

**THE CIRCUIT COURT OF BOONE COUNTY
THIRTEENTH JUDICIAL CIRCUIT OF MISSOURI**

THE STATE OF MISSOURI ex rel.
ERIC S. SCHMITT,

Plaintiff,

v.

No. _____

COLUMBIA PUBLIC SCHOOLS, and
all others similarly situated;

BOARD OF EDUCATION FOR THE
SCHOOL DISTRICT OF COLUMBIA,
and all others similarly situated;

HELEN WADE, DELLA STREATY-
WILHOIT, CHRIS HORN,
KATHERINE SASSER, DAVID
SEAMON, JEANNE SNODGRASS,
AND BLAKE WILLOUGHBY; in their
official capacities as Board Members for
the Board of Education for Columbia
Public Schools, and all others similarly
situated;

BRIAN YEARWOOD, in his official
capacity as Superintendent for Columbia
Public Schools, and all others similarly
situated;

Defendants.

CLASS ACTION PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Mask mandates for kids in schools are not supported by the science and are an arbitrary and capricious measure. The cure should not be worse than the disease.

2. The science shows that children are at a significantly lower risk of contracting a serious illness due to COVID-19 and that they do not generally spread the virus, even in school settings.

3. The science shows that public mask use has little effect on community spread or stopping infection surges.

4. The science shows that masks cause schoolchildren to suffer headaches, difficulty concentrating, impaired learning, drowsiness/fatigue, a reluctance to go to school, and less happiness.

5. The science shows that mask use by young children is detrimental to their communication skills at a critical stage of their development.

6. The science shows that school mask mandates are arbitrary and capricious.

7. Parents have the right and the responsibility to make health care decisions for their minor children.

8. Parents should have the freedom to choose whether their child wears a mask to school, not school administrators.

9. Despite the science, some public school districts require all students to wear a mask on school buses, school property, and while engaging in school activities. These mask mandates are arbitrary, capricious, unreasonable, and unlawful, and such measures are unsupported by data or science.

10. There is no evidence that Defendants considered the underlying data, science, and evidence that fail to justify issuing a mask mandate for schoolchildren at this time.

11. Missouri Attorney General Eric S. Schmitt seeks to protect the welfare of Missouri's children and the liberty and constitutional rights of the people of Missouri.

12. Attorney General Schmitt brings this action to prevent unlawful, unconstitutional, arbitrary, capricious, and unreasonable conduct by Defendants.

JURISDICTION AND VENUE

13. This Court has jurisdiction under Mo. Const. art V, § 14(a), § 536.150, RSMo, and other applicable law.

14. Venue is proper in this Court under § 508.050, RSMo. *State ex rel. City of Springfield Through Bd. of Pub. Utilities v. Barker*, 755 S.W.2d 731, 734 (Mo. Ct. App. 1988).

15. Venue is also proper under § 508.010.2(2), RSMo.

PARTIES

16. Plaintiff State of Missouri is a sovereign State of the United States of America.

17. Eric S. Schmitt is the 43rd Attorney General of the State of Missouri. Attorney General Schmitt is authorized to "institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary; and he may also appear and interplead, answer or defend, in any proceeding or tribunal in which the state's interests are involved." § 27.060, RSMo.

18. Attorney General Schmitt sues to vindicate Missouri's sovereign interest in controlling the exercise of sovereign power over individuals and entities within its borders; Missouri's sovereign interest in ensuring the enforcement of Missouri law within Missouri's borders; and Missouri's quasi-sovereign and *parens patriae* interest in the freedom, health, and physical, psychological, educational, and economic well-being of a significant segment of its populace. This interest includes, but is not limited to, preventing the spread of the COVID-19 virus within the state as well as protecting the health and welfare of the State's residents from arbitrary, capricious, unreasonable, and unlawful policies.

19. Attorney General Schmitt sues to vindicate Missouri's sovereign interest in ensuring that its municipal authorities do not exercise authority vested in them under state law in a fashion that violates the Missouri Constitution or Missouri law.

20. Attorney General Schmitt sues to vindicate Missouri's interest in ensuring that the children of the State receive an appropriate education.

21. Defendant Columbia Public Schools is responsible for providing a free, public education to the residents of Columbia, Missouri. It is a public school district and is a political subdivision of the State of Missouri. The School District is located within Boone County, Missouri. The School District has implemented a Mask Mandate to begin the 2021-22 academic year.

22. Defendant Board of Education for the School District of Columbia Public Schools oversees and supervises policy decisions for the Columbia Public Schools District,

including those related to COVID-19 mitigation measures, such as the Mask Mandate. It is the governing board of Columbia Public Schools.

23. The Board Members are Helen Wade, Dr. Della Streaty-Wilhoit, Chris Horn, Katherine Sasser, David Seamon, Jeanne Snodgrass, and Blake Willoughby. Each is sued in their official capacity.

24. Public School Districts and their Boards of Education, as a class, are responsible for providing a free, public education to Missouri's children. They oversee and supervise policy decisions, including those related to COVID-19 mitigation measures, such as the Mask Mandate.

25. Dr. Brian Yearwood is the Superintendent of Columbia Public Schools. He is tasked with overseeing the School District's operations and policies. He operates under the Board of Education's authority. He is sued in his official capacity.

26. Superintendents of the Public School Districts, as a class, are tasked with overseeing the School District's operations and policies and operates under their Board of Education's authority.

FACTUAL ALLEGATIONS

27. Missouri incorporates by reference the allegations in all preceding paragraphs.

I. The low risk to children from COVID-19

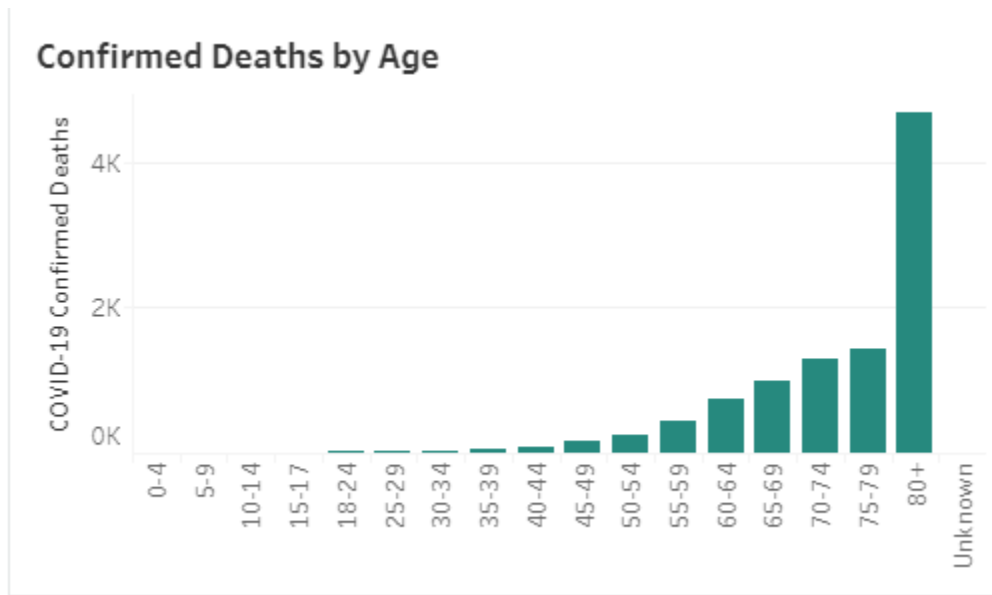
28. COVID-19 is a respiratory illness caused by a coronavirus that, among other symptoms, can cause cough, shortness of breath, fever or chills, muscle and body aches, vomiting or diarrhea, and the temporary loss of taste or smell.

a. The low risk to children of death from COVID-19

29. The death of any child is a tragedy.

30. To date, no child younger than 10 years old in Missouri has died from COVID-19.¹

31. Out of more than 10,200 reported deaths involving COVID-19 in Missouri, only five—0.05%—are from children between the ages of 10 and 17.



32. By contrast, in 2019, Missouri reported that four fatalities of children under age 15 from chronic lower respiratory disease; ten deaths of children under age 15 due to influenza and pneumonia; 11 deaths of children under age 15 from cancers; and 49 children under age 15 died in motor vehicle crashes. DHSS, Table 21A, Resident Deaths by Selected Causes by Age Groups: Missouri, 2019, available at

¹ Unless otherwise noted, the Petition cites statewide statistics reported on the Missouri Department of Health & Senior Services COVID-19 dashboard, available at <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/data/public-health/statewide.php>.

<https://health.mo.gov/data/vitalstatistics/mvs19/Table21a.pdf>.

33. Missouri's experience is consistent with nationwide data. The CDC reports 361 deaths nationally in children under 18 years old from COVID-19 out of more than 53,000 deaths from all causes in that age bracket. CDC, Deaths involving coronavirus disease 2019 (COVID-19), pneumonia, and influenza reported to NCHS by time-period, jurisdiction of occurrence, sex and age-group, Aug. 18, 2021, available at https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm (last visited Aug. 23, 2021); *see also* Marty Makary, Opinion, *The Flimsy Evidence Behind the CDC's Push to Vaccinate Children*, WALL ST. J. (July 19, 2021), <https://on.wsj.com/2VYqit1> (In the United States, less than 350 children "under 18 have died with a Covid diagnosis code in their record.").

34. By contrast, during that same time period, the CDC reports 1,341 deaths of children under 18 years old involving pneumonia, influenza, or COVID-19, meaning that approximately 1,000 deaths of children under 18 years old involved pneumonia or influenza, but not COVID-19. CDC, Deaths involving coronavirus disease 2019 (COVID-19), pneumonia, and influenza reported to NCHS by time-period, jurisdiction of occurrence, sex and age-group, Aug. 18, 2021, available at https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm (last visited Aug. 23, 2021).

35. The CDC's current best estimate scenario assesses the infection fatality rate to be 0% for 0-17 year olds and to be 0.05% for 18-49 year olds (and, given that COVID-19 risk is more serious as individual's age, 0.05% is likely far too high for 18 and 19 year olds). CDC, COVID-19 Pandemic Planning Scenarios (last updated Mar. 19, 2021),

<https://bit.ly/3AyuiiU>.

36. Data from the United Kingdom regarding fatality rates from the delta variant show the case fatality rate from delta is lower than other variants, and it is near 0.0% for those under fifty years old. *See* PUB. HEALTH ENG., SARS-COV-2 VARIANTS OF CONCERN AND VARIANTS UNDER INVESTIGATION IN ENGLAND: TECHNICAL BRIEFING 20, at 14 tbl.4 (Aug. 6, 2021); *see id.* at 18 tbl.5 (showing that only 48 of the 147,612 unvaccinated people under 50 who were infected with the Delta variant died (0.03%)).

b. The low risk to children of hospitalization from COVID-19

37. COVID-19 “infection in children is generally characterized by mild illness. Only a minority of children require hospitalization” Zoe Hyde, Perspective, COVID-19, *Children and Schools: Overlooked and at Risk*, 213 MED. J. AUSTL. 444, 444 (2020); *see Children, School and COVID-19*, NAT’L INST. PUB. HEALTH & ENV’T (last updated July 14, 2021), <https://www.rivm.nl/en/coronavirus-covid-19/children-and-covid-19> (“Worldwide, relatively few children have been reported with COVID-19. . . . Children become less seriously ill and almost never need to be hospitalized because of” COVID-19.).

38. Children make up a small percentage of COVID-related hospitalizations and make up less than 1 for every 100,000 residents in Missouri. COVID Data Tracker, CDC, *New Admissions of Patients with Confirmed COVID-19 per 100,000 Population by Age Group, Missouri* (last visited Aug. 24, 2021), <https://covid.cdc.gov/covid-data-tracker/#new-hospital-admissions>.

39. As of July 31, 2021, the CDC reported that the rate of hospitalization with

COVID for children between 5 and 17 was 0.5 per 100,000, or about 250 patients. Marty Makary & H. Cody Meissner, Opinion, *The Case Against Masks for Children*, WALL ST. J. (Aug. 8, 2021), <https://on.wsj.com/3ANwOlt>. Those numbers overestimate the risk because all children admitted to the hospital are tested whether they complained of COVID or some other affliction.

40. The CDC estimates that compared to adults 40 to 49 years of age, children 5 to 17 years of age have 160 times lower risk of death from COVID-19 and 27 times lower risk of hospitalization from COVID-19.” Dena Bravata, *Back to School: The Effect of School Visits During COVID-19 on COVID-19 Transmission* 9 (Nat’l Bureau of Econ. Research, Working Paper No. 28645, Apr. 2021).

41. Sweden, which kept schools open last year, reported only “a total of 15 children with Covid-19 were admitted to an ICU (0.77 per 100,000 children in this age group)” between March and June 2020. Jonas F. Ludvigsson, Letter to the Editor, *Open Schools, Covid-19, and Child and Teacher Morbidity in Sweden*, 384 NEW. ENG. J. MED. 669, 669 (2021).

42. All these studies and data show that children are a small proportion of COVID-19 infections and are at substantially less risk for severe health outcomes than adults.

c. The low risk of children spreading COVID-19.

43. Research and data from the last 18 months overwhelmingly shows that the risk of children spreading the coronavirus is minimal.

44. An article published in the New England Journal of Medicine studied and

confirmed the direction of the virus's spread from contact to contact. By studying results from Iceland's systematic screening process, the author determined that if children do get the virus they are less likely to transmit the disease to adults and found that there was not a single instance of a child infecting parents. Daniel F. Gudbjartsson, Ph.D., Agnar Helgason, Ph.D., et al., *Spread of SARS-CoV-2 in the Icelandic Population*, N. Eng. J. Med. (June 11, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMoa2006100>.

45. A French study from April 2020, when there were no vaccines, showed that three schoolchildren who had positive test results became positive from a source other than their school. Arnaud Fontanet, MD, DrPH, Rebecca Grant, et al., *SARS-CoV-2 Infection in Primary Schools in Northern France: A Retrospective Cohort Study in an Area of High Transmission*, Institut Pasteur, (last visited July 9, 2020), <https://www.pasteur.fr/fr/file/35404/download>

46. Out of Ireland, researchers followed three children (between ages 10 and 15) and three adults who tested positive in March 2020. After being confined to their homes due to a lockdown, the children had 722 contacts with other people, but the researchers found no instance of a child infecting another child. The adults had fewer contacts (102) and passed it on to other adults. Laura Heavey, Geraldine Casey, et al., *No Evidence of Secondary Transmission of COVID-19 from Children Attending School in Ireland, 2020*, Eurosurveillance, (May 28, 2020), https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.21.2000903#html_fulltext.

47. A Netherland study confirmed that (1) children play a minor role in the spread of the novel coronavirus, (2) the virus is mainly spread between adults and from

adult family members to children, and (3) the spread of COVID-19 among children or from children to adults is less common. *Children and COVID-19*, National Institute for Public Health and the Environment, (July 2, 2020), <https://www.rivm.nl/en/novel-coronavirus-covid-19/children-and-covid-19>.

48. Similarly, a German study from March 2020 to early May 2020 followed 128 pediatric patients admitted to hospitals. For that limited sample size, the researchers found that the primary source of infection with SARS-CoV-2 appears not to be other children. Armann, J. P., et al., *Hospital Admission in Children and Adolescents With COVID-19*. *Deutsches Arzteblatt international*, 117(21), 373–374 (2020).

49. In a large study from the United Kingdom studying school environments, the author confirmed that there is very little evidence that the virus is transmitted in schools. Sian Griffiths, *Pupils pose little risk of spreading COVID*, THE SUNDAY TIMES (Aug. 9, 2020), <https://bit.ly/3y9WqYb>.

50. Research studying the effect of school closures on disease spread finds little or no effect of school closure on disease spread. When Sweden kept its schools open, a study found that there was no additional risk to the elderly (a high risk population) cohabitating with schoolchildren even if children became infected. Brandén, Maria, et al., *Residential Context and COVID-19 Mortality among the Elderly in Stockholm: A population-based, observational study*. *Stockholm Research Reports in Demography*, THE LANCET (Oct. 27, 2020) [https://www.thelancet.com/journals/lanhl/article/PIIS2666-7568\(20\)30016-7/fulltext](https://www.thelancet.com/journals/lanhl/article/PIIS2666-7568(20)30016-7/fulltext); *Covid-19 in schoolchildren: A comparison between Finland and Sweden*, Public Health Agency of Sweden (2020),

<https://www.folkhalsomyndigheten.se/contentassets/c1b78bffbde4a7899eb0d8ffdb57b09/covid-19-school-aged-children.pdf>.

51. Additionally, teachers in Missouri have been eligible to receive a COVID-19 vaccination since early March 2021.

52. Simply put, many studies show that children do not generally spread the coronavirus, even in school settings. They also show that children have very positive outcomes with a lower risk of death and severe health outcomes.

II. Masks fail to provide adequate protection and offer a false sense of security.

53. Mask use by the general population shows, at best, a marginal impact on the spread of COVID-19. And most studies show no distinguishable difference between places with mask mandates and those without them.

54. A much touted research paper claimed that mask mandates had *reversed* COVID-19 incidence in Kansas counties that had implemented them. *See* Miriam E. Van Dyke, *Trends in County-Level COVID-19 Incidence in Counties With and Without a Mask Mandate—Kansas, June 1-August 23, 2020*, 69 MORBIDITY & MORTALITY WEEKLY REP. 1777, 1778 (2020). But that paper was based on early data that was later found to be inaccurate. When the updated data was studied, it did not show any reversal in COVID-19 incidence. Kevin Dayaratna & Norbert J. Michel, *A Statistical Analysis of Mandates and Mask Usage in Kansas*, THE HERITAGE FOUND.: SPECIAL REPORT, Apr. 15, 2021, at 6. Additionally, the paper suffered from numerous methodological deficiencies that prevented it from being useful. *See id.* at 13–14 & charts 2 & 3.

55. “[M]ask mandates and use were poor predictors of COVID-19 spread in US

states.” Damian D. Guerra & Daniel J. Guerra, *Mask Mandate and Use Efficacy in State-Level COVID-19 Containment* 12 (MedRxiv, Preprint, May 25, 2021).

56. Though the European Centre for Disease Prevention and Control advocates for universal public mask use, it has conceded that the evidence of the benefit in wearing a surgical mask was “of low to moderate certainty” and failed to show statistically significant benefits. EUROPEAN CTR. FOR DISEASE PREVENTION & CONTROL, USING FACE MASKS IN THE COMMUNITY: FIRST UPDATE 5 (2021). As for non-medical (*i.e.*, cloth) face-masks: “We did not identify any interventional or observational study directly comparing the effectiveness of non-medical face masks with that of medical face masks and no masks.” *Id.* at 7. Another study advocating for mask usage noted that “[t]he quality of the evidence [regarding the effectiveness of masks] is problematic.” Julii Brainard et al., *Community Use of Face Masks and Similar Barriers to Prevent Respiratory Illness Such as COVID-19: A Rapid Scoping Review*, EUROSURVEILLANCE, at 9 (Dec. 10, 2020).

57. Another study reported that “the scientific evidence [of whether masks prevent viral respiratory infections] should be considered equivocal.” Olga Perski et al., *Face Masks to Prevent Community Transmission of Viral Respiratory Infections: A Rapid Review Using Bayesian Analysis*, QEIOS, at 14 (May 1, 2020).

58. According to recent report, a study published by the CDC found that mitigation measures in schools, and in particular “requiring student masking were each found to not have a statistically significant benefit.” David Zweig, *Following the Science: The Science of Masking Kids at School Remains Uncertain*, NY Mag (Aug. 20, 2021).

59. The observational data and anecdotal evidence similarly show that public

mask use has little effect on community spread or stopping infection surges.

60. That is unsurprising because masks—especially cloth masks—are not able to stop “the smaller inhalable particles” that “are largely responsible for transmission” of COVID-19. Lisa M. Brosseau & Margaret Sietsema, *Commentary: Masks-for-All for COVID-19 Not Based on Sound Data*, *CTR. INFECTIOUS DISEASE RES. & POL.* (Apr. 1, 2020), <https://bit.ly/3saPjgK>.

61. Indeed, masks have long been considered one measure that offers their wearers a false sense of security.

62. Adults, let alone children, may not properly wear masks. As recently observed, “[f]olks who don’t know how to wear [masks] properly tend to touch their faces a lot and actually can increase the spread of coronavirus.” Jeffrey H. Anderson, *Do Masks Work?*, *CITY J.* (Aug. 11, 2021), <https://www.city-journal.org/do-masks-work-a-review-of-the-evidence> (quoting tweet from former Surgeon General Jerome Adams). One study found that “[r]ates of infection were consistently higher among those in the cloth mask group than in the medical mask and control groups. ... The poor performance may have been because the masks were not washed frequently enough or because they became moist and contaminated.” Abrar A. Chughtai et al., *Effectiveness of Cloth Masks for Protection Against Severe Acute Respiratory Syndrome Coronavirus 2*, *EMERGING INFECTIOUS DISEASES: ONLINE REPORT*, at e2 (Oct. 2020).

III. Masks can harm children.

63. Requiring children to mask is not mere inconvenience, there are real costs to such measures.

64. A study on mask use in 25,930 schoolchildren found that 68% “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).

65. Importantly, mask use by young children is detrimental to their communication skills at a critical stage of their development. The World Health Organization notes that masking young children raises social and communication concerns. Specifically, researchers are concerned that masks may “hinder[] verbal and non-verbal communication.” Jonas F. Ludvigsson, Opinion, *Little Evidence for Facemask Use in Children Against COVID-19*, 110 ACTA PEDIATRICA 745 745 (2021)

66. One study, for example, found that “children correctly identified the emotional expression on uncovered faces about 66% of the time ... [but] [l]ooking at faces in surgical-type masks, ... were only able to correctly identify sadness about 28% of the time, anger 27% of the time, and fear 18% of the time.” Robert Lee Hotz, *Covid Face Masks Are Disrupting a Key Tool of Human Communications, New Research Shows*, WALL ST. J.: SCI. J. (Jan. 18, 2021), <https://on.wsj.com/3iO2fWG>; see Clause-Christian Carbon, *Wearing Face Masks Strongly Confuses Counterparts in Reading Emotions*, FRONTIERS PSYCH., Sept. 2020, at 6. “Covering a child’s face mutes these nonverbal forms of communication and can result in robotic and emotionless interactions, anxiety and

depression. Seeing people speak is a building block of phonetic development. It is especially important for children with disabilities such as hearing impairment.” Marty Makary & H. Cody Meissner, Opinion, *The Case Against Masks for Children*, WALL ST. J. (Aug. 8, 2021), <https://on.wsj.com/3ANwOlt>.

IV. Columbia Public Schools impose a mask mandate despite City Council vote.

67. On Monday, August 9, 2021, the Columbia City Council rejected a citywide mask mandate. Zach Boetto, *Columbia City Council rejects mask mandate*, ABC17 KMIZ, (Aug. 9, 2021), <https://bit.ly/3z95azf>. The Columbia/Boone County Health director stated, in part, that “I don’t believe that a mask mandate is going to significantly increase mask-wearing.” *Id.*

68. Despite this vote, on Friday, August 13, 2021, Columbia Public Schools announced that everyone in school buildings and on buses will be required to wear masks as the school year begins. Roger Mckinney, *Here are the back-to-school COVID mask rules in Columbia and Boone County schools*, Columbia Daily Tribune (updated Aug. 15, 2021), <https://bit.ly/3z4jV6h>, The announcement from Defendant Columbia Public School’s webpage is attached as Exhibit A.

69. The publicly available agenda and minutes from recent Board of Education meetings do not reflect a vote by the Board on a mask mandate.

70. According to the Columbia Public Schools website, the District considered whether there was “high community transmission of the COVID-19 Delta variant.” Coronavirus Information for Families: Updates for August 13, 2021, https://www.cpsk12.org/Page/17965?utm_source=website&utm_medium=scroller&utm_

campaign=image. Aside from noting that they “consult[ed] with medical and health professionals” and “listened closely and intentionally to many voices and opinions,” the announcement does not identify what information they considered before ordering the mask mandate.

V. Columbia Public School’s mask mandate is arbitrary and capricious.

71. On information and belief, in imposing the mask mandate on schoolchildren, Defendants did not consider the harms to masking children.

72. On information and belief, Defendants failed to consider the science and evidence showing that children generally do not affect community spread and that children do not readily transmit the coronavirus, or the science and evidence showing lower risks of infection, transmission, and severe health outcomes in children from COVID-19.

73. On information and belief, Defendants failed to consider the science and evidence showing that mask use by the general population has little to no effect on community spread, and that mask mandates also have limited effectiveness, at best, in preventing community spread.

74. On information and belief, Defendants failed to consider the changed circumstances of vaccinated persons (including teachers and school staff) and the number of vaccinated persons increasing each day.

75. On information and belief, Defendants failed to consider the effect natural immunity and antibodies imparted to persons previously infected with COVID-19 would have on community spread.

76. Any restrictions Defendants impose cannot be “unconstitutional, unlawful,

unreasonable, arbitrary, or capricious § 536.150.1, RSMo. Government action is arbitrary, capricious, and unreasonable when it is based on *post hoc* rationalization, when it fails to consider an important part of the problem it is addressing, and when it fails to consider less restrictive alternatives before infringing on citizens' liberty. *See, e.g., Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1905, 1909 (2020); *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015). “[A]n agency which completely fails to consider an important aspect or factor of the issue before it may also be found to have acted arbitrarily and capriciously.” *Barry Serv. Agency Co. v. Manning*, 891 S.W.2d 882, 892 (Mo. App. W.D. 1995) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). In addition, agencies must consider whether there are less restrictive policies that would achieve their goals. *See Regents of the Univ. of Calif.*, 140 S. Ct. at 1912 (quoting *State Farm Mut. Auto.*, 463 U.S. at 51).

77. The Mask Mandate is unreasonable, arbitrary and capricious, and unlawful.

DEFENDANT CLASS ALLEGATIONS

78. This is a class action seeking only declaratory and injunctive relief pursuant to Missouri Supreme Court Rule 52.08.

79. Defendants are a member of a class of public school districts in Missouri.

80. Missouri is home to more than 500 public school districts.

81. Defendants and more than 50 other public school districts in Missouri have imposed mask mandates, or conditions under which a mask mandate would be imposed, on students.

82. For example, many school districts within St. Louis County, Missouri

adopted mask mandates between August 3 and August 8. These included Affton School District, Brentwood School District, Clayton School District, Hazelwood School District, Kirkwood School District, Ladue School District, Lindbergh School District, Maplewood-Richmond Heights School District, Mehlville School District, Normandy School District, Parkway School District, Riverview Gardens School District, Rockwood School District, Valley Park School District, and Webster Groves School District.

83. Many other school districts across the State (like those in Jackson County and near Springfield) have adopted, or are poised to adopt, similar masking policies for K-12 students. School districts in Missouri are so numerous that joinder of all school districts would be impracticable or impossible.

84. There is a common nucleus of operative facts and law among Defendants and other public school districts who have imposed mask mandates.

85. There are common issues of law and fact among all school districts adopting masking policies—including but not limited to whether such policies are arbitrary, capricious, unreasonable, and/or unlawful; whether such school districts disregarded science and other important aspects of the problem in adopting such policies, and whether such school district policies are governed by § 67.265, RSMo—that clearly predominate of any individualized issues, such as that classwide adjudicate among defendants is the superior method of adjudication.

86. The common issues of law and fact presented by Defendants are typical of the issues of law and fact that are presented by other school districts and school officials adopting mask mandates for K-12 students across Missouri.

87. Because Plaintiffs seeks only declaratory and injunctive relief, not money damages, classwide relief against defendant school districts is also the superior method of adjudication.

88. Any defenses that could be raised by the Defendants would have the same essential characteristics of the defenses of the Defendant Class at large.

89. Defendants are the public school district, the board of education, the board of education members sued in their official capacity, and the superintendent of the school district sued in his official capacity.

90. Defendants exercise control and supervise the operations and policies of a public school district and determine whether their public school district will impose a mask mandate.

91. Separate actions against each member of the Defendant class would create the risk of inconsistent adjudications which would establish incompatible standards of conduct for public schools across Missouri.

92. In imposing a mask mandate for schoolchildren, Defendants' actions are similar to other members of the Defendant class, like the school districts in St. Louis County and elsewhere in Missouri, and on grounds that are generally applicable to the whole Defendant class.

93. Defendants will fairly and adequately represent the interests of public school districts that have imposed mask mandates.

COUNT ONE – DECLARATION THAT THE MASK MANDATES ARE UNREASONABLE, ARBITRARY, AND CAPRICIOUS, § 536.150.1, RSMo

94. Missouri incorporates by reference the allegations in all preceding paragraphs.

95. The State of Missouri challenges the validity of the Mask Mandate, and seeks a declaration that they are “unreasonable, arbitrary, or capricious.” § 536.150.1, RSMo. The Mask Mandate is not subject to administrative review. *Id.*

96. School Districts are “agencies” within the definition § 536.010(2), RSMo. *P.L.S. ex rel. Shelton v. Koster*, 360 S.W.3d 805, 818 (Mo. Ct. App. 2011), *as modified* (Jan. 31, 2012). School Districts may not exercise their power in an “unreasonable, arbitrary, capricious or unlawful manner.” *Magenheim v. Bd. of Educ. of Sch. Dist. of Riverview Gardens*, 347 S.W.2d 409, 417 (Mo. App. 1961).

97. The Mask Mandate requires all elementary schoolchildren (defined as all children who are of the age to attend K-12 school) attending schools in the School Districts to wear a mask with few exceptions when they are at school. The Mask Mandate is therefore an agency decision that determines “legal rights, duties, or privileges.” § 536.150.1, RSMo.

98. Missouri’s schoolchildren are not validly subject to the Mask Mandate because they are “unreasonable, arbitrary, or capricious,” § 536.150.1, RSMo, for a number of reasons.

99. The Mask Mandate clearly fails the requirement of reasoned decision-making. It provides no discussion of how the mandate addresses the identified harms for

students and the School Districts’ particular communities. The Mask Mandate therefore suggests that the Defendants failed to grapple at all with a large swath of relevant science, data, statistics, studies, or alternatives.

100. First, the masking requirement for schoolchildren is unreasonable, arbitrary, and capricious. Schoolchildren are generally not at risk of serious illness even if they get COVID-19, thus reducing the need for harsher non-pharmaceutical intervention. *See, e.g.,* Marty Makary, Opinion, *The Flimsy Evidence Behind the CDC’s Push to Vaccinate Children*, WALL ST. J. (July 19, 2021) (“Our report found a mortality rate of zero among children without a pre-existing medical condition such as leukemia.”). On information and belief, Defendants failed to consider that fact in deciding to promulgate the Mask Mandate.

101. Second, on information and belief, Defendants failed to consider a number of important factors relating to masking for schoolchildren:

- a. To start, the Mask Mandate fails to account for the fact that children are less likely to contract COVID-19 and that, if they do contract it, display less severe symptoms. *See, e.g.,* Nicholas G. Davies, *Age-Dependent Effects in the Transmission and Control of COVID-19 Epidemics*, 26 NATURE MED. 1205, 1205 (2020) (concluding that susceptibility of infection in those under twenty is half that for those over twenty and that those under twenty do not manifest clinical symptoms as often). That suggests that children are also less likely to transmit the virus, *see id.* at 1208–09, which appears to be the

consensus position.² There is thus a much less pressing need for masking among young children. That includes within schools. One study found “an infection rate of 0.13% among students and 0.24% among staff” after analyzing in-school infection data from over 47 states. Patrick Boyle, *Kids, School, and COVID-19: What We Know—and What We Don’t*, AAMC (Nov. 5, 2020). Rather, schools are more likely to be affected by COVID-19 rates in the community than schools causing community spread. *See id.*³

- b. Defendants failed to consider the effect natural immunity and antibodies from the population (including children) that previously contracted COVID-19 have on community spread.

² *See, e.g.*, Eun Young Cho et al., Letter to the Editor, *Interpreting Transmissibility of COVID-19 in Children*, 26 EMERGING INFECTIOUS DISEASES 3106, 3107 (2020) (interpreting data); Patrick Boyle, *Kids, School, and COVID-19: What We Know—and What We Don’t*, AAMC (Nov. 5, 2020), <https://bit.ly/3kQDvyG> (“Several studies have found that children transmit the virus, but perhaps not as often as adults, especially in younger age groups. It’s not clear why.”); Eli Somekh et al., *The Role of Children in the Dynamics of Intra Family Coronavirus 2019 Spread in Densely Populated Areas*, 39 PEDIATRICS INFECTIOUS DISEASE J. 202, 203–04 (2020) (noting studies indicating that children are less likely to get COVID-19, and finding similar results).

³ *See also, e.g.*, CDC, *Science Brief: Transmission of SARS-CoV-2 in K-12 Schools and Early Care and Education Programs—Updated* (updated July 9, 2021), <https://bit.ly/3rxQeaR>; *Questions and Answers on COVID-19: Children Aged 1–18 Years and the Role of Schools Settings*, European Centre for Disease Prevention & Control (updated Jan. 25, 2021), <https://bit.ly/3j3yHDJ>. *But see* Zoe Hyde, Perspectives, *COVID-19, Children and Schools: Overlooked and at Risk*, 213 MED. J. AUSTL. 444, 446 (2020) (arguing schools play a bigger role in transmission than assumed, but conceding that “[w]hether young and older children transmit the virus similarly is unknown and requires urgent clarification”).

- c. Defendants failed to consider over a year’s worth of data showing that mask use, including a mask mandate, has little to no effect in preventing community spread of COVID-19.
- d. The Mask Mandate is arbitrary and capricious because it requires vaccinated individuals to wear masks, despite all the data showing that vaccinated individuals face minor risk from the virus.
- e. On information and belief, Defendants failed to consider whether the Mask Mandate—because it treats vaccinated individuals like unvaccinated ones—discourages people from receiving the vaccine by implying that vaccines have limited efficacy. *Cf.* Rachel Holloway et al., *Updated Preparedness and Response Framework for Influenza Pandemics*, MORBIDITY & MORTALITY WEEKLY REPORT, Sept. 26, 2014, at 6 (saying vaccine availability is a consideration when determining what actions to take during a pandemic).
- f. Defendants failed to consider non-COVID-19 harms to masking children, including emotional, psychological, and social harms.
- g. Defendants only considered the risk of a single COVID-19 infection and not the health outcomes from such an infection.
- h. Although the risks schoolchildren face from COVID-19, as well as the risk that they transmit the virus, are relatively low, there is a significant cost to forcing them to mask. For one, masks hinder “verbal and non-verbal communication.” Jonas F. Ludvigsson, Editorial, *Little Evidence for*

Facemask Use in Children Against COVID-19, 110 ACTA PAEDITRICA 742, 742 (2021); see Connor Harris, *Do We Need Mask Mandates?*, CITY J. (Mar. 22, 2021), <https://www.city-journal.org/do-we-need-mask-mandates> (“Some child development researchers also worry that widespread mask-wearing may hamper children’s linguistic and emotional development.”); see also John T. Brooks, et al., *Effectiveness of Mask Wearing to Control Community Spread of SARS-CoV-2*, J. AM. MED. ASS’N, Feb. 10, 2021, at 7 (finding that “children were less accurate with faces that wore a mask compared to faces that were not covered”). And the same risks associated with mask use in adults are present with respect to children—namely, that the masks may create a false sense of security and that failing to properly wear face masks over their nose and mouths and that touching the masks will eliminate, if not exceed, any benefit achieved by having students wear masks. See *id.*

- i. There are also common-sense concerns with having schoolchildren wear a face mask all day while at school, such as general discomfort and unhappiness. See Harris, *supra* (“In a self-selected survey of German schoolchildren, more than half of the participants reported headaches.”). Similarly, mask requirements also take up instructional time as teachers police mask compliance, take mask breaks outdoors, send students to get masks, and punish students for failing to comply.
- j. Finally, children with special needs may find it especially difficult to wear masks but may not be able to take advantage of any of the exceptions in the

Mask Mandate. The mandate thus jeopardizes their ability to be in public places under the Mask Mandate. *See The Challenge of Face Masks*, ORG. FOR AUTISM RES. (Nov. 12, 2020), <https://bit.ly/3eVYRa3>.

102. On information and belief, Defendants failed to consider those factors in applying the Mask Mandate to schoolchildren. They therefore failed to engage in reasoned decision-making, and, as a result, subjected schoolchildren to an unnecessary, burdensome, and harmful mask mandate.

103. For those reasons, among others, the Mask Mandate is unreasonable, arbitrary, and capricious and the schoolchildren of Missouri should not be subject to it.

COUNT TWO – DECLARATION THAT THE MASK MANDATE IS SUBJECT TO § 67.265 AND EXPIRES WITHOUT BOARD OF EDUCATION AUTHORIZATION, RSMo

104. Missouri incorporates by reference the allegations in all preceding paragraphs.

105. Missouri seeks a declaration that the Mask Mandate is subject to the requirements of § 67.265, RSMo.

106. Columbia Public Schools is a political subdivision within § 67.265.1, RSMo.

107. The Board of Education is the governing body of Columbia Public Schools within § 67.265.2, RSMo.

108. Defendant Yearwood acts with the Board’s authority in issuing the Mask Mandate.

109. There is an emergency order declared pursuant to chapter 44, RSMo.

110. The Mask Mandate is an “order” as defined by § 67.265.1, RSMo.

111. The Mask Mandate is also an order that “directly or indirectly closes, partially closes, or places restrictions on the opening of or access to any one or more business organizations, churches, schools, or other places of public or private gathering or assembly, including any order, ordinance, rule, or regulation of general applicability or that prohibits or otherwise limits attendance at any public or private gathering” § 67.265.1(1), RSMo.

112. The Mask Mandate places restrictions on access to “business organizations, churches, schools, or other places of public or private gathering or assembly,” § 67.265.1(1), RSMo, because it limits access to schools to only masked individuals or to individuals who fall under an exception to the mask requirement.

113. On information and belief, students who refuse to comply with the Mask Mandate will be excluded from school property, will face discipline, and may be sent home.

114. On information and belief, students who refuse to comply with the Mask Mandate will not be allowed in school and will be required to use virtual instruction

115. As a result, the Mask Mandate is subject to § 67.265, RSMo, and expires after thirty days absent authorization by a majority vote of the Board of Education for the School District of Columbia.

116. The Mask Mandate is also subject to § 67.265.2, RSMo, and may be terminated at any time by a simple majority vote of the governing body of the school district.

117. The Mask Mandate is also subject to § 67.265.4, RSMo, and could not be implemented without a report to the governing body of the school district containing

information supporting the need for such order. On information and belief, no such report was issued to the governing body in this case.

118. The Mask Mandate is also subject to the other provisions of § 67.265, RSMo.

COUNT THREE – DECLARATION THAT THE MASK MANDATE IS UNLAWFUL AS TO SCHOOLCHILDREN, § 536.150.1, RSMo

119. Missouri incorporates by reference the allegations in all preceding paragraphs.

120. In the alternative, the State of Missouri challenges the validity of the Mask Mandate, and seeks a declaration that it is “unlawful” and therefore Missouri’s schoolchildren cannot be lawfully subjected to it. § 536.150.1, RSMo. The Mask Mandate is not subject to administrative review. *Id.*

121. By law, “[i]t shall be the general duty and responsibility of the department of health and senior services to safeguard the health of the people in the state and all its subdivisions.” § 192.020.1, RSMo.

122. DHSS permits local health authorities to create and enforce only orders “adequate . . . to prevent the spread of [a] disease and other measures considered by the . . . local health authority as appropriate disease control measures based upon the disease” 19 C.S.R. § 20-20.040.2(G).

123. DHSS has not delegated that authority to school districts.

124. The local health authority has not issued an order requiring schoolchildren to wear masks.

125. Neither the Missouri Constitution nor the General Assembly has granted Defendants a general police power to enact law for the public welfare.

126. In fact, Missouri statutes that require DHSS to set health policy in schools indicates that only DHSS may provide appropriate measures to safe guard the public health. *See* § 167.181, RSMo (DHSS promulgates mandatory vaccination requirements for schoolchildren); § 167.182, RSMo (DHSS develops informational brochure on HPV).

127. The Mask Mandate is not authorized under 19 CSR 20-20.040 because it is neither “adequate” to prevent the spread of disease nor “appropriate” as a disease control measure among K-12 schoolchildren, for all the reasons stated herein.

128. Missouri law does not authorize Defendants to impose a Mask Mandate.

129. Defendants do not have authority to impose a Mask Mandate for public health reasons.

130. For those reasons, the Mask Mandate is an unlawful order and Missouri’s schoolchildren should not be subject to it.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. Declare that Defendants’ Mask Mandates, individually and as applied to the Defendant class, are arbitrary, capricious, unreasonable, and invalid under Missouri law as to schoolchildren (Count One);
- b. Grant relief by injunction, certiorari, mandamus, prohibition, or other appropriate action against Defendants and their officers and agents, both individually and as to the Defendant class, providing that Defendants’

Mask Mandates are unlawful, arbitrary, capricious, unreasonable, and invalid under Missouri law as to schoolchildren;

- c. Declare that Defendants' Mask Mandates are subject to § 67.265, RSMo, and expire thirty days after issuance absent authorization from the Board of Education (Count Two), both individually and as to the Defendant class, as well as being subject to the other provisions of § 67.265;;
- d. In the alternative, declare that the Mask Mandate is unlawful because Defendants and their officers and agents, both individually and as to the Defendant class, do not have statutory authority to issue the Mask Mandates (Count Three);
- e. Enter a final judgment in Plaintiff's favor on all Counts in this Petition; and
- f. Grant such other and further relief as the Court deems just and proper under the circumstances.

Dated: August 24, 2021

Respectfully submitted,

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