

San Antonio v. Abbott – Key Docket Items Summary

DRAFT of September 9 2021

August 10, 2021 Complaint filed by San Antonio in District Court of 45th Judicial District, Bexar County

August 10, 2021 Bexar District Court issues temporary restraining order “restraining Defendant Greg Abbott, in his official capacity as Governor of Texas, ... from enforcing ... Executive Order GA-38” to the extent the executive order would prohibit mask mandates on City and County-owned property and public schools in the City of San Antonio and/or in Bexar County.

August 13, 2021 Fourth Court of Appeals, San Antonio, denies Governor Abbott’s petition for writ of mandamus and emergency motion for temporary relief and lets stand the August 10, 2021 TRO issued by the 45th Judicial District court.

August 15, 2021 Texas Supreme Court stays the August 10, 2021 TRO issued by the 45th Judicial District court. In a one-page order, it explains: “The trial court’s temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court’s hearing and decision on plaintiffs’ request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).”

August 16, 2021 Bexar District Court issues temporary injunction “restraining Defendant Greg Abbott, in his official capacity as Governor of Texas, ... from enforcing ... Executive Order GA-38” to the extent the executive order would prohibit mask mandates on City and County-owned property and public schools in the City of San Antonio and/or in Bexar County.

August 19, 2021 Fourth Court of Appeals, San Antonio, considers the (1) Governor Abbott’s notice of appeal from the August 16 temporary injunction, which causes the injunction to be “superseded” pursuant to Texas Rule of Appellate Procedure 29.1(b); and (2) San Antonio’s emergency motion requesting the issuance of an order reinstating the August 16 temporary injunction. The Fourth Court of Appeals does not make a decision on the merits of Abbott’s appeal from the August 16 temporary injunction, but it does provide an order regarding interim relief. It grants San Antonio’s motion to reinstate the August 16 temporary injunction, pursuant to its authority under Texas Rule of Appellate Procedure 29.3. It writes that the “temporary injunction is necessary to prevent irreparable harm...” It also invokes its ability under Texas law to preserve the “status quo.” It notes that “the Texas Supreme Court defines ‘the status quo’ as ‘the last, actual, peaceable, non-contested status which preceded the pending controversy,’” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) and concludes that it was the July Executive Order, not the August 10 temporary restraining order or the later temporary injunction, that disturbed the status quo.

August 23, 2021. Governor Abbott petitions the Supreme Court of Texas for a writ of mandamus and files an emergency motion for temporary relief. He requests that the Supreme Court of Texas direct the Fourth Court of Appeals to vacate its August 19, 2021 Rule 29.3 order. The Governor’s petition

argues that the order “undermines the State’s ability to achieve an orderly, cohesive, and uniform response to the pandemic.”

August 26, 2021 Texas Supreme Court grants Abbott’s emergency motion for temporary relief and stays the August 19, 2021 temporary injunction order of the Fourth Court of Appeals, San Antonio. The stay of the temporary injunction means that no court order restrains the application of Executive Order GA-38 to prevent city, county or public school mask mandates in San Antonio. The court again cites *Newton* and explains that “The status quo, for many months, has been gubernatorial oversight of [decisions about whether the government should make people wear masks] at both the state and local levels. That status quo should remain in place while the court of appeals, and potentially this Court, examine the parties’ merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought. ... The petition for writ of mandamus remains pending before this Court.”

August 30, 2021 Fourth Court of Appeals, San Antonio, sets a briefing schedule to consider Abbott’s appeal of the August 16, 2021 grant of a temporary injunction by the District Court of 45th Judicial District, Bexar County. This is the injunction that was stayed by the August 26, 2021 order of the Texas Supreme Court. Abbott’s brief is due September 7, San Antonio’s brief is due September 14, and Abbott’s reply brief is due September 20.

As of September 9, 2021, the state of play is:

- There is a stay of a district court temporary injunction (i.e., a decision that favors Abbott) granted by the Texas Supreme Court on August 26.
- There is a pending appeal in the 4th Court of Appeals regarding the district court’s temporary injunction with a briefing schedule that concludes September 20
- There is a trial on the merits scheduled in Bexar District Court for December 13.