

**THE CIRCUIT COURT OF ST. LOUIS COUNTY  
TWENTY-FIRST JUDICIAL CIRCUIT OF MISSOURI**

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

*Plaintiff,*

v.

ST. LOUIS COUNTY;

*Defendant.*

No. \_\_\_\_\_

**PETITION**

1. Like its prior attempts, St. Louis County’s COVID-19 mask mandate is illegal under Missouri statutes, including § 67.265, RSMo, and § 536.150, RSMo.

2. Since the pandemic began, Defendant St. Louis County has suffered some of the highest COVID-19 case rates and death rates in Missouri despite having some of the strictest COVID-19 mandates and shutdowns.

3. During the pandemic, public health officials, including those in St. Louis County, have issued COVID-19 public health orders indefinitely restricting the liberty of Missourians.

4. The General Assembly enacted § 67.265, RSMo, to curb such abuses of authority.

5. On December 9, 2021, St. Louis County rescinded an illegal Mask Mandate.

6. On January 4, 2022, the St. Louis County Council approved a public health order that imposes the same requirements as the earlier Mask Mandate.

7. Attorney General Schmitt brings this action to require St. Louis County to end its unlawful January 5 Mask Mandate.

## JURISDICTION AND VENUE

8. This Court has jurisdiction under Mo. Const. art V, § 14(a), § 527.010, RSMo, *et seq.*, § 536.150, RSMo, and § 536.050, RSMo.

9. Venue is proper in this Court under § 508.010.2(2) RSMo, and § 508.060, RSMo.

## PARTIES

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

11. 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.

12. 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, including but not limited to their rights to religious freedom. This interest includes, but is not limited to, preventing the spread of the COVID-19 virus within the state.

13. Attorney General Schmitt sues to vindicate Missouri’s sovereign interest in ensuring that its municipal authorities exercise authority vested in them under state law in a fashion that does not violate the Missouri Constitution or Missouri law.

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

15. Attorney General Schmitt sues to vindicate the private rights of residents who have face deprivation of their life, liberty, and property as a result of Defendant’s enforcement of an unlawful, arbitrary, and capricious Mask Mandate. This includes threats of prosecution, legal proceedings, and potential shutdowns of private businesses.

16. St. Louis County is a political subdivision of the State of Missouri.

### **FACTUAL ALLEGATIONS**

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

#### **I. HISTORY OF UNLAWFUL RESTRICTIONS IN ST. LOUIS COUNTY**

18. St. Louis County has issued a series of public health orders that restricted the private rights of its residents and visitors without considering important public health, religious, economic, and educational issues.

19. When St. Louis County initially removed its COVID-19 restrictions in May 2021, 41.9% of St. Louis County residents had received the first vaccination dose and 33.2% were fully vaccinated.

20. At the time, County Executive Page said that “[t]he easing of restrictions is made possible as more people get vaccinated, and I urge everyone to get vaccinated as early as possible.”

21. Yet, on July 26, 2021, St. Louis County issued a Face Covering Order (“July 26 Mask Mandate”) (Attached as Exhibit A). That order required all individuals ages five and older to wear masks while indoors regardless of vaccination status with very limited exceptions.

22. The July 26 Mask Mandate purported to justify the order, first, by discussing the spread of COVID-19 cases in the County. *See* Ex. A § I.B. The order highlighted claims that the

COVID-19 variants, particularly the delta variant, could spread more easily. *See id.* It also claimed that “[s]urges are increasingly impacting [*sic*] younger adults and children.” *Id.* The order did not discuss hospitalizations or death rates.

23. The July 26 Mask Mandate claimed that masks prevent transmission of COVID-19 in two ways. One is through “source control,” which refers to the alleged ability of masks to “prevent infected persons from exposing others to [COVID-19] by blocking exhalation of virus-containing droplets into the air.” Ex. A § I.C. The other is by protecting uninfected wearers by “forming a barrier to large respiratory droplets . . . and partially filtering out small droplets and particles from inhaled air.” *Id.* The July 26 Mask Mandate pointed to studies it claims supports those conclusions. *See id.*

24. On or around July 26, 2021, approximately 51.2% of County residents had received their first vaccine dose and 45.0% had completed the vaccination regimen.

25. On July 26, 2021, the State of Missouri was under a state of emergency declared by Governor Parson related to the COVID-19 pandemic.

26. On July 27, 2021, the St. Louis County Council held a regular meeting (transcript attached as Exhibit B).

27. At that meeting, Council Member Tim Fitch requested that Acting Public Health Director Khan answer questions about the Mask Mandate and for the Council to consider whether to terminate the County Mandate.

28. When asked by Council Member Fitch why he did not meet with the Council “and tell them what’s going on” before issuing the Mask Mandate, Acting Director Khan stated that he had to follow the chain of command and that “I answer to the executive branch. I do not report to you.” Ex. B, 28:6–19. This is confirmed by a majority of the St. Louis County Council:

“Shockingly, at the July 27, 2021 County Council meeting, Acting Director of Public Health Khan, in direct contravention of state law, County Charter and County Ordinances said he does not report to the Council but only the County Executive.” Ex. C, August 17 St. Louis County Council Members Letter at 4. Those council members further noted that “as has been practice, the Acting Public Health Director violated Section 67.265.4 by refusing to provide any report or supporting information to the Council prior to or concurrently with the issuance of the face covering order.” *Id.*

29. During the July 27 meeting, Acting Director Khan confirmed that the Mask Mandate applied to “[a]ll businesses and residences in St. Louis County.” Ex. B, 44:28–32.

30. He agreed that the July 26 Mask Mandate places “an obligation to police or enforce the order” on businesses. *Id.* 44:55–45:07 (“Yes, sir.”); *see also id.* at 46:00–21 (Councilman Trakas: “In doing so, are you not imposing upon a Schnucks or a restaurant an obligation to enforce your order.” Khan: “Yes.”). He also explained that the order imposed a responsibility on individuals to be masked indoors. *Id.* 39:25–39:40; *id.* at 44:18-27.

31. In two hours of public comments, St. Louis County residents, business owners, and parents informed the County Council of the devastating toll the last year of public health orders had imposed. They discussed the negative effect of the orders, including masking mandates, on their children’s education, development, and overall well-being; how lockdowns led to friends falling into addiction and committing suicides; how much their small businesses were struggling; the discouragement—including discouragement from receiving the vaccine—that stemmed from the public health orders and the Mask Mandate; and forcing children to wear masks throughout an entire school day detracted from their children’s learning environment.

32. At the July 27, 2021, Regular Meeting, the County Council voted to terminate the Mask Mandate by a vote of five to two. *See id.* at 3:26:20–28:45 (“The motion carries, the public health order is terminated.”); Ex. C, County Council Letter (“The Council exercised its legal right to terminate the July 26, 2021 face covering order pursuant to Section 67.265.”).

33. The next morning County Executive Page announced that the Mask Mandate was still in effect.

34. A St. Louis County Circuit Court granted Attorney General Schmitt’s request and enjoined certain County Officials from enforcing the July 26 Mask Mandate from August 3, 2021 to October 14, 2021.

## **II. THE SEPTEMBER 27 MASK MANDATE**

35. Despite being enjoined from “from taking any and all action to enforce the July 26, 2021 Face Covering Order,” St. Louis County officials issued a mask mandate on September 27, 2021. Ex. D (September 27 Mask Mandate).

36. The September 27 Mask Mandate states that “the July 26 Face Covering Order is rescinded.” Ex. D, § V. They gave no reason for doing so while claiming that “[t]he universal wearing of face coverings is particularly important when a surge of COVID-19, or a variant thereof, is impacting a community.” *Id.* at § I.C. Indeed, on September 24, 2021, Acting Director Khan asked to speak with the St. Louis County Council to “explain the continuing need for indoor mask requirements in St. Louis County.”

37. The September 27 Mask Mandate imposed the same requirements and exemptions as the July 26 Mask Mandate. *Compare* Ex. A § III, *with* Ex. D § III. Both Mask Mandates claim that they are necessary “to reduce the transmission of COVID-19, including variants thereof, in St. Louis County” and address the Delta variant.

38. Specifically, the September 27 Mask Mandate required all persons in St. Louis County over five years old to wear a mask “while in indoor and enclosed public buildings and spaces and public transportation vessels,” without regard to vaccination status or natural immunity. *See* Ex. D § III.1.

39. The St. Louis County Council never voted on the September 27 Mask Mandate.

40. On or around September 27, 2021, 58.5% of St. Louis County residents had initiated vaccination and 52.4% of residents have completed the regimen. St. Louis County had the second highest percent of vaccinated residents in Missouri.

41. On September 27, a statewide emergency declaration under Chapter 44 was in effect relating to COVID-19 and Missouri’s recovery efforts.

42. After the regulations authorizing local public health officials to issue certain public health orders related to communicable diseases were struck down for being unconstitutional, Acting Director Khan rescinded the illegal September 27 Mask Mandate on December 9, 2021 (Attached as Exhibit F).

### **III. THE JANUARY 5 MASK MANDATE**

43. On January 4, 2022, the St. Louis County Council approved an order to require all individuals five and older to wear masks indoors, regardless of vaccination or immunity status that became effective on January 5, 2022. Ex. E, January 5 Mask Mandate.

44. This order was first introduced and approved at the Regular Meeting on January 4, 2022.

45. The January 5 Mask Mandate imposes the same requirements and exemptions as the July 26 and September 27 Mask Mandates. *Compare* Ex. A § III, *and* Ex. D § III, *with* Ex. E, § III. All Mask Mandates claim that they are necessary “to reduce the transmission of COVID-

19, including variants thereof, in St. Louis County” and explicitly address the Delta variant. The January 5 Mask Mandate states that the Omicron variant is present in St. Louis County and “continue[s] to be of concern in St. Louis County.” Ex. E, § I.

46. Specifically, the January 5 Mask Mandate requires all persons in St. Louis County over five years old to wear a mask “while in indoor and enclosed public buildings and spaces and public transportation vessels,” without regard to vaccination status or natural immunity. *See* Ex. E, § III.1.

47. The January 5 Mask Mandate defines “face covering” as “a device, usually made of cloth, that covers the nose and mouth.” Ex. E, § III.1. It states that “indoor and enclosed public buildings and spaces” “include[s] all indoor and enclosed spaces other than private dwellings or private transportation vehicles.” *Id.* Like its predecessor, the January 5 Mask Mandate applies widely; it covers schools and places of worship as well as restaurants, bars, public transportation, grocery stores, hospitals, and more. The Mask Mandate applies regardless of whether social distancing is possible in the indoor area.

48. The January 5 Mask Mandate exempts:

- a. persons who have trouble breathing with a mask, or who “are unconscious, incapacitated, or otherwise unable to remove” the mask. Ex. E, § III.3.iv.
- b. persons consuming food and drink whether at a restaurant or for religious purposes. Ex. E, § III.3.vii.
- c. persons who need to remove masks for “obtaining a service” that involves “the nose or face,” including instances where removal “is necessary to perform the service.” Ex. E, § III.3.viii.
- d. persons “with health conditions that prohibit wearing a Face Covering.”

Ex. E, § III.3.iii.

- e. deaf and hard-of-hearing individuals, and those communicating with such individuals, “where the ability to see the mouth is essential for communications.” Ex. E, § III.3.v.
- a. persons “who are alone in a separate room, office, or interior space.” Ex. E, § III.3.vi.

49. The January 5 Mask Mandate will “continue in effect until such time as St. Louis County as a geographic region has attained a Moderate Transmission Level of SARS-CoV-2 as defined by the CDC unless otherwise amended or rescinded.” Ex. E, § V.

50. On or around January 5, 2021, 68.1% of St. Louis County residents had initiated vaccination and 59.9% of residents have completed the regimen. St. Louis County has the second highest percent of vaccinated residents in Missouri.

51. Like the September 27 Mask Mandate, the January 5 Mask Mandate claims it does not authorize criminal enforcement.

52. The January 5 Mask Mandate is not subject to administrative review.

#### **IV. COVID-19 IN MISSOURI**

53. Since COVID-19 threatened the world, it has affected the entire state. As St. Louis County Officials told a St. Louis County Circuit Court, COVID-19 is not bound by jurisdictional borders. The January 5 Mask Mandate explains that this is a “global pandemic caused by the viral respiratory illness called COVID-19.” Ex. E, § I.

54. Missouri has endured the original virus, and now at least two more variants. According to the CDC, the omicron variant comprised 95% of all sequenced Covid-19 cases in the U.S. in the week ending January 1, up from a revised 77% in the previous week, according to a

model by the Centers for Disease Control and Prevention. Previously, the CDC estimated that the variant accounted for 58.6% of cases in the week ending Dec. 25. Additionally, the CDC has found that the once-dominant delta variant, which spurred a nationwide jump in cases last year, now accounts for just 4.6% of sequenced cases.

55. Doctors appear to agree that is time to “retire the cloth mask.” Dr. Scott Gottlieb has noted that “Cloth masks aren’t going to provide a lot of protection, that’s the bottom line. This is an airborne illness. We now understand that, and a cloth mask is not going to protect you from a virus that spreads through airborne transmission.” Indeed even the most intense advocates for masking admit that “Cloth masks are little more than facial decorations. There’s no place for them in light of Omicron.”

56. Studies suggest that cloth masks do not prevent COVID-19 infection, indeed, even the Abaluck study cited by the January 5 Mask Mandate agrees.

57. The Mask Mandate is a reversal of long-held consensus on the merits of community masking, and rests on assumptions and premises that reject the fundamental tenets of modern medicine, statistical analysis, and public health decision-making.

**COUNT ONE – DECLARATION THAT THE JANUARY 5 MASK MANDATE IS VOID AS A PROHIBITED ORDER**

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

59. Missouri seeks a declaration that the January 5 Mask Mandate, and any subsequent public health order that “indirectly or directly” effects a similar policy, is unlawful as a “prohibited order” under § 67.265.5. The July 26 Mask Mandate is a “prohibited order” because it was lawfully terminated by the St. Louis County Council on July 27, 2021, pursuant to § 67.265.2. Because the July 26 Mask Mandate is a “prohibited order” under § 67.265.5, Defendant cannot lawfully “make or modify any orders that have the effect, directly or indirectly, of a prohibited

order under this section.” Yet that is exactly what the January 5 Mask Mandate does—it has the same “effect” as the prohibited July 26 Mask Mandate.

60. The January 5 Mask Mandate is an “order” under the statutory definition of § 67.265.1. The July 26 and September 27 Mask Mandates were also orders under § 67.265.1.

61. A majority of the County Council is four of seven votes. The County Council voted to terminate the July 26 Mask Mandate by a vote of five to two.

62. The St. Louis County Council’s vote lawfully terminated the Mask Mandate. § 67.265.2, RSMo.

63. Section 67.265.5 provides: “No political subdivision of this state shall make or modify any orders that have the effect, directly or indirectly, of a prohibited order under this section.” § 67.265.5, RSMo.

64. The January 5 Mask Mandate has the same effect as a prohibited order, *i.e.*, the July 26 Mask Mandate. The July 26 Mask Mandate is a prohibited order.

65. The January 5 Mask Mandate and any subsequent public health order that has the effect of the July 26 Mask Mandate violates § 67.265.5.

66. In the alternative, even if the July 26 Mask Mandate had not been lawfully terminated, the September 27 Mask Mandate is a “prohibited order” because it violated § 67.265.1(1), RSMo, and continued in effect until December 9, 2021.

67. The July 26, September 27, and January 5 Mask Mandates are orders that “directly or indirectly close[], partially close[], or place[] 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.

68. All the Mask Mandates place restrictions on access to “business organizations, churches, schools, or other places of public or private gathering or assembly,” § 67.265.1(1), RSMo, because they limit access to those entities only to masked individuals or individuals who fall under an exception to the mask requirement. The orders have the same effect.

69. The September 27 Mask Mandate was subject to § 67.265.1(1), RSMo and remained in effect from September 27, 2021 until December 9, 2021. The governing body of St. Louis County (the County Council) never approved or authorized it. Pursuant to subdivision 1, the September 27 Mask Mandate “shall not remain in effect for longer than thirty calendar days in a one hundred eighty-day-period, including the cumulative duration of similar orders issued concurrently, consecutively, or successively.” Because it did not expire and was not approved, the September 27 Mask Mandate became a prohibited order. § 67.265.5, RSMo.

70. The September 27 Mask Mandate or a similar public health order, i.e., the January 5 Mask Mandate, cannot remain in effect until 150 days from December 9, 2021.

71. The January 5 Mask Mandate, and any subsequent public health order that has the effect of the September 27 Mask Mandate, may not be made or modified until 150 days from December 9, 2021. *See* § 67.265.1(1), RSMo.

**COUNT TWO – DECLARATION THAT THE JANUARY 5 MASK MANDATE DOES NOT APPLY TO SCHOOL DISTRICTS, § 536.150.1, RSMo.**

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

73. The January 5 Mask Mandate depends solely on the County’s charter powers and only cites § 602.020 SLCRO for its authority to issue.

74. School districts are distinct and separate political subdivisions from counties.

75. The Missouri Constitution provides that charter counties, such as St. Louis County, “may provide for the vesting and exercise of legislative power pertaining to any and all services and functions of any municipality or political subdivision, except school districts . . . .” MO. CONST. ART. VI, § 18(c). Even when a charter county may act “throughout the entire county” the Constitution prevents them from exercising legislative power over school districts. *Id.*

76. St. Louis County has no authority to apply the January 5 Mask Mandate to the school districts within the geographic borders of St. Louis County.

77. The State asks that the Court declare that the January 5 Mask Mandate does not apply to school districts within St. Louis County.

**COUNT THREE – DECLARATION THAT THE JANUARY 5 MASK MANDATE IS  
VOID AS ST. LOUIS COUNTY ACTED *ULTRA VIRES* IN PASSING THE MASK  
MANDATE**

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

79. The State of Missouri challenges the validity of the Mask Mandate, and seeks a declaration that it is unlawful and *ultra vires*.

80. The St. Louis County Council passed the January 5 Mask Mandate contrary to law.

81. Specifically, the January 5 Mask Mandate is an ordinance, and not a rule or regulation under § 602.020 SLCRO.

82. St. Louis County did not follow the mandatory charter procedures to issue the January 5 Mask Mandate, such as by not considering it at multiple meetings.

83. Further, Chapter 602 does not empower the Department of Health (or its director) to make rules and regulations requiring county-wide mask use to respond to global pandemic caused by a viral respiratory illness.

84. On information and belief, no authority empowers St. Louis County bureaucrats to issue the January 5 Mask Mandate.

**COUNT FOUR – DECLARATION THAT THE JANUARY 5 MASK MANDATE IS  
ARBITRARY AND CAPRICIOUS**

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

86. The State of Missouri challenges the validity of the Mask Mandate, and seeks a declaration that it is unreasonable, arbitrary, or capricious.

87. On information and belief, the January 5 Mask Mandate fails to fully consider the potential social, economic, and political consequences of the Mask Mandate including virus transmission parameters, severity of disease among different age and risk groups, availability and effectiveness of control measures and treatment options, and the impact on health care, schools, business, and the community.

88. The January 5 Mask Mandate does not account for the populations of residents who have completed a vaccination regimen, received a booster, developed natural immunity, or a combination of those factors.

89. On information and belief, it is widely reported that the Omicron variant is less likely to cause severe illness and death. Doctors report that the disease appears to be less severe and note that this is not the same disease experienced a year ago. Dr. Fauci has recently commented that “all indications point to a lesser severity of omicron versus delta.”

90. The January 5 Mask Mandate does not consider the overcounting of hospitalizations due to the disease that has been widely reported. Recently, Dr. Fauci also explained that the “other important thing is that if you look at the children who are hospitalized, many of them are hospitalized *with* COVID as opposed to *because* of COVID.”

91. On information and belief, Defendant failed to consider these and other factors in applying the Mask Mandate to schoolchildren.

92. The January 5 Mask Mandate fails to grapple with a large swath of relevant science, data, statistics, studies, or alternatives. That includes failing to grapple with the weakness of the evidence supporting community masking as a mitigation measure, and the significant contrary evidence showing that masking does very little to prevent the spread of COVID-19.

93. The September 27 Mask Mandate is arbitrary and capricious because it requires vaccinated individuals and those with natural immunity to wear masks, despite the low risk of infection, even smaller risk of serious health outcomes from infection, and low risk of infecting others. The Mask Mandate fails to address this issue.

94. The January 5 Mask Mandate fails to consider costs. For example, there are many harms that masking can impose—including economic harms to businesses, educational injuries, interference with religious free exercise, loss of social connectivity, and many others. These have secondary effects on the general population, too. On information and belief, St. Louis County failed to consider these harms in issuing the January 5 Mask Mandate.

95. The factors listed above are not an exhaustive list. Ultimately, the January 5 Mask Mandate fails to represent a rational weighing of the costs and benefits of mandating community masking.

96. For those reasons, and more, the January 5 Mask Mandate is unreasonable, arbitrary, and capricious.

### **CONCLUSION**

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. Declare that the January 5 Mask Mandate and any subsequent public health order with the same or similar effect as the July 26 Mask Mandate is void and order St. Louis County to rescind the January 5 Mask Mandate (Count One);
- b. Declare that the January 5 Mask Mandate is unlawful because it is a similar order to the rescinded the September 27 Mask Mandate, and that it violates the 180-day time restriction on similar orders that in § 67.265.1(1), RSMo, and enjoin St. Louis County from enforcing it (Count One);
- c. Declare that January 5 Mask Mandate is unconstitutional, unlawful, arbitrary, capricious, unreasonable, and invalid under Missouri law (all Counts);
- d. Grant relief by injunction, certiorari, mandamus, prohibition, or other appropriate action, providing that the January 5 Mask Mandate is unconstitutional, unlawful, arbitrary, capricious, unreasonable, and invalid under Missouri law
- e. Enter a final judgment in Plaintiff's favor on all Counts in this Complaint; and
- f. Grant such other and further relief as the Court deems just and proper under the circumstances.

Dated: January 5, 2022

Respectfully submitted,

**ERIC S. SCHMITT**  
**Attorney General of Missouri**

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