



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 15, 2021

To all Texas state agencies:

On August 25, 2021, Governor Greg Abbott issued Executive Order GA-39, which states that “[n]o governmental entity can compel any individual to receive a COVID-19 vaccine.”¹ This order has “the force and effect of law” pursuant to the authority the Legislature vested in the Governor through the Texas Disaster Act.² In fact, on October 14, 2021, the Texas Supreme Court confirmed that GA-39 controls at both the state and local level, issuing a stay against San Antonio ISD’s vaccine mandate.³

Separately, President Biden recently issued a federal executive order⁴ directing federal departments and agencies to begin including a clause in federal “contract and contract-like instruments” specifying that contractors must comply with “workplace safety protocols” that would apply to “all covered contractor employees, including contractor or subcontractor employees.”⁵ These protocols will now include a requirement that covered employees receive a COVID-19 vaccination. Thus, President Biden’s order potentially conditions the continuation of federal funding on your agency’s cooperation in compelling your employees to receive a COVID-19 vaccination.

¹ See Executive Order GA-39, issued August 25, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-39_prohibiting_vaccine_mandates_and_vaccine_passports_IMAGE_08-25-2021.pdf. Governor Abbott has since issued Executive Order GA-40, which states that “[n]o entity in Texas can compel receipt of a COVID-19 vaccine by any individual, including an employee or a consumer, who objects to such vaccination for any reason of personal conscience, based on a religious belief, or for medical reasons, including prior recovery from COVID-19[.]” See Executive Order GA-40, issued October 11, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-40_prohibiting_vaccine_mandates_legislative_action_IMAGE_10-11-2021.pdf. However, GA-40 states that it does not supersede GA-39, which explicitly addresses governmental entities.

² Tex. Gov’t Code §§ 418.011–.012; see also *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.—El Paso 2020, no pet.).

³ *In re State*, No. 21-0873 (attached herein).

⁴ Exec. Order No. 14,042, 86 Fed. Reg. 50,985 (Sept. 14, 2021), available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-ensuring-adequate-covid-safety-protocols-for-federal-contractors/>.

⁵ Safer Fed. Workforce Task Force, COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors (September, 24, 2021), available at: https://www.saferfederalworkforce.gov/downloads/Draft%20contractor%20guidance%20doc_20210922.pdf.

Since this order was issued, several state agencies have contacted my office for guidance concerning compliance with both state law and the mandates that will flow from President Biden's executive order. My position is this: the Texas Attorney General has a constitutional and statutory responsibility to uphold state law. This obligation does not diminish in the face of federal overreach. On the contrary, my office is charged with a duty to vindicate Texas' laws and interests when the federal government intrudes on the sovereignty of our State or the liberties of the millions of people who call Texas home. Accordingly, I must—and will—take legal action against the federal government to protect Texas state agencies and their employees from COVID-19 vaccination mandates.

I understand that many state agencies receive federal funding through contractual and quasi-contractual agreements with the federal government. In some cases, federal money pays the salaries of your employees, and you now face the difficult decision of violating state law or potentially losing federal funding. We will defend the State of Texas and its dedicated public servants from this federal overreach, and we hope that your agency will stand with us. We did not choose this fight, but we will fight back to uphold the Constitution and the laws of the State of Texas. We will support any agency that follows state law and seeks to resist the repressive funding conditions being unlawfully imposed by President Biden, but we note that any violation of state law may expose your agency and its principals to liability.

We appreciate that yours is a difficult situation, forced upon you by a coercive federal government that has threatened the very existence of many of our institutions. Rest assured, we will always stand for Texas—we hope that you will do the same.

For Texas,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly stylized font.

KEN PAXTON
Attorney General