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December 20, 2022

VIA FEDERAL EXPRESS

Texas Office of Court Administration
Attn: Harris County Courts
P.O. Box 12066
Austin, Texas 78711-2066

Dear Office of Court Administration:

It has come to our attention that there is a face covering mandate for prospective jurors in Harris County, Texas. This requirement contravenes present Texas law, and as such, we respectfully request that you rescind the face covering mandate.

As part of the ongoing response to the COVID-19 pandemic, on July 29, 2021, Governor Abbot issued Executive Order GA38 (“**GA38**”), *inter alia*, to emphasize that Texans “have the individual right and responsibility to decide for themselves and their children whether they will wear masks, open their businesses, and engage in leisure activities.”¹ The authority for the Governor’s executive orders related to the COVID-19 pandemic is derived from the Texas Governmental Code Section 418.014 (Declaration of State Disaster Statute), which provides that such declarations do not last more than 30 days unless renewed by the Governor. Tex. Gov’t Code § 418.014(c). The Governor has continued to renew the Disaster Declaration, having done so most recently on November 18, 2022.² Thus, the State of Texas remains under a Disaster Declaration, and COVID-19-disaster-related executive orders, including GA38, remain in effect.

Section 4 of GA38 prohibits **all** governmental entities from requiring face coverings:

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:

¹ Press Release, Governor Abbott Issues Executive Order Providing Clarity And Uniformity In The State’s COVID-19 Response (July 29, 2021), <https://gov.texas.gov/news/post/governor-abbott-issues-executive-order-providing-clarity-and-uniformity-in-the-states-covid-19-response>.

² Press Release, Governor Abbott Renews COVID-19 Disaster Declaration in November 2022, Office of the Texas Governor (Nov. 18, 2022), <https://gov.texas.gov/news/post/governor-abbott-renews-covid-19-disaster-declaration-in-november-2022>.

- 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.³

Notably, the two listed exceptions do not include the Texas Judicial Branch.

Crucially, **Section 4 of GA38 temporarily suspends contrary existing law** and specifically provides that any statute invoked by any local governmental entity or official in support of a face covering requirement is suspended. GA38 § 4b (“This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a.”). This is consistent with Section 418.016 of the Texas Governmental Code, which further permits the Governor, as part of his emergency powers, to suspend certain laws and rules. *See* Tex. Gov’t Code § 418.016(a).

Therefore, in light of the above, GA38 is predicated upon proper legal authority, and as such, we request that you rescind the face covering mandate forthwith. We look forward to your prompt response.

Very truly yours,

/s/ Walker Moller

Walker Moller, Esq.

Thomas Stavola, Esq.

³ Executive Order GA38 (July 29, 2021), https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.