

Texas mask mandate ban reinstated by federal appeals court

Andy Hartman, D. Lencho
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A federal appeals court has rescinded a judge's order that overturned Texas Governor Greg Abbott's executive order, known as GA-38, banning school districts from requiring masks in schools. The ruling was filed on December 1.

On November 10, US District Judge Lee Yeakel ruled that the mask mandate ban violated the Americans with Disabilities Act's (ADA) protections for disabled students' access to public education. On November 24, a three-judge panel of the 5th US Circuit Court of Appeals in New Orleans restored the order while it issued a formal ruling. A final ruling is expected later.

The lawsuit was originally filed by Disability Rights Texas, an advocacy group for the disabled, against Abbott, Texas state Attorney General Ken Paxton, and Texas Education Agency Commissioner Mike Morath. The original decision by Judge Yeakel prevented Paxton from enforcing Abbott's order by suing school districts, withholding state or federal funds, or any other manner. Additionally, Paxton was ordered to pay the court fees for the plaintiffs.

Judge Yeakel wrote: "The spread of COVID-19 poses an even greater risk for children with special health needs. Children with certain underlying conditions who contract COVID-19 are more likely to experience severe acute biological effects and to require admission to a hospital and the hospital's intensive care unit.

"This includes children with conditions including, Down syndrome, organ transplants, lung conditions, heart conditions, and weakened immune systems."

To put it concretely, COVID-19 kills and maims children. According to the American Academy of Pediatrics more than 7 million have been infected by the virus and at least 651 children have died from COVID-19 in the US, with Texas reporting 112 deaths among those ages 0-19 as of December 2.

According to figures from the UK Office for National Statistics, 1.2 million people in the UK experienced Long COVID following a COVID-19 case, with an estimated 1.4 percent of 12- to 16-year-olds experiencing Long Covid. The top symptoms include fatigue and shortness of breath,

followed by loss of smell and difficulty concentrating. COVID-19 is also known to cause vast and extensive damage to organs throughout the body, a cognitive impact often worse than a stroke or lead poisoning, and can lead to diabetes.

As reported by the *World Socialist Web Site*, a joint report by the University of Texas Health Science Center in Houston and the Texas Department of State Health Services published in October found that over 36 percent of Texas children have had COVID-19, along with roughly one-quarter of educational professionals. It is not known how many of these children have Long COVID symptoms as both the state and federal government have not attempted to track this.

The high rate of infection is due to the policy of fully reopening schools and workplaces so that workers can get back to work producing profits for Wall Street. This policy is bipartisan, with both the Republicans, who control the state government in Texas, and the Democrats, who control the White House, Congress and Texas' largest cities and school districts, pursuing it, as well as the unions, who have been the spearhead of the reckless reopening even as hundreds of their members died of COVID-19 throughout the US. Over 1,000 educator COVID-19 deaths were reported by *Education Week* in September.

According to Twitter user @LostToCovid, which reports on school personnel lost to COVID-19, at least 80 school personnel have died from the virus since late July, with the latest recorded being Kathy Gilbert, 64, a teacher in Weatherford ISD, just outside Fort Worth, Texas.

The Texas branch of the American Federation of Teachers issued a two-paragraph statement on the decision to uphold the mask mandate ban which was not at all critical, and simply stated that "the lawsuit will continue" and that "in practical terms, the decision will have no impact on most school districts." This statement will only create complacency in the face of the deadly Delta variant, which is surging across the US, and the emergence of new variants.

The appeals court ruled that Yeakel's ruling did not

consider various accommodations available to students, such as Plexiglas barriers, spacing between students, vaccinations and voluntary masking. Supposedly, according to the judges, “given the other preventative measures available to plaintiffs and the schools they attend, any injury-in-fact arising from the enforcement of GA-38 appears speculative or tentative.”

The judges further asserted that “the alleged injury to plaintiffs from the enforcement of [Abbott’s order] is, at this point, much more abstract.” The court’s argument is false and anti-scientific; the efficacy of masks has been well established, significantly reducing the spread of coronavirus when broadly used in a given population, though not enough to stop transmission by itself. There is nothing “abstract” about the injuries suffered.

Further, the court’s argument depends, not withstanding the idiotic claims of Plexiglas barriers stopping an aerosolized virus that can linger in the air for hours or “distancing” in crowded classrooms, on the false notion that stopping the virus is not a social issue but essentially a matter of personal responsibility. To the contrary, science makes clear that coordinated society-wide and comprehensive public health measures to eliminate the virus are necessary for the preservation of human life.

The Texas government’s machinations to hinder public safety in the face of a deadly pandemic are not popular. Results of a University of Texas/Texas Tribune poll published in November showed that a majority of registered voters in Texas do not agree with the 5th Circuit Court. The survey of 1,200 voters found that 57 percent were in favor of mask requirements in indoor public spaces as opposed to 40 percent against, while mask mandates for students and staff in public schools were favored by 58 percent with 39 percent opposed.

After the Circuit Court’s decision was issued, Paxton gloated on Twitter that the ban “is THE LAW and was affirmed by the 5th Circuit Court of Appeals,” while Abbott thanked Paxton for his efforts and called the decision “great news.”

In a statement following the ruling, Disability Rights Texas attorney Dustin Rynders expressed disappointment and stated, “As new COVID variants threaten to make an improving situation worse again, it is imperative schools have the option of requiring masks in the class, campus or district as needed to protect vulnerable students.” In fact, the situation is not at all “improving,” according to the *New York Times* COVID tracker, the 7-day average of new cases are once again on the rise and are higher than late July when the third wave struck in Texas.

In addition, new variants of the disease are constantly emerging, with the latest being the Omicron variant, a variant the World Health Organization has designated a

variant of concern and warned could become the dominant strain globally. Early estimates show Omicron to be three to six times as infectious as the Delta variant, which would make it more infectious than measles, and with signs that it may be resistant to vaccines. The Omicron variant is already in Houston, with Harris County Judge Lina Hidalgo reporting the first identified case Monday. The case was detected in a woman in her 40s with no travel history, indicating community spread of the variant. The woman, who was fully vaccinated, was not hospitalized.

Other lawsuits—and counter-lawsuits—regarding GA-38 are making their way through state courts. On November 10, the 4th Court of Appeals in San Antonio ruled in favor of San Antonio and Bexar Counties’ mask mandates, and the Dallas-based 5th District Court of Appeals ruled last week that the Texas Disaster Act “does not give the governor carte blanche to issue executive orders empowering him to rule the state in any way he wishes during a disaster.” The court affirmed Dallas County Judge Clay Jenkins’ authority to require mandatory face masks as a pandemic safety measure.

In the Austin-based 3rd Court of Appeals, Paxton’s office, which no longer provides public access to its list of school districts and local governments that have mask mandates, has challenged trial court orders allowing mask mandates in Harris County and some school districts.

In fact, while mask-wearing is necessary to stem the spread of the coronavirus, by itself it is entirely inadequate to end the pandemic. To truly eliminate COVID-19, much more stringent measures, including the temporary shutdown of schools and nonessential businesses with full compensation, quarantines, contact tracing and mass testing, would be required. That Abbott, not to mention the rest of the ruling elite, oppose even the most basic levels of protection speaks to their depravity.

As the *World Socialist Web Site* has made clear, workers need to adopt a strategy of eliminating and eradicating COVID-19. To prepare for this, the WSWS has initiated the Global Workers’ Inquest into the COVID-19 Pandemic, which will expose the lies of the ruling class and its representatives.



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