THE CIRCUIT COURT OF ST. CHARLES COUNTY
ELEVENTH JUDICIAL CIRCUIT OF MISSOURI

THE STATE OF MISSOURI ex rel. ERIC S. SCHMITT; HOLLY LIBERA; INGRID KOPP; and ELENA CHENDOVA *Plaintiffs*, v. ST. CHARLES R-VI SCHOOL DISTRICT; *Defendant*.	No. 2211-CC00069

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

As Missouri, like the nation, attempts to regain normalcy in the wake of the COVID-19 pandemic, schools are one area of society where normalcy is not only achievable, but also necessary. Roughly two years after COVID-19 reached America, the data is clear: schools are not drivers of transmission and COVID-19 does not pose a serious risk to children. Equally clear is that the pandemic has taken a toll on the country's children. From their health to their education, COVID-19 mitigation measures harmed children in the name of protecting them from a disease that was no more dangerous to children than the seasonal flu.

One of the artifacts of the pandemic standing between children and normalcy are mandatory mask requirements in schools. Until 2020, public health officials had not endorsed the idea that masks could limit the spread of a respiratory virus like COVID-19. Nearly two years later, it is increasingly clear why: masks do not prevent the spread of COVID-19. It is also clear that masks have downsides. Putting a child in a mask for eight hours during the school day is uncomfortable; it limits the child's educational development; and it serves as a constant reminder of overplayed pandemic woes—woes that add to the mental stress that child already faces. For children with special educational needs, masks are an additional limit that serve to separate them even more from their peers. Yet school administrators continue flipping on and off mandatory mask requirements based on arbitrary, internally-concocted thresholds that do not actually reflect the severity of this disease.[1] Two years after the arrival of COVID-19, it is now apparent that

[1] For comparison, Denmark declared it will no longer categorize COVID-19 as a "socially critical disease" starting February 1 despite a surge of cases caused by an omicron subvariant. Camille Gijs, *COVID-19 No Longer a 'Socially Critical Disease' in Denmark, Health Minister Says*, Politico (Jan. 26, 2022), https://politi.co/3g3cJPQ.

schools believe masking to be a permanent solution, and that the only temporary thing about the promises that masks were a stopgap measure were the promises themselves.

The time has come to make good on the promise that COVID-19 mitigation measures, masks included, are temporary. To that end, Plaintiffs bring this lawsuit. St. Charles R-VI School District (the "District") has imposed a mask mandate—again. It has no legal authority to do that. By statute, that power rests with the State of Missouri and is exercised by the Department of Health and Senior Services (DHSS). The District cannot point to any contrary statutory authority that would permit it to require its students to cover half their faces. Furthermore, the General Assembly restricted the ability of political subdivisions to issue orders like this Mask Mandate in § 67.265, RSMo. The District has ignored that restriction.

For those reasons, Plaintiffs request this Court enjoin enforcement of the District's Mask Mandate.

FACTUAL BACKGROUND

I. St. Charles R-VI's Mask Mandate

For basically the whole school year, students at the District's schools have gone to class with their face covered. The reason: The perceived threat of COVID-19. COVID-19 is a respiratory disease caused by a coronavirus, SARS-CoV-2. SARS-CoV-2 spreads via droplet and aerosolized particles (or aerosols), which are microscopic, inhalable particles. *See* CDC, *How COVID-19 Spreads* (last updated July 14, 2021), https://bit.ly/35nQUsl. Mechanically, that is similar to how the influenza virus spreads. *See*, *e.g.*, CDC, *Similarities and Differences Between Flu and COVID-19* (last visited Jan. 28, 2022), https://www.cdc.gov/flu/symptoms/flu-vs-covid19.htm; *cf.* EUROPEAN CDC, USING FACE MASKS IN THE COMMUNITY: FIRST UPDATE 5 (2021) (looking at studies involving the effect of masks in preventing influenza, though cautioning about extrapolating those conclusions to COVID-19).

Yet despite the near-constant presence of respiratory illnesses with transmission mechanisms similar to COVID-19, there is no evidence that masks, like the ones the District allows, prevent the spread of those diseases. *See*, *e.g.*, WORLD HEALTH ORG., NON-PHARMACEUTICAL PUBLIC HEALTH MEASURES FOR MITIGATING THE RISK AND IMPACT OF EPIDEMIC AND PANDEMIC INFLUENZA 99 (2019) ("[O]ur review identified a lack of compelling evidence for the effectiveness of hand hygiene, respiratory etiquette and face masks against influenza transmission in the community."). Indeed, just recently, thirteen public health experts reviewing the literature on the effect of masking in schools concluded that "[w]ell-controlled real-world studies have not demonstrated any clear benefit of masking students." URGENCY OF NORMAL, *Children, COVID, and the Urgency of Normal* 18–19 (Jan. 26, 2022), https://bit.ly/3nXsZGI. All of that is likely why mask mandates have been rarely, if ever, used.

Nevertheless, the District imposed the Mask Mandate. For the current school year, the mandate first went into effect at the start of the year, and applied to all students and all district buildings. *See* Scott Aff. Ex. A [hereinafter Ex. A], at 5; *see also* Scott Aff. Ex. B [hereinafter Ex. B]. According to the District's *2021-22 Entry Plan* (the "Coronavirus Plan"), the District's Board would revisit that decision "approximately every 30 days (during their monthly open sessions) … ." Ex. A, at 5.

On October 14, 2021, the Board ended its universal, mandatory mask policy. Instead, it concluded that "[g]rades 9-12 will have a mask optional protocol" while "K-8 grades will continue to have a mask mandate protocol for both students and staff" effective October 18, 2021. Scott Aff. Ex. C [hereinafter Ex. C]. The policy included a trigger—when 4 percent of people in a particular building tested positive, the Superintendent has the discretion to impose a mask mandate.

Id. The Board lowered the trigger threshold to 3 percent in November. *See* Scott Aff. Ex. D [hereinafter Ex. D], at 1.

That masking policy remained in place until January 13, 2022, when the District's Board voted to re-impose the Mask Mandate—that is, the District mandated that all students wear masks. Scott Aff. Ex. E [hereinafter Ex. E], at 1 (summarizing the policy); *see also* Scott Aff. Ex. F [hereinafter Ex. F] (providing the vote); Scott Aff. Ex. G [hereinafter Ex. G], at 15 (providing the recommendation). As authority for the Mask Mandate, the District pointed to §§ 167.191, 160.011, 162.261, 162.471, 171.011, and 177.031, RSMo. Ex. F, at 11. It appears that the Board predominantly relied on § 167.191, RSMo. *See id.*

II. Procedural history

After the District terminated the Mask Mandate on January 13, 2022, Missouri and Private Parents (who are taxpayers within the District) with children attending the District's schools sued to block the Mask Mandate. *See* Chendova Aff. ¶¶ 1–5. Plaintiffs now seek a temporary restraining order and preliminary injunction barring enforcement of the Mask Mandate based on Count Two of the Petition and a temporary restraining order and preliminary injunction barring enforcement of the Mask Mandate in grades 9-12 based on Count One of the Petition.

ANALYSIS

Missouri Supreme Court Rule 92.02 governs the issuance of temporary restraining orders and preliminary injunctions. Granting a temporary restraining order requires a showing that "irreparable injury, loss, or damage will result in the absence of relief." Mo. Sup. Ct. R. 92.02(a)(1).

"When considering a motion for a preliminary injunction," Missouri courts "should weigh '[1] the movant's probability of success on the merits, [2] the threat of irreparable harm to the movant absent the injunction, [3] the balance between this harm and the injury that the injunction's

issuance would inflict on other interested parties, and [4] the public interest.'" *State ex rel. Dir. of Revenue v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996) (quoting *Pottgen v. Mo. State High Sch. Activities Ass'n*, 40 F.3d 926, 928 (8th Cir. 1994)). "The likelihood of success on the merits is '[t]he most important of the [preliminary-injunction] factors.'" *Craig v. Simon*, 980 F.3d 614, 617 (8th Cir. 2020) (per curiam) (quoting *Shrink Mo. Gov't PAC v. Adams*, 151 F.3d 763, 764 (8th Cir. 1998)).

I. Plaintiffs are likely to succeed on the merits.

A. Plaintiffs are likely to succeed on the merits of Count 2.

The gravamen of Count 2 is this: The District lacks the power to issue the Mask Mandate. *See* Pet. ¶¶ 69–79. That is so because the Mask Mandate is a public health order issued in response to COVID-19. When the district's superintendent announced the Mask Mandate at the start of the school year, he connected the need for the mandate with COVID-19 metrics. *See* Ex. B. The Coronavirus Plan explicitly links District mitigation policies, like Masks, to "fluctuations in the pandemic." Ex. A, at 2. And the superintendent's recommendation that the Board readopt the Mask Mandate on January 13, 2022, included numerous COVID-19-related indicators, such as transmission rate in St. Charles County and St. Charles City and the number of COVID cases. Ex. G, at 13–14.

But the authority to issue public health orders is one of those general police powers that belongs exclusively to the State of Missouri, *see*, *e.g.*, *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905), which has vested it in the Department of Health and Senior Services (DHSS), *see*, *e.g.*, § 192.020.1, RSMo; 19 C.S.R. 20-20.040; *City of Olivette v. St. Louis County*, 507 S.W.3d 637, 643 (Mo. Ct. App. 2017); *see also* §§ 192.005, .006, RSMo. That is, only DHSS may "make and enforce adequate orders … to prevent the spread of [infectious, contagious, communicable or dangerous] diseases." § 192.020.1, RSMo. The General Assembly has granted no such authority

to the District. Indeed, where the General Assembly intends for school districts to have some role in public health, it says so. *See* § 167.181.4, RSMo (immunization recording and reporting requirements for school superintendents); § 210.003.4, RSMo (similar). It did not do so with regards to public health orders. Chapter 192, RSMo—which provides DHSS authority to respond to diseases like COVID-19—gives counties and cities and their officials a narrow ability to exercise state authority, so long as it does not conflict with state law and DHSS regulation, *see* §§ 192.280–.310, but does not mention school districts. That "strong contrast" evidences the General Assembly's intent not to give school districts authority to issue public health rules like the Mask Mandate. *Six Flags Theme Parks, Inc. v. Dir.*, 179 S.W.3d 266, 270 (Mo. banc 2005) (quoting another source) (discussing how to apply *expressio unius est exclusio*).[2]

That is enough to justify relief here. Indeed, it is more than enough. School districts are not independent, sovereign actors; they "constitute [an] arm or instrumentality" of the State. *Sch. Dist. of Oakland v. Sch. Dist. of Joplin*, 102 S.W.2d 909, 910 (Mo. 1937). So like all political subdivisions of this State, their "powers, duties, and obligations … must be found within the limits of the statutory provisions governing school districts." *State ex rel. Sch. Dist. of Springfield R-12 v. Wickliffe*, 650 S.W.2d 623, 625 (Mo. banc 1983). School districts thus possess only that power "clearly comprehended within the words of the statute or that may be derived therefrom by necessary implication … . Any doubt or ambiguity arising out of the terms of the grant must be resolved in favor of the people." *Wright v. Bd. of Educ. of St. Louis*, 246 S.W. 43, 45 (Mo. 1922);

[2] The extensive legislation on public health differentiates this analysis from that in *State ex rel. O'Bannon v. Cole*, 119 S.W. 424, 428–30 (Mo. 1909), which held that a predecessor to § 167.191 (relating to the power to require a child to "be examined by a physician" to determine if that child has "any liability" of transmitting a contagious or infectious disease) did not limit a school district's power to require students be vaccinated against smallpox in a district where there was a smallpox epidemic under the district's general grant of authority.

see State ex rel. Sch. Dist. of City of Independence v. Jones, 653 S.W.2d 178, 185 (Mo. banc 1983) ("[S]chool districts are not sovereigns, but creatures of the legislature whose only powers are those expressly granted by or necessarily implied from statute."); *see also St. Louis County v. River Bend Estates Homeowners' Ass'n*, 408 S.W.3d 116, 137 (Mo. banc 2013) ("[T]he county has 'no inherent powers but is confined to those expressly delegated by the sovereign and to those powers necessarily implied in the authority to carry out the delegated powers.") (quoting *Christian County v. Edward D. Jones & Co.*, 200 S.W.3d 524, 527 (Mo. banc 2006) (quoting another source)).

So even if the General Assembly had not expressly authorized DHSS to issue public health orders and had not omitted school districts when it created that authority, the District still could not claim that it had the power to issue the Mask Mandate. Rather, the District would need to point to a law providing it with authority to issue public health orders. *See Harfst v. Hoegen*, 163 S.W.2d 609, 613 (Mo. 1941) ("[B]y statute the school board has been given certain powers, and it behooves the board to point to a statute[] when its will and that of the parent conflict."). Importantly, general grants of authority will not do since "[t]he State has not delegated the police power to school districts." *Kansas City v. Sch. Dist. of Kan. City*, 201 S.W.2d 930, 933 (Mo. 1947); *Kansas City v. Fee*, 160 S.W. 537, 538 (Mo. Ct. App. 1913) ("Our laws vest in the public school authorities the 'supervision of instruction' but nowhere gives them governmental *police power*."). Thus where, as here, the question is whether a school district may exercise a traditional police power—like the power to issue public health orders—the Legislature must "*expressly* and *specifically* given" the power to the district. *Sch. Dist. of Kan. City*, at 934 (emphases added); *see Sch. Dist. of City of Independence*, 653 S.W.2d at 185; *Wright*, 246 S.W. at 45; *Kansas City v.*

Fee, 160 S.W. 537, 538 (Mo. Ct. App. 1913). Here, the District cites five laws. None clearly and expressly provide it with authority to issue the Mask Mandate.

First, the District appears to rely predominantly on § 167.191, RSMo. *See* Ex. G, at 11. But § 167.191, RSMo, says nothing about a school district's ability to issue district-wide, prophylactic public health orders. The statute has four parts. Two have nothing to do with school districts—they make it "unlawful for any child to attend any of the public schools of this state while afflicted with any contagious or infectious disease, or while liable to transmit such disease after having been exposed to it" and make it a misdemeanor for parents to send a child to school "found [by a physician] to be afflicted with any contagious or infectious disease, or liable to transmit the disease" or for parents to refuse to allow a child to be examined by a physician to determine if the child is so afflicted or so liable to transmit. *Id.* The other two parts provide only a narrow authority to school boards—school boards "may require any child to be examined by a physician" "[f]or the purpose of determining the diseased condition, or the liability of transmitting the disease" and school boards may "exclude" children "so long as there is any liability of such disease being transmitted by the pupil" or if the student's parents "refuse[ ] to have an examination made by a physician" at the school's request. *Id.*; *see also State ex rel. O'Bannon v. Cole*, 119 S.W. 424, 429 (Mo. 1909) (summarizing a previous law with similar language).

Nothing about that suggests the District may impose a masking requirement on the *entire* student body without regard as to whether they are "afflicted" or "liable to transmit" COVID-19. To start, the statutory language focuses on individual students, not the entire student population and staff of a school district; § 167.191 refers to "child" in the singular, not "children" or "students" or "student body." As the Supreme Court said of a very similarly worded predecessor statute, the law deals "wholly with *a* case where *a child* is actually diseased, or has been exposed

to a disease … ." *O'Bannon*, 119 S.W. at 429 (emphases added); *see also id.* ("The first part of the statute, as said, deals with a concrete case of a diseased or exposed child."). Indeed, *O'Bannon* suggests that the law is not even about school district power—"[o]ne main purpose of" the law was "to provide a punishment for that class of either careless or persistent parents, who are willing to inflict upon others the diseases and troubles of their own children." *Id.*

Nor does § 167.191 clearly authorize schools to condition school attendance on mask-wearing. Indeed, the law says nothing about attendance at all. It just authorizes schools to "exclude" certain students to prevent them from spreading a contagious or infectious disease. Nothing in the statute indicates that it empowers school districts to allow students who are potentially liable to transmit a disease to attend school if they follow school-designed health and safety rules. The statute certainly says nothing about the power of schools to condition the attendance of healthy children on those children following a prophylactic health order.

In short, there is nothing ambiguous or complex about § 167.191, RSMo. Its terms are plain and plainly limited. The law does not come close to authorizing the District's universal, prophylactic, public-health-oriented Mask Mandate.

Second, is § 160.011, RSMo. *See* Ex. G, at 11. That law is not a grant of authority but merely defines "school board," for a slew of statutes, as the "the board of education having general control of the property and affairs of any school district." § 160.011(8), RSMo. That is purely descriptive. It does not vest authority of any stripe in the District; some other law must do that. *Cf. Sch. Dist. of Kan. City v. Clymer*, 554 S.W.2d 483, 486 (Mo. Ct. App. 1977) (describing separately, in a similar statutory scheme with similar statutory language, one statute the vests "government and control" in a Board of Directors and the definition section). And even if it did, the power it would provide the District's Board is "general control of the property and affairs" of

the district. That is far from the specific grant of authority necessary for the District to issue a rule requiring all students and staff to wear a mask in response to a pandemic.

Third, is § 177.031, RSMo—specifically, § 177.031.1, which provides that the Board "has the care and keeping of all property belonging … and shall provide fuel, heating apparatus, and other material and appliances necessary for the proper heating, lighting, *ventilation and sanitation* of the schoolhouses." Ex. G, at 11 (quoting the law) (emphasis in original). The plain text of the statute shows that all it does is entrust school boards "with the duty of providing and maintaining school facilities." *Hart v. Bd. of Educ. of Nev. Sch. Dist.*, 252 S.W. 441, 442 (Mo. banc 1923). Indeed, the Supreme Court has rejected any claim that the statute ranges more broadly in *School District of Kansas City*: After noting the law says school boards "shall keep the schoolhouses in good repair, and provide 'fuel, heating apparatus, and other material and appliances necessary for the proper heating, lighting, ventilation and sanitation of the schoolhouses,'"[3] the Court concluded that "the powers and duties of School District's board provided" in that, and another statute empowering school boards to construct and repair schoolhouses, "pertain to the acquisition, construction, care, custody, maintenance and repair of schoolhouses, and to the provision of the materials and appliances essential to the effectual fulfillment of School District's agency in its educational purpose. The State has not delegated the police power to school district." 201 S.W.2d at 933 (quoting the law).

Fourth and *Fifth* are three laws providing a general grant of housekeeping authority to school districts: §§ 162.261, 162.471, and 171.011, RSMo.

[3] While *School District of Kansas City* involved a predecessor statute to § 177.031, RSMo, the language is similar.

The first two laws—§§ 162.261 and 162.471—vest "government and control" over school districts in certain types of school boards depending on the type of school district. Such a general grant of power does no more than give the school board control over the operations of the District. *See Enright v. Kansas City*, 536 S.W.2d 17, 19 (Mo. banc 1976); *Willett v. Reorganized Sch. Dist. No. 2 of Osage Cty.*, 602 S.W.2d 44, 47 (Mo. Ct. App. 1980). It does not "expressly and specifically give to" the District a general police power to regulate what its students wear in the name of public health. *Smith v. Bd. of Educ. of City of St. Louis*, 221 S.W.2d 203, 205 (Mo. banc 1949). Similarly, § 171.011, RSMo, is simply a grant of housekeeping authority. All it says is that "school board[s] ... may make all needful rules and regulations for the organization, grading and government in the school district."

On their face, then, none of those statutes says anything about the authority of school districts to respond to a global pandemic like COVID-19, much less issue the Mask Mandate. For each, their general grant of authority must give way to the specific public health decision-making scheme the General Assembly created in chapter 192, RSMo, because "[t]he special statute controls over the general statute." *State ex rel. Normandy Sch. Dist. v. Small*, 356 S.W.2d 864, 871–72 (Mo. banc 1962) (concluding that any authority a school board had to sell school property by virtue of the fact it had "government and control" over a district gave way to a specific statute involving disposition of school property); *see also*, *e.g.*, *Greenbriar Hills Country Club v. Dir.*, 935 S.W.2d 36, 38 (Mo. banc 1996) ("When the same subject matter is addressed in general terms in one statute and in specific terms in another, the more specific controls over the more general."); *Cmty. Fire Prot. Dist. of St. Louis Cty. v. Bd. of Educ. Pattonville Consol. Sch. Dist. R-3*, 315 S.W.2d 873, 877 (Mo. Ct. App. 1958) (concluding a Fire District could regulate school building

construction "because the Legislature, by granting specific power to the Fire District to ordain fire prevention measures is deemed to have denied contrary power to the School District").

Illustrating that fact is *O'Bannon*, which involved statutes containing language similar to § 171.011 as well as the "government and control" language found in §§ 162.261 and 162.471. *See* 119 S.W. at 426. *O'Bannon* held that school districts, when faced with a smallpox epidemic, could require smallpox vaccination as a condition of attendance. *See* 119 S.W. at 429–30. But that conclusion arose in the context of a very different statewide public health regime than is present today. For example, the *O'Bannon* court said, "That the school board has the power to absolutely suspend the school during epidemics of contagious or infectious diseases, we think can hardly be questioned." *Id.* at 426. But under § 192.020, RSMo, "only the director of the Department of Health and Senior Services or the director's designated representative shall have the authority to close a public or private school or other place of public or private assembly." 19 C.S.R. 20-20.050(3).[4] Likewise, at the time of *O'Bannon*, §§ 167.181 and 210.003, RSMo—which govern immunization of schoolchildren, the topic at issue in the case—did not exist.

Most importantly for this case, the analogue to DHSS at the time of *O'Bannon*, the State Board of Health, lacked DHSS's powers. The State Board of Health, while having "general supervision over the health and sanitary interests of the citizens of the state," lacked the power to achieve that end; it could only "*recommend* to the general assembly sanitary laws, and to cities

[4] DHSS rescinded 19 C.S.R. 20-20.050(3) on December 22, 2021, in order to comply with the judgment in *Robinson v. DHSS*, No. 20AC-CC00515 (Cole Cty. Cir. Ct.). *See* MO. SEC'Y OF STATE, *Terminated and Suspended Administrative Rules* (last visited Jan. 28, 2022). That does not change the analysis. *Robinson* did not address this part of the regulation. Instead, the court there held that the ability of a local public health official to issue health directives, based on his or her opinion that doing so is necessary to protect the public health, violated the non-delegation doctrine. *See* Judgment at 9–10, *Robinson* (No. 20AC-CC00515). *Robinson* never questioned that § 192.020 vests authority to shut down schools in DHSS, not the District's Board.

and county courts the adoption of any rules they may deem wise or expedient for the protection and preservation of the health of the citizens thereof, and they were also empowered to administer oaths and to take testimony in all matters relating to their duties and powers." *State ex rel. Granville v. Gregory*, 83 Mo. 123, 133 (1884) (quotations omitted) (emphasis added). The law had not changed when *O'Bannon* came out. *See* Op. No. 37, Mo. Att'y Gen. at 3 (Oct. 28, 1960). Since that time, however, the General Assembly amended § 192.020 and empowered the State health agency[5]—now DHSS—to "*make and enforce* adequate orders, findings, rules and regulations to prevent the spread of such diseases and to determine the prevalence of such diseases within the state" and "to *make* such orders, findings, rules and regulations as will prevent the entrance of infectious, contagious and communicable diseases into the state." "This is a much broader power than that possessed by the State Board of Health in 1909." Op. No. 37, Mo. Att'y Gen. at 4 (Oct. 28, 1960). And it is a power that places the ability to respond to "infectious, contagious, and communicable diseases" like COVID-19 with DHSS. § 192.020, RSMo.

Taken together, legislative changes have overtaken *O'Bannon*'s reading of school districts' general grant of power. *See State ex rel. Gentry v. Curtis*, 4 S.W.2d 467, 470 (Mo. banc 1928) (acknowledging "the state's right to withdraw the police power or any part thereof from local authorities"). There is now clearly "an intent upon the part of the Legislature to exclude" school boards from making pandemic-related public health orders like the Mask Mandate that was absent when the Court handed down *O'Bannon*. *O'Bannon*, 119 S.W. at 429.[6]

[5] And cities and counties to a limited extent as well so long as they act through their elected officials and to the extent their exercise of that state authority is consistent with state law and DHSS regulations. *See* §§ 192.280–.310, RSMo.

[6] Bolstering that conclusion is the fact that *O'Bannon* is an outlier even for its time—indeed, the Court seemed to recognize that, refusing to "go beyond the facts of the case." *O'Bannon*, 119 S.W. at 429. For comparison, in *McCutchen v. Windsor*, 55 Mo. 149 (1874), the Missouri Supreme Court concluded that the 19th Century equivalent of school boards could not discharge a teacher

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In sum, the General Assembly plainly vested authority to make public health orders, like the Mask Mandate, in DHSS and local county and city authorities acting pursuant to state law. It did not vest that power in school districts. Underlining that is the fact the District has not, for it cannot, point to any state law providing it with such authority. Thus, the Plaintiffs are likely to succeed on Count 2.

B. The Mask Mandate is unlawful as to grades 9-12 under § 67.265.

Count 1 alleges that the Mask Mandate is an unlawful order under § 67.265, RSMo. Section 67.265 applies where, as here, there is an "order"—as defined by the statute—"issued by a political subdivision." § 67.265.1, RSMo. The governing body of a political subdivision has "the authority to terminate an order issued or extended under this section" upon majority vote. § 67.265.2, RSMo. Once an order either expires or is terminated, it is a "prohibited order" and "[n]o political subdivision of this state shall make or modify any orders that have the effect, directly or indirectly, of a prohibited order." § 67.265.5, RSMo.

In this case, the Mask Mandate is a prohibited order as to at least the District's high schools (grades 9-12) under § 67.265.5, RSMo, because the Board terminated the mandate as to those schools at its October meeting.[7] *See* Ex. C.

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at will because "[t]he only power delegated to [them] is to employ legally qualified teachers." *Id.* at 152. While that case did not involve § 171.011, RSMo, the statute at issue provided a broad power "to manage and control [the district's] local interests and affairs" as well as the specific power to hire teachers. *Id.* (quoting the law). Given the numerous statutes specifically dealing with public health, and specifically vesting that authority in DHSS, this case is more like *McCutchen* than *O'Bannon*.

[7] Plaintiffs do not abandon any other argument regarding § 67.265.

1. The Mask Mandate is an "order" under § 67.265, RSMo.

In order to be subject to § 67.265, RSMo, the Mask Mandate must be an "order" as defined in § 67.265.1. Under § 67.265.1, "the term 'order' shall mean a public health order, ordinance, rule, or regulation issued by a political subdivision, including by a health officer, local public health agency, public health authority, or the political subdivision's executive, as such term is defined in section 67.750, in response to an actual or perceived threat to public health for the purpose of preventing the spread of a contagious disease." The Mask Mandate satisfies the "plain and ordinary meaning" of this definition. *Cox v. Dir.*, 98 S.W.3d 548, 550 (Mo. banc 2003) ("This Court ascertains the legislature's intent by considering the plain and ordinary meaning of the words in the statute. Absent a definition in the statute, the plain and ordinary meaning is derived from the dictionary."); *see also*, *e.g.*, *Dickemann v. Costco Wholesale Corp*., 550 S.W.3d 65, 68 (Mo. banc 2018) ("Absent express definition, statutory language is given its plain and ordinary meaning, as typically found in the dictionary.") (quoting *State v. Brookside Nursing Ctr., Inc*., 50 S.W.3d 273, 276 (Mo. banc 2001)); *State ex rel. Nixon v. Karpierz*, 105 S.W.3d 487, 490 n.10 (Mo. banc 2003) ("The plain and ordinary meaning of statutory language is generally derived from the dictionary where no definition is provided.").

Specifically, the word "order" means "a rule or regulation made by a competent authority," or "an authoritative mandate usu. from a superior to a subordinate: injunction, instruction." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1588 (2002). The word "rule" means "a prescribed, suggested, or self-imposed guide for conduct or action: a regulation or principle." *Id.* at 1986. So when the Mask Mandate "require[s] masking (both students and staff)" in all district buildings, Ex. E, at 1, it clearly provides "an authoritative mandate" and "instruction," and it "prescribe[s]" a "guide for conduct or action"—all consistent with the dictionary definitions of "order" and "rule." It is thus an order under § 67.265.1, RSMo.

2. The District is a "political subdivision" under § 67.265, RSMo.

Next, the District is "a political subdivision" under § 67.265. The Supreme Court of Missouri and the Court of Appeals have repeatedly held that school districts are "political subdivisions." *See*, *e.g.*, *S.M.H. v. Schmitt*, 618 S.W.3d 531, 534 (Mo. banc 2021) ("[P]ublic school districts in Missouri are regularly considered political subdivisions"); *P.L.S. ex rel. Shelton v. Koster*, 360 S.W.3d 805, 818 (Mo. Ct. App. 2011) ("[S]chool districts are local political subdivisions"); *Sch. Dist. of City of Indep.*, 653 S.W.2d at 189 (holding that "school districts" are "political subdivisions"); *Hughes v. Civ. Serv. Comm'n of City of St. Louis*, 537 S.W.2d 814, 815 (Mo. App. 1976) ("School districts are political subdivisions of the state"); *Consol. Sch. Dist. No. 1 of Jackson Cty. v. Bond*, 500 S.W.2d 18, 22 (Mo. App. 1973) (holding that a school district was a "political subdivision" subject to audit by the State Auditor, and acknowledging "the general understanding of the term 'political subdivision' as including a school district"); *see also, e.g.,* MO. CONST. art. X, § 15 (providing that the phrase "other political subdivisions" includes "school … districts").

That § 67.265.1 references § 67.750, RSMo, which includes a definition of "political subdivision" that includes some but not all school districts, *see* § 67.750(8), does not change that conclusion. That is because the cross-reference to § 67.750 qualifies only to the definition of "executive," not the definition of "political subdivision." Specifically, § 67.265.1 refers to any "public health order … issued by a political subdivision, including by a health officer, local public health agency, public health authority, or the political subdivision's ***executive***, ***as such term is defined in section 67.750***…." § 67.265.1, RSMo (emphasis added). Based on plain English and well-established principles of interpretation, the phrase "as such term is defined in section 67.750" refers to the word that immediately precedes it: "executive." It does not refer to the phrase "political subdivision," which is separated from it by 18 words and five substantive terms. That

also follows from a traditional rule of construction, the so-called "last-antecedent" rule, which provides that a modifying phrase "generally refers to the nearest reasonable antecedent." ANTONIN SCALIA & BRYAN GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 144 (2012); *see also id.* at 144–46 (providing examples). As the Supreme Court of Missouri has held, "the long recognized 'last antecedent rule' … instructs that: 'relative and qualifying words, phrases, or clauses are to be applied to the words or phrase *immediately preceding* and are not to be construed as extending to or including others more remote.'" *Rothschild v. State Tax Comm'n of Missouri*, 762 S.W.2d 35, 37 (Mo. banc 1988) (emphasis added) (quoting *Citizens Bank & Trust v. Dir.*, 639 S.W.2d 833, 835 (Mo. 1982)). "This rule is the legal expression of a commonsense principle of grammar," which provides that the modifying word or phrase "should be placed as near as the construction allows to the noun or noun phrase to which it refers." SCALIA & GARNER, at 144. For § 67.265.1, that means the modifier "as such term is defined in § 67.750" refers to the immediately preceding "executive" and not the relatively distant "political subdivisions."

Nor is this a situation where "there is a straightforward, parallel construction that involves all nouns or verbs in a series," *id.* at 147 (the so-called "series-qualifier canon"), for two reasons. First, the phrase "political subdivision" does not appear in the same list as "executive." § 67.265.1. That is, the statute refers to orders "issued by a political subdivision" and then provides a list of officers of that subdivision who could issue such orders that includes "executive."

Second, the trailing qualifier (*i.e.*, "as such term is defined in section 67.750") clearly does not refer to "all" items on the list before it (*i.e.*¸ "health officer," "local public health agency," and "public health authority"), because none of those items is defined in section 67.750. *See* § 67.750(1)–(9) (defining none of the terms in the list, other than "executive"). The "series qualifier" canon does not permit a trailing qualifier to apply to only two of five items listed in

series—it applies to all or none. *See* SCALIA & GARNER, at 147–48 (providing that the canon applies when there is a "construction that involves *all* nouns or verbs in a series") (emphasis added). The canon is plainly inapplicable here.

In the end, the Legislature did not write "political subdivision, as defined in § 67.750" in § 67.265.1. Instead, it wrote "executive, as such term is defined in section 67.750." The Court may not add words that the statute does not contain. *See, e.g.*, *Macon Cty. Emergency Servs. Bd. v. Macon Cty. Comm'n*, 485 S.W.3d 353, 355 (Mo. banc 2016) (holding that the Court "will not add words to a statute under the auspice of statutory construction"); *Hill v. Ashcroft*, 526 S.W.3d 299, 309 (Mo. App. 2017) ("[C]ourts do not engraft language onto a statute that the legislature did not provide.") (quotations omitted). Accordingly, the ordinary and well-established meaning of "political subdivision" applies in § 67.265—by which "public school districts in Missouri are regularly considered political subdivisions." *S.M.H.*, 618 S.W.3d at 534.

That makes sense. Section 67.750's definitions apply only to terms "[a]s used in sections 67.750 to 67.799 and sections 67.1700 to 67.1769," *id.*, *not* to § 67.265. Moreover, those statutory sections to which the more limited definition applies—*i.e.*, §§ 67.750 to 67.799, and 67.1700 to 67.1769—address park and recreational systems, which the vast majority of school districts do not maintain. Thus, the narrower definition of "political subdivision" in § 67.750(8), which includes only those school districts to which those provisions are relevant, is appropriate in that unique context and, conversely, that same definition makes no sense in § 67.265, which the General Assembly clearly intended to apply broadly. As the Supreme Court recently stated, "[t]he context in which a word is used determines which of the word's ordinary meanings the legislature intended. So, to determine a statute's plain and ordinary meaning, the Court looks to a word's usage in the context of the entire statute and other statutes *in pari materia*." *Gross v. Parson*, 624 S.W.3d 877,

885 (Mo. 2021) (citations omitted). Section 67.750's artificially narrow definition of "political subdivision" would subject just a few school districts to the democratic accountability provisions of § 67.265, while exempting most others, which is illogical and unreasonable. *Akins v. Dir.*, 303 S.W.3d 563, 565 (Mo. banc 2010) (holding that Missouri courts avoid a statutory interpretation that "would lead to an absurd or illogical result").

Courts "do not force term-of-art definitions into contexts where they plainly do not fit and produce nonsense." *Johnson v. United States*, 559 U.S. 133, 139–40 (2010) (quoting *Gonzales v. Oregon*, 546 U.S. 243, 282 (2006) (Scalia, J., dissenting). So this Court should not force the narrow definition of "political subdivision" in § 67.750 into § 67.265 where it "plainly do[es] not fit." *Id.*

3. The District's Board terminated the Mask Mandate for grades 9–12.

Thus, the Mask Mandate is an "order issued or extended under this section" and, as a result, the District's Board could "terminate" it "upon a simple majority vote … ." § 67.265.2, RSMo. The Board did exactly that. At its October Board meeting, the Board dictated that "[g]rades 9-12 will have a mask optional protocol for both students and staff." Ex. C.

Thus, the Mask Mandate became a prohibited order as to those individuals under § 67.265.5, which prohibits political subdivisions from making or modifying "any orders that have the effect, directly or indirectly, of a prohibited order under this section." That is so because "prohibit" means "to forbid by authority or command: enjoin, interdict," or "to prevent from doing or accomplishing something: effectively stop." WEBSTER'S THIRD, *supra*, at 1813. That definition overlaps with the definition of "terminate," which is used in § 67.265.2, and which means "to end formally and definitely (as a pact, agreement, contract)." WEBSTER'S THIRD, *supra*, at 2359; *see also, e.g.*, BLACK'S LAW DICTIONARY 1511 (8th ed. 2004) (defining "terminate" as "to put an end to; to bring to an end"). Thus, when the Board voted to end the Mask Mandate as to grades 9-12,

it ended it formally and definitely (*i.e.*, it terminated it) and also "forb[ade] by authority," "prevent[ed]," and "effectively stop[ped]" District personnel from imposing or enforcing it (*i.e.*, prohibited it) as to those grades.

Because the Mask Mandate is a prohibited order as to students and staff in grades 9-12 under § 67.265.5, RSMo, the District could not "make … any orders that have the effect, directly or indirectly" of the Mask Mandate. Yet the District did just that on January 13, 2022, when the District's Board voted to "require[] masking (both students and staff)" for all grades, including grades 9-12.

That conclusion is consistent with § 67.265's text and purpose. As the Supreme Court recently emphasized, a statute's immediate context and related provisions illuminate the meaning of statutory phrases. *See Gross*, 624 S.W.3d at 885 ("[T]o determine a statute's plain and ordinary meaning, the Court looks to a word's usage in the context of the entire statute."). Here, multiple provisions of § 67.265 clearly prevent political subdivisions, like the District, from evading the statute's restrictions by re-imposing orders that have terminated or expired. *See*, *e.g.*, § 67.265.1(1) (preventing the de facto extension of expired orders through "similar orders issued concurrently, consecutively, or successively"); *id.* (requiring successive approval of orders subject to expiration every 30 days); § 67.265.1(2) (similar restrictions on another class of orders); § 67.265.5 (prohibiting orders that have the same effect as another prohibited order). Permitting the District to renew the same order after it was lawfully terminated defeats the manifest purpose of the statute, reflected in § 67.265.5 and all of the statute's provisions, contrary to basic principles of interpretation. *Gross*, 624 S.W.3d at 885.

* * *

Thus, the Mask Mandate is (1) an order issued by (2) a political subdivision that (3) the subdivision's governing body voted to terminate. It is thus a prohibited order. And the District's resurrection of it in January was invalid.

II. The remaining *Gabbert* factors justify a preliminary injunction.

As outlined above, Plaintiffs are likely to succeed on its legal claims that the Mask Mandate is illegal. That is the most important factor in determining whether preliminary relief should issue. *Craig*, 980 F.3d at 617. The remaining *Gabbert* factors (the threat of irreparable harm absent the injunction, the balance of harms, and the public interest) also favor Plaintiffs.

A. Plaintiffs will suffer irreparable harm absent relief.

To start, the District's defiance of State law is simply an attempt to thwart the efficacy of duly-enacted State policy, and so imposes irreparable harm on Missouri. "Any time" the State is prevented "from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citing *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). When a State cannot effectuate the policies embodied in its laws, it "necessarily suffers the irreparable harm of denying the public interest in the enforcement of its law." *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 419 (5th Cir. 2013); *see also Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018); *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 609 (8th Cir. 2020); *Coalition for Economic Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997).

The District's Mask Mandate also unlawfully restricts the personal liberty and freedom of its schoolchildren.[8] "The United States Supreme Court has held being subject to an unconstitutional statute, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Rebman v. Parson*, 576 S.W.3d 605, 612 (Mo. banc 2019) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). The same is true of being subject to an unlawful mask mandate—an unconstitutional restriction on personal freedom constitutes *per se* irreparable injury to the parents and schoolchildren of Missouri.[9] Ms. Chendova, for example, does not want her son to be "forced to wear a mask while at school" because he has "difficulty breathing" while wearing it. Chendova Aff. ¶ 6. The Mask Mandate unlawfully takes that choice from her and her child.

But the Mask Mandate does more than restrict the liberty of those subject to it. The mandate also undermines the constitutional right children in the district have to a free public education and the system Missouri set in place to vindicate that right. The General Assembly created the District to fulfill the legislature's constitutional duty to "establish and maintain free public schools for the gratuitous instruction of all persons in this state … ." MO. CONST. art. IX,

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[8] Plaintiff Parents raise this issue on behalf of their children who attend schools in the district. *See* Chendova Aff. ¶ 4. The State, through its attorney general, may do so to vindicate its interest in enforcing Missouri law and its *parens patriae* interest in preventing injury to its population. *See* § 27.060, RSMo; *see State ex rel. Hawley v. Pilot Travel Ctrs., LLC*, 558 S.W.3d 22, 30 (Mo. banc 2018) ("The attorney general has the authority 'to seek enforcement of the legislature's statutory purposes.'") (quoting *Fogle v. State*, 295 S.W.3d 504, 510 (Mo. App. 2009)); *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel. Barez*, 458 U.S. 592, 607 (1982) (holding that the State has a *parens patriae* interest in preventing an injury to a "substantial segment of its population," especially where "the injury is one that the State, if it could, would likely attempt to address through its sovereign lawmaking powers").

[9] To be clear, nothing in this motion prevents parents or schoolchildren from *voluntarily* deciding to wear masks at school and during school activities—a decision that lies within their own judgment and responsibility. But under Missouri law, once a mask mandate has expired or been lawfully terminated, the school district cannot continue to *command* parents and schoolchildren to do so—it must respect their freedom to make such decisions for themselves.

§ 1(a). The District is thus charged with "discharging" that "constitutionally intrusted governmental functional." *Sch. Dist. of Oakland*, 102 S.W.2d at 785. By unlawfully imposing the Mask Mandate, the District created an unnecessary barrier to children—like the children of the Plaintiff Parents—who have "a fundamental right" "to attend the public school established in their district," *State ex rel. Roberts v. Wilson*, 297 S.W. 419, 420 (Mo. Ct. App. 1927); *see also Washington v. Ladue School District Board of Education*, 564 F. Supp. 2d 1059, 1063 (E.D. Mo. 2008), and undermines the General Assembly's system for providing children the means of enjoying that right, *cf. School District of Oakland*, 102 S.W.2d at 785. The Parents also suffer the harm of having the District deprive their children of a constitutional right, and, as taxpayers of the District, the harm of paying for the deprivation. *See* Chendova Aff. ¶¶ 3–6 (noting Ms. Chendova's status as a taxpayer and parent with a child subject to the Mask Mandate and her desire that he not be "forced to wear a mask while at school").

Aside from infringing on numerous legal interests the Plaintiffs have, the District's Mask Mandate imposes positive harm on the children subject to it—that is, the children of the Plaintiff Parents and the children that Missouri has a sovereign and *parens patriae* interest in protecting. Specifically, the Mask Mandate denies children access to in-person instruction if they do not wear masks. And those children who do wear mask face a plethora of injuries. "[T]he short-term and long-term consequences of [masking children] are not well understood ... . Initial data, however, are not reassuring." Margery Smelkinson, Leslie Biene, & Jeanne Noble, *The Case Against Masks at School*, THE ATLANTIC (Jan. 26, 2022), https://bit.ly/3r5NMtE. Specifically, universal masking may impair educational, social, and emotional development for children while affirmatively hurting them:

- "Recent prospective studies from Greece and Italy found evidence that masking is a barrier to speech recognition, hearing, and communication, and that masks impede children's ability to decode facial expressions, dampening children's perceived trustworthiness of faces."
- "Research has also suggested that hearing-impaired children have difficulty discerning individual sounds; opaque masks, of course, prevent lip-reading."
- Anecdotes from teachers, parents, and speech pathologists that "masks can make learning difficult for some of America's most vulnerable children, including those with cognitive delays, speech and hearing issues, and autism."
- "Masks may also hinder language and speech development."
- "Masks may impede emotion recognition … particularly in children."
- Masks also are uncomfortable for children.

Smelkinson et al., *supra*.

Indeed, students say as much. A study on mask use in 25,930 schoolchildren found that 68 percent "complained about impairments caused by wearing the masks," including "irritability (60%), headache (53%), difficulty concentrating (50%), less happiness (49%), reluctance to go to school/kindergarten (44%), malaise (42%), impaired learning (38%) and drowsiness/fatigue (37%)." Silke Schwarz et al., *Coronakinderstudien co-Ki: Erste Ergebnisse Eines Deutschlandweiten Registers zur Mund-Nasen-Bedeckung (Maske) bei Kindern*, 169 MONATSSCHRIFT KINDERHEILKUNDE 353, 355 (2021). And Ms. Chendova's "child has had difficulty breathing when he wears his mask … ." Chendova Aff. ¶ 6.

In short, the Mask Mandate imposes *per se* irreparable harm because it is unlawful and infringes on numerous constitutional rights. It also imposes irreparable harm by limiting the educational opportunities of children in the District, including the Parents' children.

B. The District will suffer no harm from an injunction and the public interest justify relief.

Because the District is a governmental entity, whether preliminary relief will irreparably harm the District and whether such relief is in the public interest merge. *See*, *e.g.*, *Nken v. Holder*, 556 U.S. 418, 435 (2009).

This analysis begins and ends with the Mask Mandate's unlawfulness. As courts have affirmed numerous times en route to enjoining unlawful COVID-19 orders, such injunctions do not harm the defendant and are squarely in the public interest: "Any interest [the District] may claim in enforcing an unlawful" and unconstitutional mandate "is illegitimate." *BST Holdings, LLC v. OSHA*, 17 F.4th 604, 619 (5th Cir. 2021); *see Nat'l Fed'n of Indep. Business v. OSHA*, 142 S. Ct. 661, 666 (2022); *Ala. Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485, 2489–90 (2021); *Missouri v. Biden*, 2021 WL 5998204, at *7 (E.D. Mo. Dec. 20, 2021); *see also Make Liberty Win v. Ziegler*, 478 F.Supp.3d 805, 812 n.6 (W.D. Mo. 2020) (holding that "a governmental entity 'has no legitimate interest in enforcing an unconstitutional ordinance'") (quoting *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006)).

Additionally, any perceived benefit of masking is substantially reduced by the fact that cloth masks, which the Mask Mandate permits, do little to prevent the spread of COVID-19. *See*, *e.g.*, URGENCY OF NORMAL, *supra*; Smelkinson et al., *supra*; Alex J. Rouhandeh, *Some Doctors Urging to 'Retire the Cloth,' Push Hospital-Grade Masks Amid Omicron Surge*, NEWSWEEK (Dec. 27, 2021), https://www.newsweek.com/some-doctors-urging-retire-cloth-push-hospital-grade-masks-amid-omicron-surge-1663495; *Full transcript: Dr. Scott Gottlieb on "Face the Nation,"*

January 2, 2022, CBSNEWS (Jan. 22, 2022), https://www.cbsnews.com/news/full-transcript-dr-scott-gottlieb-face-the-nation-january-2-2022/. Little to no reason thus exists to believe that enjoining enforcement of the Mask Mandate would prevent the spread of COVID-19—a disease that is already circulating in the population. And if parents or students believe a mask would be beneficial, the Plaintiffs' requested relief does not prevent them from wearing one.

Moreover, even if masks provide a benefit, that benefit is basically zero for schoolchildren. That is because COVID-19 does not pose a serious risk to children between the ages of 0 and 17,[10] especially since "all indications point to a lesser severity of" the now-dominant omicron variant compared to other variants. *See* Kevin Breuninger, *Fauci Says All Indications Suggest that Omicron is Less Severe Than Delta, But Warns Against Complacency*, CNBC (Dec. 29, 2021), https://cnb.cx/3ru9F4J (quoting Dr. Fauci); *see also* A. Danielle Iuliano et al., *Trends in Disease Severity and Health Care Utilization During the Early Omicron Variant Period Compared with Previous SARS-CoV-2 High Transmission Period—United States 2020-January 2022*, Jan. 2022, at 5 ("[D]isease severity appears to be lower than compared with previous high disease-transmission periods."). Even if the Court optimistically assumes that masks prevent the substantial transmission of COVID-19, the degree of risk students face is so slight that there is

[10] For example, the CDC recently released a study showing that hospitalizations of individuals in that age group makes up the minority of all COVID-19 hospitalizations, representing only 4.2 percent of all hospitalizations during the recent omicron wave. *See* A. Danielle Iuliano et al., *Trends in Disease Severity and Health Care Utilization During the Early Omicron Variant Period Compared with Previous SARS-CoV-2 High Transmission Period—United States 2020-January 2022*, Jan. 2022, at 3, 4 tbl.1. And that is likely an inflated number, as the study's data counted those hospitalized with "incidental SARS-CoV-2 infections," not just those hospitalized for COVID-19. *Id.* at 6.

Further underscoring the fact children are less likely to suffer severe negative health outcomes from COVID-19, that same study did not measure the number of children who received ventilation or died from COVID-19 because those outcomes were so rare. *Id.* at 4. DHSS data indicates that only eight children between the ages of 0 and 17 have died with a COVID-19 diagnosis in Missouri. DHSS, *Demographics* (last visited Jan. 28, 2022), https://bit.ly/3Ay8tkS.

little reason to believe that the Mask Mandate will provide any benefit by preventing any serious illness or severe health outcomes. As a result, the harms, known and unknown, that the Mask Mandate will have and the injury State suffers by allowing the District to exercise power it does not possess outweigh those extremely marginal benefits.

CONCLUSION

Plaintiffs respectfully request the Court to grant their motion for a temporary restraining order and preliminary injunction and:

- Enjoin the District from enforcing the Mask Mandate or, in the alternative, enjoin it from enforcing the Mask Mandate as to students and staff in grades 9-12;
- Instruct the District to post a sign on its website and on its building noting that enforcement of the Mask Mandate has been enjoined or, in the alternative, instruct the District to post a sign on its website and its buildings hosting students and staff in grades 9-12 noting that enforcement of the Mask Mandate has been enjoined as to students and staff in grades 9-12.

Dated: January 28, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on January 28, 2022, a true and correct copy of the foregoing was filed with the Court's electronic filing system to be served by electronic methods on counsel for all parties entered in the case, and that a true and correct copy was also served by electronic mail and first-class mail upon counsel for Defendants.

/s/ James S. Atkins