



## Texas Lawmakers Sue Governor Over COVID Tracing Contract

When Texas Governor Greg Abbott (R) served as the Lone Star State's Attorney General, he was famous for having given this description of his job: "I wake up in the morning, put on my suit, and sue the Federal government." Now, he's on the receiving end of that deal with lawsuits and challenges piling on. Five Texas lawmakers have filed suit against him for deciding to ink a \$295 million deal for a statewide COVID-19 contact-tracing effort with Frisco-based MTX, a company some claim to be untested and not adequate to the task. The contract is supposed to aid the state in tracking COVID cases, along with everyone who's been in contact with someone diagnosed with the virus.



According to the *Texas Tribune* for August 5, the [lawsuit](#) filed on Monday by "Republican state Reps. Mike Lang, Kyle Biedermann, Bill Zedler, Steve Toth, and state Senator Bob Hall asked a Travis County judge to void the controversial contract, arguing that both the selection process and length of the contract were improper." Arlington attorney Warren Norred represents the plaintiffs.

The lawmakers added, "The request for proposal for the contract was inadequate, the contract bid process was a sham, and the contract impermissibly exceeds two years."

Indeed, the bid request was not posted publicly, had a short window of response, and was sent to only a select group of potential vendors. No Texan or his state representative was given a chance to know about the deal, much less respond to it. It was a done deal before anybody knew it.

The *Houston Chronicle* even reported that MTX workers were spending hours [doing little or no work](#), received confusing or erroneous instructions, and often could not give people the advice they needed.

According to the *Tribune*, the suit argues that "The Texas Constitution requires a separation of powers, and that separation leaves policy-making decisions with the Texas Legislature. The Governor cannot establish new state policy, issue a \$295M contract to [implement] that policy, and ignore or suspend state statutes just by claiming 'It's a disaster.'"

"Using a serious but manageable disease threat which some refer to as 'the new normal' and authorizing multiple-year contracts entrenching a new bureaucracy and effective government program is not an appropriate use of the Governor's power." The lawmakers added that Abbott could have called a special session to allow lawmakers to weigh in.

The Texas Legislature meets every other year, and is currently between sessions, but the Governor can indeed call lawmakers back for a "special session" after the regular session ends. Since Abbott didn't do



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that, Texans were immediately up in arms, as the move was just one more thing rankling them about Abbott's recent extra-constitutional actions.

Abbott was criticized for the unconstitutional shutdown and mask orders in Texas that hampered personal freedom and threw the state's economy under the bus, causing untold hardships. Abbott was challenged when Dallas salon owner Shelley Luther (also defended by Norred) defied shutdown "orders" and refused to close her small business. Abbott backpedaled and publicly defended Luther's right to run her business, even though he's the one who ordered her to shut it down in the first place.

The real question is whether Abbott even has such authority. The [Austin American Statesman](#) reported that in May, Representative Zedler "asked the Texas Supreme Court to strike down the law that gave Abbott broad powers to respond to the coronavirus pandemic, arguing they were unconstitutional."

"In July, the Texas Supreme Court dismissed that petition and said it lacked jurisdiction to consider it."

"Texas Supreme Court Justice John Devine, who agreed that the court lacked jurisdiction, did include comments in the July ruling that were critical of Abbott's use of executive orders to close businesses or limit their ability to operate as part of a strategy to reduce exposure to a dangerous virus."

"In these most atypical times, Texans' constitutional rights have taken a back seat to a series of executive orders attempting to unilaterally quell the spread of the novel coronavirus," Devine wrote. "That can't be right."

Former Denton County Republican Party activist Kay Francis agrees. She reports the governor's use of executive orders has jolted folks who generally never question the state's authority. "For the first time, people are aghast that their governor would do this, and can't believe he's issuing these edicts. These are not laws."

By the way, the \$295 million required to fund the move isn't Texas money, but federal funds. Some remember that Abbott promised to throw off federal shackles when he campaigned for his job. Early in his reign as Texas governor, one of his top agenda items was Texas' passage of an application for an Article V convention. Abbott defended Texas' participation in the highly suspicious Article V movement by rightfully stating that the federal government had gone way off the rails, and needed to be reined in. However, he wrongly stated that the Article V convention was Texas' only hope to throw off Washington's control.

A better idea would be for Texas to quit taking Washington's money in the first place in order to get out from under its thumb. Critics of such a convention have noted that it's tough for a state to reconcile the need for a constitutional convention to stop federal spending while taking a huge sum from Washington, and sometimes using that money to violate people's guaranteed rights.

According to the *Tribune*, Abbott said he doesn't expect the lawsuit to be successful.

"I've been sued too many times for me to count. Every lawsuit that's been filed against me ... I either won in court or it has been dismissed.... This lawsuit will meet that exact same fate." What hubris.

Some say that Abbott is burning through political capital, not understanding that Texans are getting fed up. For many people, the Constitution still matters. They remember Jefferson's words that "taking a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power." In Abbott's case, the boundless field is not his to claim.

Some wonder where Texas' reputation for fierce independence went. It's certainly dead in Austin, it seems. It would be difficult to imagine the defenders at the Alamo maintaining social distancing while



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they fought for independence.

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