enforce the law made by the legislature without regard to the policy or the disastrous results it may entail.[21] If the disputed statute is clear and unambiguous, extrinsic aids and canons of construction are inappropriate and the statute should be given its common, everyday meaning.[22] It is the duty of the courts to construe a law as written and, if possible, ascertain its intention from the language used without reading into

17. The Governor of the State of Tex., Exec. Ord. GA-38, 46 Tex. Reg 4913, 4913–15 (2021).

18. *See* Pet. for Review at 12, Abbott v. La Joya Indep. Sch. Dist., No. 22-0328 (Tex. May 31, 2022) (arguing that other courts have misinterpreted the Texas Disaster Act).

19. *See id.* at v–vi (failing to list any constitutional provision in the Index of Authorities).

20. *See* Harris Cnty. Hosp. Dist. v. Tomball Reg'l Hosp., 283 S.W.3d 838, 847 (Tex. 2009) (citing McIntyre v. Ramirez, 109 S.W.3d 741, 748 (Tex. 2003)) (stating the judiciary should not make legislative decisions).

21. *See id.* (reinforcing how the judiciary's task "is not to refine legislative choices" or determine the legislation's effectiveness but merely to "interpret legislation as it is written").

22. *See In re* Smith, 333 S.W.3d 582, 586 (Tex. 2011) (orig. proceeding) (assuming "the Legislature tries to say what it means," and concluding "the words it chooses should be the surest guide to legislative intent" (quoting Leland v. Brandal, 257 S.W.3d 204, 206 (Tex. 2008))).

the law an intention not expressed therein for extraneous reasons, such as the political needs of the Governor.[23]

B. *The Actual Wording of the Relevant Portions of the Texas Disaster Act of 1975*

Among the various express purposes of Chapter 418, the legislature intended to:

> (1) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property . . . ;
> . . . .
> (3) provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;
> (4) clarify and strengthen the roles of the [G]overnor . . . and local governments in prevention of, preparation for, response to, and recovery from disasters; [and]
> (5) authorize and provide for cooperation in disaster mitigation, preparedness, response, and recovery . . . .[24]

The Governor is vested with the responsibility to meet "the dangers to the state and people presented by disasters."[25] "Under this chapter, the Governor may issue executive orders, proclamations, and regulations" that "have the force and effect of law."[26] Of course, such actions may also be amended or rescinded.[27] It is also the responsibility of the Governor to formally declare when such a disaster has occurred or is imminent.[28] Finally, the Governor has the power 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 . . . would in any way prevent, hinder, or delay necessary action in coping with a disaster."[29]

The original Act did not provide an express grant of power to counties or cities within the state.[30] All actions taken by the government to "meet

23. *See id.* ("When construing a statute, we begin with its language.").
24. TEX. GOV'T CODE ANN. § 418.002(1), (3)–(5).
25. *Id.* § 418.011(1).
26. *Id.* § 418.012.
27. *Id.*
28. *Id.* § 418.014(a).
29. *Id.* § 418.016(a).
30. *Id.* § 418.002.

the dangers" of a disaster had to be ordered or approved by the Governor.[31] After over thirty years of experience, the legislature made a very significant amendment to the Act by providing the Governor with an equal partner, the "emergency management director," to aid in all of the actions needed to help the people and their communities.[32]

The legislature decided to create local districts for each political subdivision for the purpose of disaster preparedness and response and provided that "[t]he presiding officer of the governing body of an incorporated city or county" would be "designated as the emergency management director."[33] The emergency management director has the unilateral power to declare a local disaster.[34] The emergency management director has the power to exercise all of the powers of the Governor set forth within Chapter 418 "on an appropriate local scale."[35] Additionally, the emergency management director serves as "the [G]overnor's designated agent in the administration and supervision of" all orders issued by the Governor.[36]

As always, lawyers and the people subject to the laws of the legislature never know exactly why a specific statute was enacted, amended, or even repealed. If the courts dragged all our legislators into a court of law every time we needed an answer, the legislature would probably shut down, or virtually nothing would get done. And after all legislators were questioned as to their subjective intent, we might, amazingly, not find a majority consensus as to what those particular words were intended to mean. Thus, rightly or wrongly, the judiciary looks only to the words actually adopted by at least a majority of those legislators and reasonably infers what the objective legislative intent was.[37] It accomplishes this task by not reading

31. *See generally* Texas Disaster Act of 1975, 64th Leg., R.S., ch. 289, 1975 Tex. Gen. Laws 731 (amended 1987) (current version at GOV'T. ch. 418) (failing to grant express power to counties and municipalities).

32. Act of June 6, 2007, 80th Leg., R.S., ch. 258, § 1.02, sec. 418.1015, 2007 Tex. Gen. Laws 367, 368 (amended 2009) (codified at GOV'T § 418.1015).

33. GOV'T § 418.1015(a).

34. *Id.* § 418.108(a).

35. *Id.* § 418.1015(b).

36. *Id.*

37. Molinet v. Kimbrell, 356 S.W.3d 407, 411 (Tex. 2011) (citing City of Rockwall v. Hughes, 246 S.W.3d 621, 625–26 (Tex. 2008)).

into the law an intention not expressed or intended to be expressed therein.[38]

However, the judiciary presumes that when the legislature enacts an amendment to an existing statute, it clearly intended to change the law, "and a construction should be adopted that gives effect to the intended change, rather than one that renders the amendment useless."[39] This presumption is also strong "where the amendment fills an apparent void in the statutory scheme and does not merely reiterate long-standing interpretations that . . . the courts have given the statute."[40]

So, after thirty years of experience, why did the legislature expressly provide that the emergency management directors would be designated agents to implement the Governor's orders? It seems clear that, with this pandemic, the Governor's orders apply statewide. Even during a natural event like a hurricane or tornado affecting multiple counties and cities, the Governor and his or her staff cannot be in all places at once. Orders are merely words on a piece of paper, and they alone do not guarantee compliance. The Governor needs people in every county and city who know it is their responsibility to "rally the citizens" to do the right thing and alert and gain the cooperation of local enforcement authorities, including the district attorney, to enforce the orders if need be. For thirty years, no one in any city or county had that express responsibility.

By vesting the emergency management directors with the power to declare a local disaster and empowering them with all the tools vested in the Governor to utilize in their city or county, the legislature seemed to clearly establish its intent with plain words.[41] It appears there may have been or

38. *See In re* Smith, 333 S.W.3d 582, 586 (Tex. 2011) (orig. proceeding) (assuming "the words [the Legislature] chooses [are] the surest guide to legislative intent" (quoting Leland v. Brandal, 257 S.W.3d 204, 206 (Tex. 2008))).

39. *Ex parte* Trahan, 591 S.W.2d 837, 842 (Tex. Crim. App. 1979) (en banc) (first citing Stolte v. Karen, 191 S.W. 600 (Tex. App.—San Antonio 1917, writ ref'd); and then citing McLaren v. State, 199 S.W. 811 (Tex. Crim. App. 1917)); *see* Pub. Util. Comm'n v. City of Harlingen, 311 S.W.3d 610, 620 n.7 (Tex. App.—Austin 2010, no pet.) ("In the absence of some showing, either by legislative history or otherwise, that the intent of the legislature in adopting the amendment was to clarify rather than change the statute in question, the presumption is of change rather than clarification." (citing Williamson Pointe Venture v. City of Austin, 912 S.W.2d 340, 345 (Tex. App.—Austin 1995, no pet.))).

40. Ford Motor Co. v. Motor Vehicle Bd., 21 S.W.3d 744, 763 (Tex. App.—Austin 2000, pet. denied) (citing Adams v. Texas State Bd. of Chiropractic Exam'rs, 744 S.W.2d 648, 656 (Tex. App.—Austin 1988, no writ)).

41. *See* Abbott v. Harris Cnty., 641 S.W.3d 514, 525–26 (Tex. App.—Austin 2022, pet. filed) (concluding the Disaster Act "gives both the Governor and counties the same authority" and was not intended to give the Governor "broad authority to preempt local orders" (first citing TEX. GOV'T

could be a time when the Governor and emergency management director disagree on whether a disaster exists in the city or county. The legislature makes it expressly clear it will not leave that determination solely to the Governor, and the local officials who live within the community can have the final word.[42] If they so declare, they need the power to get things done, for they obviously cannot look to the Governor for help to issue orders.

This interpretation of the goals behind the amendment's words empowers the Governor with a responsible agent in every city and county throughout the state to ensure everyone complies with the Governor's orders.[43] Additionally, it frees the Governor from dealing with a particular problem in a county or city and vests such powers in those local officials who have an intimate knowledge of the needs and desires of its citizenry, businesses, and other organizations.[44] Thus, this interpretation of the amendment does not disturb a thirty-year tradition but instead fortifies it and logically allows the Governor to be free of distinctly local problems so that he can focus on state issues.

Moreover, if the disaster varies widely in severity around the state, it will be difficult for the Governor to issue an order that seems reasonable to citizens and public officials in various cities or counties. The Governor could be attacked for simultaneously "doing too much" and "doing too little." By setting forth the necessary minimum, the Governor can leave local officials with the ability to add or adopt new measures for each city, county, or school district.[45]

However, the "pink elephant" in every legislature conference room and on the floors of both houses was handled by either not recognizing the problem or leaving it for the courts to decide the answer despite anticipating the issue. The better approach is to allow the judiciary to decide if there is

---

CODE ANN. § 418.015(c); and then citing Abbott v. Jenkins, No. 05-21-00733-CV, 2021 WL 5445813, at *9 (Tex. App.—Dallas Nov. 22, 2021, pet. filed) (mem. op.))).

42. *See* GOV'T § 418.1015(b) (giving the emergency management director the same powers the Governor has under Chapter 418, including the power to declare a local state of disaster); *Harris Cnty.*, 641 S.W.3d at 524 ("The Act also authorizes the presiding officers of local government entities . . . to issue local disaster declarations." (citing GOV'T § 418.108)).

43. GOV'T § 418.1015(b); State v. El Paso Cnty., 618 S.W.3d 812, 820 (Tex. App.—El Paso 2020, orig. proceeding) (citing GOV'T § 418.1015).

44. *See* GOV'T § 418.1015(b) (vesting authority to local government officials to manage local emergencies); *El Paso Cnty.*, 618 S.W.3d at 840 (defining the Texas Disaster Act as a "grant-of-authority statute," which gives "local authorities the leeway to act in their best independent judgment within the confines of their own jurisdictions").

45. *See El Paso Cnty.*, 618 S.W.3d at 839 (suggesting Section 418.108 gives local officials some "autonomy at the local level" to manage disasters).

more than one reasonable interpretation of statutory provisions, thereby constituting ambiguity and permitting the courts to utilize all canons of construction as guides in determining, if possible, the actual expressed or implied legislative intent.[46]

How did the amendments create ambiguity? The issue is clear. Both the Governor and the emergency management directors have the exact same powers to deal with a declared disaster.[47] The only difference is the geographical breadth of that power. The Governor's power ranges from one county to the entire state, while the emergency management director's power is limited to one county or city.[48] However, the legislature did not provide that the emergency management director could only exercise these powers when the Governor failed to act.[49] In fact, a local disaster may be declared at any time with no restrictions; therefore, such a declaration may be made before, during, or after a Governor's declaration of the same.[50] Thus, the Governor and emergency management director may exercise their identical powers simultaneously.

If both the Governor and the emergency management director declare a disaster and issue orders covering the same subject matter that differ in scope, which order must the populace comply with? If there is a conflict, what wording, if at all, in Chapter 418 tells us the answer as to which order prevails? Unfortunately, the pink elephant was ignored in the legislature. Consequently, Chapter 418 has "legislative silence" as to the answer to that question.[51]

So, if there is no express provision deciding the issue, then is the answer implied?

46. *In re* Smith, 333 S.W.3d 582, 586 (Tex. 2011) (orig. proceeding) (quoting Leland v. Brandal, 257 S.W.3d 204, 206 (Tex. 2008)).

47. GOV'T § 418.1015(b).

48. *See id.* (limiting the emergency management director's reach to "an appropriate local scale"); *id.* § 418.011 (holding the Governor responsible for meeting "the dangers to the state" overall).

49. Abbott v. Harris Cnty., 641 S.W.3d 514, 525 (Tex. App.—Austin 2022, pet. filed) (explaining the Act does not suggest the Governor's authority and the local official's authority to make disaster declarations are mutually exclusive).

50. GOV'T § 418.108(a).

51. *See* Abbott v. Jenkins, No. 05-21-00733-CV, 2021 WL 5445813, at *10 (Tex. App.—Dallas Nov. 22, 2021, pet. filed) (mem. op.) (noting the legislature's silence on competing orders).

C. *If Both the Governor and an Emergency Management Director Issue a Disaster Order Regarding the Same Subject Matter, Which Order Must Be Lawfully Obeyed?*

To prevent confusion, it must be noted that one of the provisions defining the Governor's power provides that his or her orders "have the force and effect of law."[52] Yet, the grant of power to the emergency management director equips him or her with all the same powers of the Governor.[53] Therefore, the order of an emergency management director also has the force and effect of law. So, all orders have the force and effect of law, but that fact alone does not make an order dominant or superior to another. Thus, the language in the statute does not aid one in determining which order is superior, but it is critical to clarify that both orders are of equal legal value on their face and standing alone.

The legislature can provide to the judiciary, as they have done in another statute dealing with disasters, that "[n]otwithstanding any other statute, the supreme court may modify or suspend procedures for the conduct of any court . . . ."[54] Judicial orders of this kind are superior to any order of like-kind by the Governor or a local government. And why? Chapter 418 has no identical or even similar language to that effect.[55]

The Texas Supreme Court held many times: "[E]very word of a statute must be presumed to have been used for a purpose. Likewise, we believe every word excluded from a statute must also be presumed to have been excluded for a purpose."[56] The legislature has demonstrated that it knows how to make specific laws superior to others, but it did not do so in Chapter 418.[57]

But does a statute not always supersede a city or county ordinance or order? Under the Home Rule Amendment of our Texas Constitution, a local subdivision has the full power of government so long as its ordinances

52. GOV'T § 418.012.

53. *Id.* § 418.1015(b).

54. *Id.* § 22.0035(b).

55. *See generally* GOV'T ch. 418 (lacking a provision granting the Governor the authority to suspend or modify the orders of a local authority).

56. *In re* Bell, 91 S.W.3d 784, 790 (Tex. 2002) (orig. proceeding) (quoting Cameron v. Terrell & Garrett, Inc., 618 S.W.2d 535, 540 (Tex. 1981)); *see* Ron Beal, *The Art of Statutory Construction: Texas Style*, 64 BAYLOR L. REV. 339, 397–98 (2012) (explaining the benefits of the Texas Supreme Court's rule on statutory construction).

57. State v. El Paso Cnty., 618 S.W.3d 812, 833 (Tex. App.—El Paso 2020, orig. proceeding) (describing the preemption mechanism built into Texas statutes).

or other lawful orders are not inconsistent with state law.[58] Therefore, if a city is exercising what it believes to be an inherent power or acting pursuant to a statute adopted by the legislature, generally, a valid state law administered by the state government supersedes or "preempts" the inconsistent local government ordinance or order.[59]

However, that interpretation would be fundamentally erroneous in this case because the Governor and the local governments have been granted express powers from the *same* statute.[60] By definition, "preemption" involves the law of one jurisdiction superseding or supplanting an inconsistent law of another jurisdiction.[61] Thus, the Governor has no legitimate or reasonable basis in the law to assert preemption and to confuse all to believe that this is a simple issue of a state law versus a local ordinance. Because the powers of both are granted in the same statute, the proper and lawful analysis is to apply the canons of statutory construction when there appears to be a conflict between two provisions of the same statute.[62]

Assuming that Governor Abbott has adopted an order consistent with his express and implied powers pursuant to Chapter 418, what does the same allow local governments to do? In two *separate sentences*, it states the emergency management director may "serve[] as the governor's designated agent in the administration and supervision of duties under this chapter," and the "emergency management director may exercise the power granted to the governor under this subchapter on an appropriate local scale."[63]

As we all know, two sentences contain separate thoughts unless they are joined by their wording. The first provision is obvious. When the Governor issues an order, where is it fulfilled? In all of the local governments of the state—the cities and the counties. The Governor cannot be in all places at once, so the legislature dictated the local governments are his agents to make sure all orders are complied with by all citizens.[64] Thus, local governments

58. TEX. CONST. art. XI; TEX. LOC. GOV'T CODE ANN. § 51.072; *see El Paso Cnty.*, 618 S.W.3d at 833 (explaining local government authority to self-govern under the home rule doctrine).

59. *El Paso Cnty.*, 618 S.W.3d at 833 (first citing TEX. CONST. art. XI, § 5; and then citing S. Crushed Concrete, L.L.C v. City of Houston, 398 S.W.3d 676, 678 (Tex. 2013)).

60. Abbott v. Harris Cnty., 641 S.W.3d 514, 525 (Tex. App.—Austin 2022, pet. filed) (summarizing how the Act grants powers to the Governor and to certain local officials).

61. *Preemption*, BLACK'S LAW DICTIONARY (8th ed. 2004).

62. *See* Beal, *supra* note 56, at 414–16 (describing methods courts use to construct conflicting statutes).

63. TEX. GOV'T CODE ANN. § 418.1015(b).

64. *Id.*; *Harris Cnty.*, 641 S.W.3d at 526.

are the agents of the Governor for law application. That provision does not, by definition, apply to the second sentence.

The second sentence clearly states that local governments have all of the powers conferred upon the Governor in Chapter 418 on an appropriate local scale.[65] That is an absolute grant of the identical power of the Governor to the cities, counties, and school districts. It cannot be read to mean anything else but what it clearly states. If all the local governments could do is issue orders as dictated by the Governor, thereby acting as his designated agent, then that would nullify the second sentence. They would have no power to act on their own.

However, the grants of power to the Governor and the identical grants of power to the local governments cannot be read in isolation. So how do the two statutory provisions logically and legally work together? The Texas Supreme Court has long held that a court "must always consider the statute as a whole rather than its isolated provisions."[66] In doing so, a statutory provision should not be given a meaning out of harmony or inconsistent with other provisions, even if standing alone that provision is susceptible to another meaning.[67] Unless there is a positive repugnance, both provisions should be given effect.[68] Finally, the entire statute is intended to be effective, and the court should not read any word to be useless or a nullity.[69]

Therefore, since the Governor has statewide and multi-county-wide jurisdiction in meeting a large disaster, counties, cities, and school districts must follow the Governor's orders that would prevent injury, loss of life, or threat to property.[70] As his statutory agents, the local governments must administer and supervise compliance with the orders' provisions whether they agree with them or not.[71] Particularly, if the concern was ingress and egress from a disaster area, the Governor needs to determine the statewide

65. GOV'T § 418.1015(b).

66. Helena Chem. Co. v. Wilkins, 47 S.W.3d 486, 493 (Tex. 2001) (citing Morrison v. Chan, 699 S.W.2d 205, 208 (Tex. 1985)).

67. *See* City of Waco v. Kelley, 309 S.W.3d 536, 542 (Tex. 2010) (citing Harris Cnty. Hosp. Dist. v. Tomball Reg'l Hosp., 283 S.W.3d 838, 842 (Tex. 2009)) (examining the provision "in context of the statute as a whole," not "in isolation").

68. B.L. Standard v. Sadler, 383 S.W.2d 391, 395 (Tex. 1964) (quoting Wintermann v. McDonald, 102 S.W.2d 167, 171 (Tex. 1937)).

69. Spradlin v. Jim Walter Homes, Inc., 34 S.W.3d 578, 580 (Tex. 2000) (first citing City of Beaumont v. Bouillion, 896 S.W.2d 143, 148 (Tex. 1995); and then citing Hanson v. Jordan, 198 S.W.2d 262, 263 (1946)).

70. GOV'T § 418.002(1); *see* GOV'T § 418.011 (summarizing the responsibility of the Governor in emergency situations).

71. *Id.* § 418.1015(b).

impact, whereas the counties and cities would only be focused on their local areas.[72]

However, if the counties, cities, or school districts desire to add additional requirements, such as a mask mandate or vaccine mandate, that enhances and better protects the local population from injury, loss of life, or destruction of property than the Governor's order, or adds a protective measure that the Governor has either intentionally or unintentionally not required, then such power is vested expressly in local governments pursuant to Chapter 418 and their constitutional police power to protect the public health.[73] In other words, the order of the city or county is consistent with the Governor's order or lack thereof when the local order is consistent with and furthers the purposes of the statute.[74]

Local governments act not as agents of the Governor but independently on behalf of citizen interest. Local leaders with the legislature's express delegation and consent, without the Governor's input or blessing, may unilaterally determine when something is more beneficial to the local population than the Governor's order.

Logically, only when the counties, cities, or school districts mandate that its local population need not comply with a Governor's order and do less than required or even do nothing, would it be clearly repugnant and void as inconsistent with and outside the scope of the provisions of the Act read as a whole.[75] If local governments ordered less protection than the Governor, clearly the statute only gave them the power to meet the dangers of the disaster, not to enhance them. On the other hand, adopting new and additional beneficial requirements, the local governments are simply not acting inconsistently with a Governor's order when they demand more protection for their citizenry to meet those dangers.

This is the only logical interpretation that will fulfill the purposes of Chapter 418 and not render the power expressly granted to the local governments to be a nullity, i.e., if they cannot do less or need not do the same as the Governor, their only power is to do more. And it makes total sense. If the Governor perceives taking a certain action will be met with

72. *See id.* § 418.018(c) (granting the Governor the power to "control ingress and egress to and from a disaster area"); *see also id.* § 418.101 (explaining divisions of local areas).

73. *See* TEX. CONST. art. IX, § 13 (vesting municipalities with power to enact public health measures in their respective jurisdictions).

74. *See supra* notes 24, 33–36 and accompanying text (describing the purposes of the Act and the powers the Act vests in the local government).

75. GOV'T § 418.1015(b).

great displeasure from the state-wide citizenry, he has the power to abdicate his responsibility.[76] However, if the citizens of one or more local governments demand that action be taken, the local leaders may satisfy the interests of the local population.

Therefore, the local governmental entities have a separate, express statutory grant of power in addition to their local, inherent powers to protect the public health, safety, and welfare. As long as the order is more beneficial than the Governor's order to "meet[] the dangers" of the disaster, local governments have the power and discretion to so adopt.[77]

This power analysis is not complete, however, for it has only focused on two provisions of Chapter 418. As stated, the Texas Supreme Court always requires that the statute be read as a whole.[78] The first provision to be considered states the Governor "is the commander in chief of state agencies, boards, and commissions having emergency responsibilities."[79] So should the "commander in chief's" orders supersede the order of a mere county or city emergency management director? If the label had stood on its own, that might be a powerful argument. However, as noted, the commander in chief is only such a commander to listed statewide entities.[80] There is no reference to cities or counties.

In fact, such entities are included within two definitions in the statute; namely (1) "Political subdivision"[81] and (2) "Local government entity."[82] It would have been so easy for the legislature to have included cities and counties by the use of one or both definitions. The Texas Supreme Court not only presumes the words used in a statute were intentional by the legislature but also presumes the words excluded from a statute were intentionally excluded by the legislature.[83] This is bolstered by our previous analysis of the legislature vesting cities and counties with independent power to meet the dangers of the disaster.[84] There would have been no need to do

76. *Id.* § 418.104.

77. *Id.* §§ 418.011(1), 418.1015(a).

78. Helena Chem. Co. v. Wilkins, 47 S.W.3d 486, 493 (Tex. 2001) (citing Morrison v. Chan, 699 S.W.2d 205, 208 (Tex. 1985)).

79. GOV'T § 418.015(c).

80. *Id.*

81. *Id.* § 418.004(6).

82. *Id.* § 418.004(10).

83. *In re* Bell, 91 S.W.3d 784, 790 (Tex. 2002) (quoting Cameron v. Terrell & Garrett, Inc., 618 S.W.2d 535, 540 (Tex. 1981)).

84. *See supra* notes 39–44 and accompanying text (explaining how the legislature's plain meaning in the Act suggested it vested local authorities with authority independent of the Governor's authority).

so if they were solely the agent of the Governor. Thus, the emergency management director need not follow the exact path or order of the Governor when his or her citizens demand more protection or help in dealing with the disaster.

The second relevant provision sets forth that 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."[85] It has been established that Governor Abbott suspended the statutory provision of Chapter 418, which vested cities and counties all the power of the Governor[86] in three executive orders: GA-34, GA-36, and GA-38.[87]

It becomes immediately clear that the legislature excluded Chapter 418 in the statutes to be suspended and a Governor's suspension is void. First, it did not state "this chapter,"[88] and it did not express specifically any sections that were subject to suspension.[89] Again, what can be most telling is what the legislature did not place within the statute and if it so intended, it is simply illogical that it would not have named them in the text. Second, the legislature is clearly referring to statutes *other* than Chapter 418, for it did not know what statutes would cause a problem nor could it specify the particular provisions that would cause the Governor to have an inability to act. So, there simply is no ambiguity for the total lack of mention of Chapter 418. However, if one believes it remains ambiguous, the following arguments make it clear that Chapter 418 was not intended by the legislature to be suspended by the Governor.

Since the judiciary must always read the statute as a whole,[90] that clearly includes reading the sentence as a whole. The suspension provisions speaks

85. GOV'T § 418.016.

86. *Id.* § 418.1015(a).

87. *See* The Governor of the State of Tex., Exec. Ord. GA-34, 46 Tex. Reg. 1567 (2021) (prohibiting counties and localities from issuing regulations inconsistent with GA-34); The Governor of the State of Tex., Exec. Ord. GA-36, 46 Tex. Reg. 3325 (2021) (stating GA-36 supersedes any "face-covering requirement imposed by any local government entity or official"); The Governor of the State of Tex., Exec. Ord. GA-38, 46 Tex. Reg. 4913 (2021) (considering any inconsistent local laws by local officials as a failure to comply with GA-38).

88. *See* GOV'T § 418.1015(b) (providing an example for Chapter 418's use of the phrase, "this chapter," to refer to itself).

89. *See id.* § 418.016 (failing to list any specific statutes or Chapter 418 as subject to suspension).

90. TGS-NOPEC Geophysical Co. v. Combs, 340 S.W.3d 432, 439 (Tex. 2011) (citing Tex. Dep't of Transp. v. City of Sunset Valley, 146 S.W.3d 637, 642 (Tex. 2004)).

of regulatory statutes, rules, and orders *of a state agency*.[91] It also speaks of *state* business, and it has been established that the Governor's need to control, in the eyes of the legislature, is focused exclusively on him or her being the commander in chief of all *state* agencies.[92] Once again, there is absolutely no reference to city or county ordinances, or rules, thereby creating a deafening legislative silence.[93]

Next, to interpret "regulatory statutes" to include the very statute adopted by the legislature would negate the legislature's decision to make a major amendment of allowing cities and counties to have significant power to shape the orders imposed upon the citizens and businesses of the state. The Governor's interpretation, which eliminates all power that the statute has vested in cities and counties, results in that statutory provision becoming a nullity. The Texas Supreme Court held that if there truly is an ambiguity, the provision must be construed with reference to its main purpose, so if the language is susceptible of two constructions, one of which will carry out its main purpose and the other will go against it, the former construction should be used.[94] There is no doubt that since the major amendment, the legislative intent was to have cities and counties as major players in dealing with a disaster, not simply if the Governor so desires it.[95]

Next, the Code Construction Act provides that a court is to presume: (1) "the entire statute is intended to be effective," (2) "a just and reasonable result is intended," and (3) "a result feasible of execution is intended."[96] Will this standard be met if it is construed to allow the Governor to redistribute powers when the express statute distributes such powers otherwise? The Texas Supreme Court held that those sections considered together prohibit an absurd reading of the statute.[97] There could be no reasonable construction that the Governor has the power, in essence, to rewrite the statute adopted by the legislature when combating a disaster.

---

91. GOV'T § 418.016(a).

92. *Id.* §§ 418.015(c), 418.016(a).

93. *See supra* note 51 and accompanying text (explaining how the Disaster Act is silent on what should happen if the Governor's and local authorities' orders conflict with each other).

94. Citizens Bank of Bryan v. First State Bank, 580 S.W.2d 344, 348 (Tex. 1979) (first citing *In re* Nat'l Guard, 45 A. 1051 (Vt. 1899); and then citing City of Corpus Christi v. S. Cmty. Gas Co., 368 S.W.2d 144 (Tex. App.—Corpus Christi 1963, writ ref'd n.r.e.)).

95. *See* State v. El Paso Cnty., 618 S.W.3d 812, 820 (Tex. App.—El Paso 2020, orig. proceeding) (describing the roles of county judges and mayors in natural disasters).

96. GOV'T § 311.021(2)–(4).

97. TGS-NOPEC Geophysical Co. v. Combs, 340 S.W.3d 432, 439 (Tex. 2011) (citing Tex. Dep't of Protective & Regul. Servs. v. Mega Child Care, 145 S.W.3d 170, 177 (Tex. 2004)).

Even if one rejects all of the above arguments, the Governor can suspend procedural statutes based on the plain and clear language quoted above.[98] It has already been demonstrated that this grant of power to local governments goes far beyond procedure. The emergency management director may issue orders related to substantive rights.[99]

Finally, it has been established that the only power cities and counties have been granted is to adopt orders that will fulfill the purposes and objectives of the statute.[100] As set forth above, the Governor can only suspend statutes that "prevent, hinder or delay necessary action in coping with the disaster."[101] Therefore, by definition, city or county orders would be null and void if the only result of their application would be preventing, hindering, and delaying the Governor's actions to deal with a disaster.[102] Thus, the legal result is the city or county order would be invalid, not because the Governor stripped them of their power but because the order is inconsistent with and outside the scope of their delegated power.

However, the flip side of that coin applies with equal force. As it was established, the Governor's orders, GA-34, GA-36, and GA-38, all forbid local governmental entities from adopting a mandatory mask rule in the county, city, or public schools.[103] Yet, Chapter 418 gives no express power to the Governor to forbid an emergency management director from adopting any type of order, ordinance, or rule.[104] Once again, the Texas Supreme Court not only focuses on the language of the statute but that language omitted by the legislature.[105]

In addition, as set forth above, both the Governor and the emergency management director may only adopt orders that fulfill the statute's purposes.[106] Therefore, if the Governor attempts to forbid an emergency management director from adopting an order that does fulfill the statute's

98. GOV'T § 418.016(a).

99. *See supra* notes 33–36 (discussing the powers granted to emergency management directors).

100. *See* GOV'T § 418.002 (listing the purposes of the Act, which apply to cities and counties).

101. *Id.* § 418.016.

102. *See supra* notes 73–77 and accompanying text (describing the scenarios in which a local order that conflicts with an executive order would have to be nullified).

103. *See supra* notes 10–17 and accompanying text (describing the substance of GA-34, GA-36, and GA-38).

104. *See generally* GOV'T ch. 418 (providing no enumerated provision allowing Governor to forbid an emergency management director from adopting a provision).

105. *In re* Bell, 91 S.W.3d 784, 790 (Tex. 2002) (quoting Cameron v. Terrell & Garrett, Inc., 618 S.W.2d 535, 540 (Tex. 1981)).

106. *See* GOV'T § 418.002 (listing the Act's purposes, which apply to the Governor and local authorities alike).

purposes, the Governor's order is void for he is acting inconsistent with and outside the scope of his statutory authority. Thus, GA-34, GA-36, and GA-38, which forbid an emergency management director from adopting a mandatory mask mandate in public schools,[107] enhance the dangers of the disaster and are therefore void. This is particularly undisputed by the fact that Governor Abbott stated in GA-29 that wearing face masks was "one of the most important and effective [means] for reducing the spread of COVID-19."[108]

It is therefore clear that an emergency management director's order for a county, city, or school district that regulates conduct in an area the Governor has chosen not to regulate or has decided to cease regulating, is valid as long as such order is "meeting the dangers" of the disaster and reducing the vulnerability of the people and community to damage, injury, or loss of life or property. Simply put, the Governor wholly lacks statutory power to forbid an emergency management director from mandating masks in schools, even though the Governor desires the citizenry to make that decision on their own.[109]

D. *Five Court of Appeal Decisions That Ignored the Linchpin Provision of the Texas Disaster Act*

There are four opinions of three different courts of appeals that held Governor Abbott's three orders, GA-34, GA-36, and GA-38, were void because the Texas Disaster Act did not vest him with the power to prohibit schools from imposing a mandatory mask mandate for children, staff, and teachers.[110] On the other hand, the El Paso Court of Appeals, in a split decision, issued an opinion that upheld one of Governor Abbott's orders,

107. *See supra* notes 10–17 and accompanying text (discussing the executive orders which lifted mask mandates).

108. The Governor of the State of Tex., Exec. Ord. GA-29, 45 Tex. Reg. 4849, 4849 (2020).

109. *See* Abbott v. Harris Cnty., 641 S.W.3d 514, 525 (Tex. App.—Austin 2022, pet. filed) (holding the Act does not "empower the [G]overnor with broad authority to preempt local orders").

110. Abbott v. City of San Antonio, No. 04-21-00342-CV, 2021 WL 5217636, at *6 (Tex. App.—San Antonio 2021, pet. filed) (concluding the Governor did not possess inherent power to suspend all statutes, thereby rendering GA-38 invalid); Abbott v. Jenkins, No. 05-21-00733-CV, 2021 WL 5445813, at *13–14 (Tex. App.—Dallas 2021, pet. filed) (mem. op.) (determining Jenkins, the county judge, possessed standing to challenge the Governor's authority to suspend statutes); *Harris Cnty.*, 641 S.W.3d at 524 (stating the Governor cannot preempt the local government's orders under the Texas Disaster Act); Abbott v. La Joya Indep. Sch. Dist., No. 03-21-00428-CV, 2022 WL 802751, at *5 (Tex. App.—Austin 2022, pet. filed) (holding the Governor cannot suspend statutes that provide schools the authority to issue face-covering requirements).

GA-32.[111] Because the area surrounding El Paso was still experiencing a surge of COVID cases, local authorities issued an order retaining many restrictions related to businesses and bars.[112] GA-32, however, allowed a state-wide relaxation of protections imposed by many of the earlier executive orders related to the pandemic.[113] The El Paso Court of Appeals resolved this conflict by concluding the Texas Disaster Act empowered the Governor to prohibit local officials from requiring more protection for its citizens than what GA-32 required.[114]

What is truly astonishing is that all four of these opinions seemingly ignored the section of the Texas Disaster Act setting forth that local governments were vested with all of the powers of the Governor contained in Chapter 418.[115] Instead, the four decisions,[116] holding Governor Abbott lacked the power to prohibit schools from having a mask mandate, solely relied upon the classic police powers of cities and counties and particularly the Texas Health and Safety Code, which allows the entities to do what is "reasonably necessary to protect the public health."[117] The tone of all four cases was exemplified by the holding of the Dallas Court of Appeals that the Texas Disaster Act "does not give the [G]overnor carte blanche to issue executive orders empowering him to rule the state in any way he wishes during a disaster."[118]

Even more amazing, the El Paso Court of Appeals, who held the Governor had the power to preempt local health orders, quoted the language that local governments had all the powers of the Governor as set forth in Chapter 418, but it did not value the provision in making its legal determination that the Governor's orders preempted the orders of local

111. *See* State v. El Paso Cnty., 618 S.W.3d 812, 826 (Tex. App.—El Paso 2020, orig. proceeding) (clarifying "[i]f conduct is allowed under the Governor's order, that County cannot prohibit it").

112. *El Paso Cnty.,* 618 S.W.3d at 816.

113. *See* The Governor of State of Tex., Exec. Ord. No. GA-32, 45 Tex. Reg. 7341, 7347 (2020) (increasing the occupancy limit of businesses in Texas to seventy-five percent).

114. *El Paso Cnty.*, 618 S.W.3d at 826.

115. *See* TEX. GOV'T CODE ANN. § 418.1015(a)–(b) (allowing "emergency management directors" to exercise gubernatorial powers, granted in Chapter 418, on an "appropriate local scale").

116. *City of San Antonio,* 2021 WL 5217636, at *5; *Jenkins,* 2021 WL 5445813, at *26; *Harris Cnty.,* 641 S.W.3d at 525, 528; *La Joya Indep. Sch. Dist.*, 2022 WL 802751, at *8–10.

117. TEX. HEALTH & SAFETY CODE ANN. § 121.003(a).

118. *See* Jenkins, 2021 WL 54455813, at *10 (condemning Governor Abbott's use of executive orders to assert authority over local authorities during a disaster).

governments.[119] This controversy exemplified the true intent of the legislature in adopting an amendment in that the entire state will rarely have the same exact conditions as the result of a disaster and the legislature expressly provided that local governments could address unique problems or add additional protections due to their extraordinary circumstances.

Therefore, all four appellate courts, by ignoring the powers granted to local governments in Chapter 418, have erected an approach that the interpretation must be either "all for the Governor" or "all for the local governments" instead of "the Governor and local subdivisions working together." In other words, the approach of the courts, the Governor, and local governments must be to ask, "What can *we do together* to meet the dangers of the disaster?" The legislature clearly did not intend their approach to result in constant power disputes between government entities but to facilitate cooperation by all governmental entities to protect, heal, repair, and aid Texas citizens in returning to a normal life.[120]

As stated before, when the legislature amends a statute to vest specific powers in the local governments, it is presumed they intended to change the existing law and to fill a void that had become apparent from the statute's application to real events.[121] In addition, the language is presumed to be what the legislature intended and if the meaning is plain, then the court cannot base its interpretation on any other method or source.[122] For these four opinions to ignore such an amendment in determining the breadth of the local governments' power is inexcusable in fulfilling their judicial role.

It is fundamental to statutory construction that a court "must always consider the statute as a whole rather than its isolated provisions."[123] It is also presumed that the entire statute is intended to be effective, and the

119. *See El Paso Cnty.*, 618 S.W.3d at 820–24 (finding the Governor possesses the authority to control ingress, egress, and occupancy to and from a disaster area, and proclaiming "the legislature inserted a tie breaker and gave it to the Governor in that his or her declarations under Section 418.012 have the force of law").

120. *See generally* GOV'T ch. 418 (providing multiple provisions that have local and state government working together).

121. *See supra* notes 39–40 and accompanying text (favoring the use of judicial restraint in interpreting statutory amendments).

122. *In re* Smith, 333 S.W.3d 582, 586 (Tex. 2011) (orig. proceeding) (quoting Leland v. Brandal, 257 S.W.3d 204, 206 (Tex. 2008)).

123. Helena Chem. Co. v. Wilkins, 47 S.W.3d 486, 493 (Tex. 2001) (citing Morrison v. Chan, 699 S.W.2d 205, 208 (Tex. 1985)).

court should not read a word, phrase, or sentence to be a nullity.[124] Finally, the Code Construction Act indicates the court is to presume (1) "the entire statute is intended to be effective," (2) "a just and reasonable result is intended," and (3) "a result feasible of execution is intended."[125]

By failing to consider the significant power granted by the legislature to local governments, the court could and likely will have long-term consequences on the right of local governments to do what is necessary during a disaster. For example, a court could mandate that the Governor's "one-size-fits-all" orders apply to all locales despite differences in their specific needs throughout this State.[126]

III. THE TEXAS SUPREME COURT HAS CAUSED SIGNIFICANT DAMAGE TO THE DIGNITY AND INTEGRITY OF THE COURT

A. *The Law Applicable to the Conduct of Judges and Supreme Court Justices, In Particular*

The Texas Supreme Court is undoubtedly responsible for the functioning of the judiciary and serves as a gatekeeper to protect the dignity and integrity of the Texas justice system. The court has held they have inherent judicial power that is neither derived from a legislative act nor a specific provision within the Texas Constitution but has been assigned certain duties and responsibilities by the Constitution.[127] "The inherent powers . . . are those which it may call upon to aid in the exercise of its jurisdiction, in the administration of justice, and in the preservation of its independence and integrity."[128] These powers "exist[] to enable our courts to effectively perform their judicial function and to protect their dignity, independence[,] and integrity."[129] Thus, the Texas Supreme Court has held without restraint,

124. Leordeanu v. Am. Prot. Ins. Co., 330 S.W.3d 239, 248 n.35 (Tex. 2010) (first citing Columbia Med. Ctr. Of Las Colinas, Inc. v. Hogue, 271 S.W.3d 238, 256 (Tex. 2008); and then citing City of Marshall v. City of Uncertain, 206 S.W.3d 97, 105 (Tex. 2006)).

125. GOV'T § 311.021(2)–(4).

126. *See, e.g.,* State v. El Paso Cnty., 618 S.W.3d 812, 828 (Rodriguez, J., dissenting, Tex. App.—El Paso 2020, orig. proceeding) (contending Governor Abbott improperly expanded limited gubernatorial authority when the Governor used Texas Disaster Act provisions to usurp local leaders' power during the coronavirus pandemic).

127. Eichelberger v. Eichelberger, 582 S.W.2d 395, 398 (Tex. 1999).

128. *Id.*

129. *Id.* at 399.

"that in our adversary system, a court has not only the power but the *duty* to insure that judicial proceedings remain truly adversary in nature."[130]

The Texas Supreme Court has adopted the Texas Judicial Code of Conduct to ensure the judicial duty is fulfilled by our legal system.[131] The court states, "Our legal system is based on a principle that an independent, fair[,] and competent judiciary will interpret and apply the laws that govern us."[132] Further, "[a]n independent and honorable judiciary is indispensable to justice in our society . . . so that the integrity and independence of the judiciary is preserved."[133] "A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."[134] Most importantly for our analysis, the Texas Supreme Court concludes, "A judge shall not allow any relationship to influence judicial conduct or judgment."[135]

To place this analysis in perspective, it is necessary to view the actions of the Texas Supreme Court in another pandemic litigation that arose out of the 1975 Texas Disaster Act, approximately one year before the mandatory mask litigation. In that case, Governor Abbott issued Executive Order GA-13, which limited inmates from obtaining pre-trial bail due to the suspension of provisions from the Code of Criminal Procedure.[136] Sixteen trial judges sued the Governor asserting GA-13 was unconstitutional.[137] At the trial court level, the plaintiff judges were able to secure a temporary restraining order, which was then immediately appealed on an emergency basis to the Texas Supreme Court.[138] Oddly, the Texas Supreme Court demanded emergency briefing and oral argument of the parties, twelve days after which the court issued a nine-page opinion and decision.[139]

GA-13 was issued as a pandemic order by the Governor where he set forth multiple citations on his authority to suspend bail laws under

130. Pub. Util. Comm'n of Tex. v. Cofer, 754 S.W.2d 121, 124 (Tex. 1988) (orig. proceeding) (emphasis in original).

131. TEX. CODE JUD. CONDUCT, Preamble, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. B.

132. *Id.*

133. TEX. CODE JUD. CONDUCT, Canon 1.

134. TEX. CODE JUD. CONDUCT, Canon 2(A).

135. TEX. CODE JUD. CONDUCT, Canon 2(B).

136. *In re* Abbott, 601 S.W.3d 802, 806 (Tex. 2020) (orig. proceeding) (per curiam).

137. *Id.* at 805.

138. *Id.* at 806–07.

139. *Id.* at 807.

Chapter 418.[140] However, the main provision that was suspended was the Code of Criminal Procedure, article 17.03 relating to pre-trial bail.[141] Although the Governor acknowledged that judges could grant inmates bail under the statute by considering the circumstances, he simply stated it had been "reported[]" that some counties were intending to have "broad scale release[s]" of inmates to reduce the jail population during COVID-19 surges.[142] He failed to cite support for the fact such releases had or were planned to occur but believed a statewide suspension of such individual releases was necessary; moreover, evidential support of the statement was neither disclosed in the district court nor in the Texas Supreme Court hearings.[143]

Thus, the order was based on the Governor's sole and factually unsupported belief that all district and county court judges would disregard their legal duty to make bail decisions correctly, and all county sheriffs would neglect the law by acting without the legal consent of the presiding judge. He noted in his order that the Texas Judicial Council had recently reminded judges of their legal duties related to bail; however, he did not caution those involved to remain calm and follow the law when his order suspended the right of bail for even those entitled to it by law.[144]

The most important fact is that there was not an emergency. Judges and sheriffs did not intentionally fail to abide by the law, and there never was a "broad-scale release" of inmates during the COVID-19 pandemic.[145] However, this "emergency" went to the Supreme Court and was fully decided quite expeditiously.[146]

---

140. *See* The Governor of State of Tex., Exec. Ord. No. GA-13, 45 Tex. Reg. 2368, 2368–69 (2020) (employing TEX. GOV'T CODE ANN. §§ 4018.011, 418.012, 418.016(a), 418.017(a), 418.018(c), 418.108, 418.173, and 418.1015(b) to preclude any county authority from releasing inmates on bail due to covid-related concerns).

141. *See id.* at 2369 (listing this section first and using the rest of the sections as slight variations on this topic).

142. *Id.*

143. *See id.* at 2368–69 (lacking citation to authority demonstrating the counties' intention to release detainees because of COVID-19); *see In re Abbott*, 601 S.W.3d at 802–13 (containing no reference to evidence proffered by Governor Abbott showing the counties intended to release inmates).

144. *See* Exec. Order No. GA-13, 45 Tex. Reg. at 2369 (reminding about judicial duties but lacking a guideline to abide by the law).

145. *See id.* (stating counties were debating the release versus actually doing it).

146. *See In re* Abbott, 601 S.W.3d at 806–07, 813 (explaining that everything has and will be expedited because of the nature of the case).

Why? Was it simply that the party before them was the Governor? Was there imminent public harm? With the public notice from the Texas Judicial Council and GA-13, a judge or sheriff would not be caught with a wholesale evacuation of his or her jail cells. In contrast, a report from the University of Texas established the disadvantaged individuals in this controversy were those in pre-trial detention; eighty percent of those who died in jail were not serving a sentence but awaiting their trial.[147]

So, what were the "special" reasons for granting an emergency order, bypassing the court of appeals, and rendering a decision in twelve days? Is the mere rendition by a district court judge that a Governor's order is unconstitutional such a shocking occurrence, that the people demand a decision as soon as possible?

The analysis now turns to the mask mandate controversy, not to the merits, but to the procedure demanded by the Supreme Court. The focus is on the litigation and advocacy concerning the Governor's orders to shut down mandatory masking, particularly in schools, while the school systems perceived an absolute need for their children to be masked during the 2021-2022 school year. Many schools participated, but four major school systems took the lead in commencing separate declaratory judgment actions challenging the validity of Governor Abbott's three executive orders, GA-34, 36, and 38.[148] The four school districts were San Antonio I.S.D.,[149] Houston I.S.D.,[150] Austin I.S.D.,[151] and Dallas I.S.D.[152] All four school districts were successful in securing a temporary injunction from their respective District Court judges.[153]

147. Jerusalem Demsas, *80 Percent of Those Who Died of Covid-19 in Texas County Jails Were Never Convicted of a Crime*, VOX (Nov. 12, 2020, 2:50 PM), https://www.vox.com/2020/11/12/21562278/jails-prisons-texas-covid-19-coronavirus-crime-prisoners-death [https://perma.cc/3SUK-U2MA].

148. *See supra notes* 10–17 and accompanying text (describing the executive orders Governor Abbott rendered during the pandemic).

149. City of San Antonio v. Abbott, No. 2021CI16133 (45th Dist. Ct., Bexar County, Tex. Aug. 10, 2021).

150. Harris Cnty. v. Abbott, No. D-1-GN-21-003896 (345th Dist. Ct., Travis County, Tex. Aug. 12, 2021).

151. La Joya Indep. Sch. Dist. v. Abbott, No. D-1-GN-21-003897 (353rd Dist. Ct., Travis County, Tex. Aug. 27, 2021).

152. Jenkins v. Abbott, Cause No. DC-21-10101 (116th Dist. Ct., Dallas County, Tex. Aug. 25, 2021).

153. Order Granting Temporary Restraining Order, City of San Antonio v. Abbott, No. 2021CI16133; Abbott v. Harris Cnty., 641 S.W.3d 514, 515 (Tex. App.—Austin 2022, pet. filed); Abbott v. La Joya Indep. Sch. Dist., No. 03-21-00428-CV, 2022 WL 802751 at *1 (Tex. App.—Austin

While the lower courts decided the merits of each lawsuit, Governor Abbott and Attorney General Paxton sought immediate, emergency relief from the Texas Supreme Court.[154] The Texas Supreme Court issued two separate orders less than three days after the motions were filed.[155] In both orders, the Texas Supreme Court issued a stay of the lower courts' temporary injunctions and advised the parties to proceed through the appropriate appellate court.[156] The Texas Supreme Court explained the status quo should remain while the court of appeals considered the merits of each argument.[157]

The court's conclusion that the status quo was after Governor Abbott issued executive orders banning mandatory school mask policies was the most shocking and controversial. The court theorized that the injunctions issued by the lower courts altered the status quo because, during the pandemic, the Governor oversaw decisions about the use of masks.[158] In other words, prior to the litigation, all schools in the state had mandatory mask policies due to the Governor's order and had not issued orders of their own.

The schools' briefing before the district courts and courts of appeals presented a very different story. Houston schools imposed a mandatory mask policy when they were open during the 2020 spring and fall semesters,

---

Mar. 17, 2022, pet. filed) (mem. op.); Order Granting Temporary Injunction, Jenkins v. Abbott, Cause No. DC-21-10101.

154. *E.g.*, Relator's Emergency Motion for Temporary Relief, *In re* Abbott, No. 21-0686 (Tex. Aug. 13, 2021), *available at* https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=54dfd15a-bef4-4d7f-97b7-dba12c2c4821&coa=cossup&DT=MOTION&MediaID=ee38176e-4a97-4065-95da-5db41bfd3505 [https://perma.cc/XC3K-M6Z4] (requesting the Texas Supreme Court stay a trial court's temporary restraining order).

155. Order Granting Relator's Emergency Motion for Temporary Relief, *In re* Abbott, No. 21-0686 (Tex. Aug. 15, 2021), *available at* https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=691f5a0c-f06b-428b-ab48-a2a89946eb6f&coa=cossup&DT=STAY%20ORDER%20ISSUED&MediaID=c6f35821-1a97-4ccd-beed-fb2c3397d66e [https://perma.cc/QQ5M-G4Y2]; Order Granting Relator's Emergency Motion for Temporary Relief, *In re* Abbott, No. 21-0687 (Tex. Aug. 15, 2021), *available at* https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=3974be83-e9be-4146-ac33-fa187f0f9215&coa=cossup&DT=STAY%20ORDER%20ISSUED&MediaID=f7fda87e-4842-4ca0-b1a2-8b56cd170e3c [https://perma.cc/N76E-ZHBT].

156. Order Granting Relator's Emergency Motion for Temporary Relief, *In re Abbott*, No. 21-0686; Order Granting Relator's Emergency Motion for Temporary Relief, *In re Abbott*, No. 21-0687.

157. Order Granting Relator's Emergency Motion for Temporary Relief, *In re Abbott*, No. 21-0686; Order Granting Relator's Emergency Motion for Temporary Relief, *In re Abbott*, No. 21-0687.

158. *See, e.g.*, Order Granting Relator's Emergency Motion for Temporary Relief, *In re Abbott*, No. 21-0686 (concluding the "trial court's temporary restraining order alters the status quo preceding the controversy").

even though the Governor's mandatory mask order was in place.[159] Austin schools also imposed mandatory masks when schools were open in 2020.[160] Dallas schools had not adopted a mandatory mask policy during that time but they had the power to do so if there was a surge in C-19 cases.[161] Finally, San Antonio schools had the power to issue a mask mandate and they imposed one when necessary.[162] Therefore, the Governor did not exert total control over mask mandates during the first year of the pandemic, yet the Texas Supreme Court made that factual conclusion without any proof in the record. [163] In addition, the court did not reference Chapter 418, which granted the schools the same power as the Governor to impose a mask policy.[164]

This raises another disturbing inference from what the court stated in the stay orders. Governor Abbott took a very aggressive stance in his executive orders because there were no vaccines or other types of medical treatment available for COVID-19.

These orders closed our society for the most part, as Governor Abbott required everyone to limit their exposure to others.[165] Therefore, very little action was required of the cities and counties because his mandates prohibited conduct at the literal maximum. One would believe that all disaster relief power was vested in the Governor if they merely read the executive orders without scrutinizing the law.

Did the Texas Supreme Court consider Chapter 418? If so, it would have quickly discerned that the cities and counties were vested with the same powers as Governor Abbott when acting within their locale. The fact the Governor was exercising all the power would have confused the court, but

159. Abbott v. Harris Cnty., 641 S.W.3d 514, 519 (Tex. App.—Austin Jan. 6, 2022, pet. filed).

160. Abbott v. La Joya Indep. Sch. Dist., No. 03-21-00428-CV, 2022 WL 802751, at *2 (Tex. App.—Austin Mar. 17, 2022, pet. filed) (mem. op.).

161. *See* Abbott v. Jenkins., No. 05-21-00733-CV, 2022 WL 5445813, at *2 (Tex. App.— Dallas Nov. 22, 2021, pet. filed) (mem. op.) (discussing the county judge's orders, which "authorized [him] to take such actions as are necessary in order to protect the health, safety[,] and welfare of the citizens of Dallas County by the issuance of executive orders as necessary").

162. Abbott v. City of San Antonio, No. 04-21-00342-CV, 2021 WL 5217636, at *1–2 (Tex. App.—San Antonio Nov. 10, 2021, orig. proceeding).

163. Order Granting Relator's Emergency Motion for Temporary Relief, *In re Abbott*, No. 21-0686; Order Granting Relator's Emergency Motion for Temporary Relief, *In re Abbott*, No. 21-0687.

164. Order Granting Relator's Emergency Motion for Temporary Relief, *In re Abbott*, No. 21-0686; Order Granting Relator's Emergency Motion for Temporary Relief, *In re Abbott*, No. 21-0687.

165. The Governor of the State of Tex., Exec. Ord. GA-08, 45 Tex. Reg. 2271, 2271 (2020); The Governor of the State of Tex., Exec. Ord. GA-14, 45 Tex. Reg. 2369, 2369 (2020); The Governor of the State of Tex., Exec. Order GA-18, 45 Tex. Reg. 2933, 2933 (2020).

why should it? If the court engaged in statutory construction, it would have concluded that the cities and counties had the power to take action when the Governor failed to act. Therefore, Governor Abbott did not have all the power unless he was acting at the maximum. When the Governor determined the maximum was no longer necessary, then it was time to go below the maximum, but remain vigilant. Yet, clearly the school systems wholly disagreed.

Therefore, for the court to justify allowing Governor Abbott's GA-34, GA-36, and GA-38 to remain in effect simply because everything until now in the pandemic had been done by the Governor, was not relevant to the issue. This is particularly true when the Governor abdicated his authority by allowing citizens to make their own choices about masking and obtaining a COVID-19 vaccine. It was not an order to do nothing, but instead it left people alone to make their own choices. At the time the stay order was issued, Governor Abbott did not even have an order in place regulating citizen conduct. The only order of state-wide application was Abbott's order to stop the schools from having a mask mandate. Therefore, the only question the Texas Supreme Court had to determine was if the local governments could require more protection of their children, staff, and school teachers. It was clear that this was true based on unambiguous language.

It is even more perplexing that the Texas Supreme Court did not believe the Governor had no express power to prevent cities and counties from preventing harm. The Governor also had no power to order cities and counties to enhance the harm. Therefore, it seems the supreme court relinquished its constitutional power and duty to interpret and apply the law in a way that benefitted Governor Abbott.

This analysis now moves to the most unreasonable holding of the Texas Supreme Court in issuing the two stay orders. In both orders, the court held that Governor Abbott's executive orders would remain in effect to preserve the status quo until the litigation was resolved.[166] The status quo is defined as "the last, actual, peaceable, noncontested status which preceded the

166. *In re* Abbott, No. 21-0686, slip op. at *1 (Tex. Aug. 15, 2021), *available at* https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=691f5a0c-f06b-428b-ab48-a2a89946eb6f&coa=cossup&DT=STAY%20ORDER%20ISSUED&MediaID=c6f35821-1a97-4ccd-beed-fb2c3397d66e [https://perma.cc/R3B2-M33M]; *In re* Abbott, No. 21-0687, slip op. at *1 (Tex. Aug. 15, 2021), *available at* https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=3974be83-e9be-4146-ac33-fa187f0f9215&coa=cossup&DT=STAY%20ORDER%20ISSUED&MediaID=f7fda87e-4842-4ca0-b1a2-8b56cd170e3c [https://perma.cc/X55Z-HMUL].

pending controversy."[167] As set forth above, all of the schools implemented mandatory mask requirements on an on-and-off basis through 2020, the winter and spring of 2021, and even when conditions allowed the schools to cancel the mask requirements, they had the power to reimpose them when another surge occurred.[168]

Therefore, when GA-34, GA-36, and GA-38 were issued by Governor Abbott, the schools were operating with mandatory mask polices and functioning.[169] That was the last peaceable time at the schools that preceded Governor Abbott's imposition of the illegal orders. The emergency management director vested schools with the power to impose a mandatory mask policy. There is no difference between a school immediately exercising its power to implement a mandatory mask policy and vesting the power later to act only when necessary to protect the public good.[170] Thus, the mandatory masking policies were in effect before the issuance of the executive orders.[171] It is then very difficult to give the Texas Supreme Court the benefit of the doubt regarding their conclusion that the Governor's repeal of mandatory mask policies was the last peaceable act based solely on the facts. The Texas Supreme Court's decision instead created the controversy.

To make matters worse, the main purpose of a temporary injunction is to "preserve the status quo of the litigation's subject matter pending a trial on the merits."[172] When the Texas Supreme Court allowed Governor Abbott's three orders to remain in place, what the schools were fighting for in the lawsuits was instantaneously destroyed.[173] Clearly, the schools wanted a safe

167. *In re* Newton, 146 S.W.3d 648, 651 (Tex. 2004) (citing Janus Films, Inc. v. City of Fort Worth, 358 S.W.2d 589, 589 (Tex. 1962)).

168. *See supra* notes 87–89 and accompanying text.

169. *See* Abbott v. La Joya Indep. Sch. Dist., No. 03-21-00428-CV, 2022 WL 802751, at *2 (Tex. App.—Austin Mar. 17, 2022, pet. filed) (mem. op.) (stating mask requirements allowed schools to provide students with in-person classroom instruction).

170. *See* TEX. GOV'T CODE ANN. §§ 418.1015, 418.108 (granting emergency management duties to local officials).

171. *See La Joya Indep. Sch. Dist.*, 2022 WL 802751, at *2 (describing how schools were preparing to institute mask mandates for the 2021–2022 school year).

172. Clint Indep. Sch. Dist. v. Marquez, 487 S.W.3d 538, 555 (Tex. 2016) (quoting Butnaru v. Ford Motor Co., 84 S.W.3d 198, 204 (Tex. 2002)).

173. *See* Rosa Flores et al., *Texas Supreme Court Sides With Governor and Temporarily Blocks Mask Mandates*, CNN (Aug. 27, 2022, 8:30 PM), https://www.cnn.com/2021/08/16/us/texas-supreme-court-block-mask-mandates-greg-abbott/index.html [https://perma.cc/3UCL-VAN2] ("The Texas Supreme Court sided with Gov. Greg Abbott on Sunday in a ruling that temporarily blocks mask mandates recently issued in San Antonio and Dallas . . . .").

place to study so that children would come to school healthy, learn, and be held accountable for their studies without becoming ill or severely ill, or dying from COVID-19.[174] Without a mandatory mask policy, students, staff, and teachers would be in an enclosed building for at least six hours a day breathing the same air as those potentially infected.[175] The Texas Supreme Court thus inhibited schools from providing a safe learning environment, and the court should have realized its stay orders would have this sort of impact.

Nothing speaks more concisely than data. During the period the court's stay orders remained in effect, the Texas Education Agency had counted roughly 559,878 school children and 139,901 staff and teachers who contracted COVID-19.[176] Finally, in what was truly one of the worst-case scenarios, seventy-eight children, staff, and teachers died from COVID-19 during this period.[177] The loss of one life, particularly the life of a child, is one loss too many.

Despite the stay orders, seventy-three schools had mandatory mask policies, while 254 schools did not.[178] Many of the districts with the largest populations were included in the list of law-violating schools.[179] If they had complied with the law, just how many more COVID cases, severe illnesses, and deaths would have occurred?

Suppose a school and the state are arguing over who owns a building; the state starts tearing it down, and the school sues. The court rules the status quo was at the time the state was tearing the building down so they may continue while the litigation determines the owner. As a result, there is no

174. *See La Joya Indep. Sch. Dist.*, 2022 WL 802751, at *2 (stating nineteen independent school districts, a community college district, and three parents filed suit in order to allow mask mandates for in-school instruction).

175. *See Indoor Air and Coronavirus (COVID-19)*, EPA (Dec. 15, 2021), https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19 [https://perma.cc/FAJ9-3WM6] (stating the airborne nature of COVID-19 droplets "can move throughout an entire room or indoor space" and can linger).

176. *Texas Public Schools COVID-19 Data*, TEX. DEP'T OF STATE HEALTH SERVS. (Aug. 12, 2022), https://dshs.texas.gov/coronavirus/schools/texas-education-agency/ [https://perma.cc/2QM9-4NH4].

177. *Id.*

178. *COVID-19: List of Governmental Entities Unlawfully Imposing Mask Mandates*, OFF. OF ATT'Y GEN. OF TEX. (Oct. 05, 2021, 10:47 AM), https://texasattorneygeneral.gov/covid-governmental-entity-compliance [https://perma.cc/R29T-8EZ5].

179. *Id.*

building left when the school prevails. This is the exact scenario that occurred in this litigation.

The rubble is over a half a million illnesses in our children, over a hundred thousand illnesses in our staff and teachers, and the funerals of seventy-eight precious human beings.[180] And how many children, staff, and teachers that contracted COVID have lasting effects?

The Texas Supreme Court accepted the GA-13 case on an emergency basis and not only formally acted in twelve days but issued an order and opinion, which determined the merits of the lawsuit.[181] Why did the court not act this quickly in the mask mandate cases? If the court had read and studied Chapter 418, they would have quickly learned the issue was a question of the meaning of the law; and if it applied the canons of construction, it would have concluded the schools had the power to act and the Governor did not.[182]

Instead, the Texas Supreme Court used their discretion to send these cases back to the appellate courts, which guaranteed at least a three- to five-month delay before returning to the Texas Supreme Court. The court could have factored in the daily risk to the health and lives of our children, school staff, and teachers, but instead it exercised discretion, which appears to have solely benefited Governor Abbott when he had no lawful authority to act in the first place.

Finally, the four cases arrived back at the Texas Supreme Court beginning in January 2022, but the court has moved slowly. As of August of 2022, only three of the cases have briefing schedules[183] and one is sitting on the docket with no action at all.[184] In fact, no petitions have been granted thus

180. TEX. DEP'T OF STATE HEALTH SERVS., *supra* note 176.

181. *See supra* Part III.A (discussing the GA-18 order and how the Texas Supreme Court ruled on it).

182. *See supra* Part II.C (explaining how the Disaster Act—in conjunction with the Texas Constitution—should be construed as giving local authorities express power to impose regulations in order to protect public health).

183. *See generally* Abbott v. City of San Antonio, No. 21-1079, *available at* https://search.txcourts.gov/Case.aspx?cn=21-1079&coa=cossup [https://perma.cc/U372-AKUH] (indicating the latest calendar deadline was set on February 8, 2022); *In re* Abbott, No. 21-0687, *available at* https://search.txcourts.gov/Case.aspx?cn=21-0687&coa=cossup [https://perma.cc/CS77-SSAA] (showing the case calendar was set on May 9, 2022); Abbott v. La Joya Indep. Sch. Dist., No. 22-0328, *available at* https://search.txcourts.gov/Case.aspx?cn=22-0328&coa=cossup [https://perma.cc/J59D-NBAU] (setting the next calendar deadline for October 6, 2022).

184. *See generally* Abbott v. Harris Cnty., No. 22-0124, *available at* https://search.txcourts.gov/Case.aspx?cn=22-0124&coa=cossup [https://perma.cc/YX6K-SUUR] (lacking a calendar set by the court).

far, but continued briefings have been filed to assist in the court's efforts to decide whether to grant the petitions.[185] It is astounding how the court has allowed the case management process to delay the decisions in these cases by half of a year. Although the court has been fully aware of these cases for over eighteen months, it has neglected to determine whether to accept and decide them.

Of course, this likely means that there will not be any decisions before the November election, in which the Governor is running for reelection. In fact, the court's normal pace in issuing opinions almost guarantees it will not be issued until the end of the 2022–2023 school year. Therefore, with the stay orders remaining in effect, Governor Abbott obtained a two-year political benefit by his violation of the Texas Disaster Act, which seems to have been facilitated by the Texas Supreme Court's actions.

IV. CONCLUSION: THERE MUST BE OVERSIGHT OF THE TEXAS SUPREME COURT

The most tragic aspect of the controversy described and analyzed in this Article and the earlier controversy related to Governor Abbott issuing GA-13 is the potential lack of oversight of the actions and inactions of the Texas Supreme Court regarding Governor Abbott's orders. This would pose a direct threat to Texas's representative democratic form of government and the preservation of separation of powers as dictated by the Texas Constitution,[186] as well as the failure to oversee the unethical conduct of the Chief Justice and eight other Justices of the court.

The Texas Constitution demands that our government establish and maintain a State Commission on Judicial Conduct.[187] It is composed of six judges appointed by the Texas Supreme Court, two attorneys appointed by the Texas State Bar, and five citizens appointed by the Governor.[188] The Legislature has statutorily created the Commission as dictated by the

185. *See generally City of San Antonio*, No. 21-1079 (indicating a pending decision since the petition was filed on January. 25, 2022); *In re* Abbott, No. 21-0687 (showing the petition was filed on August. 13, 2021 and has yet to be accepted); *La Joya Indep. Sch. Dist.*, No. 22-0328 (noting the petition was submitted on May 31, 2022, and no decision has been reached); *Harris Cnty.,* No. 22-0124 (displaying a list of briefs to be reviewed since petition was filed on February 18, 2022, still without acceptance).

186. TEX. CONST. art. II, § 1.

187. *Id.* art. V, § 1-a(2).

188. *Id.* § 1(a)(2).

Constitution[189] and the Texas Supreme Court has adopted a Texas Code of Judicial Conduct.[190]

At this time, the Commission has not publicly acknowledged the existence of any formal complaints related to the court's action with the issuance of GA-13, nor has it acknowledged the subsequent issuances of GA-34, GA-36 and GA-38. Moreover, no actions have been taken against any of the Texas Supreme Court Justices for the unreasonable deference given to the Governor's blatant misinterpretation of the Texas Disaster Act.

It is worth noting that eleven members of the Commission are hand-picked by the Texas Supreme Court or the Governor.[191] Therefore, it would be unfortunate for the citizens of Texas if the Governor and the entire Texas Supreme Court are not held accountable for violating or grossly misinterpreting the law simply because of political loyalties in the State Commission on Judicial Conduct. Failure to do so would permit the state's executive branch and judicial branch to continue to work in concert to diminish the role of the legislative branch and write the law themselves, thwarting the fundamental principles of the Texas Constitution in the process.

189. TEX. GOV'T CODE ANN. § 33.002.

190. TEX. CODE JUD. CONDUCT, Canon 3(D)(1), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. B.

191. TEX. CONST. art. V, § 1(a)(2).