

SUPREME COURT OF ARIZONA

ARIZONA SCHOOL BOARDS
ASSOCIATION, INC., et al.,

Plaintiffs/ Appellees,

v.

STATE OF ARIZONA, a body politic,

Defendant/ Appellant.

Arizona Supreme
Court No. CV-21-0234-
T/AP

Court of Appeals
Division One
No. 1 CA-CV 21-0555

Maricopa County
Superior Court
No. CV2021-012741

AMICUS BRIEF OF PHOENIX UNION HIGH SCHOOL DISTRICT

FILED WITH WRITTEN CONSENT OF THE PARTIES

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INTRODUCTION

Phoenix Union High School District (“PXU”) is responsible for the education and school-day safety of about 28,000 students.¹ To protect its students and staff, PXU currently has a mask requirement on campus. If Section 12 of HB 2898 goes into effect, PXU will not be able to continue that policy. PXU offers this amicus brief to assist the court in deciding whether that statute violates the Equal Protection Clause of the Arizona Constitution. We assert that it does.

BACKGROUND

On October 3, 2021 (the most recent reporting period), there were more than 2,800 confirmed or probable cases of COVID-19 among children ages 0-18 in Maricopa County during the previous week.² Since August 2020, 743

¹ See PXU, Dist. Info., Dist. Profile, <https://www.pxu.org>.

² Maricopa Cnty., COVID-19 Dashboard, sorting by Age Groups, <https://phdata.maricopa.gov/Dashboard/e10a16d8-921f-4aac-b921-26d95e638a45?e=false&vo=viewonly>.

schools have had a COVID-19 outbreak.³ The County is currently facing a “high transmission” rate, with 12% positivity among all residents.⁴

In light of the risk of COVID-19 illness to students and because schools play “critical roles in promoting equity in learning and health,” the CDC recommends “universal indoor masking for all students, staff, teachers, and visitors to K-12 schools, regardless of vaccination status.”⁵ State and county public health authorities are in accord.⁶

Indeed, CDC and Maricopa County Department of Public Health guidance include an exception to “close contact” for purposes of quarantine

³ *Id.*, sorting by Schools.

⁴ Maricopa Cnty., COVID-19 Data, <https://www.maricopa.gov/5460/Coronavirus-Disease-2019>.

⁵ CDC, Guidance for COVID-19 Prevention in K-12 Schools, “Health Equity,” <https://www.cdc.gov/coronavirus/2019-ncov/community> (updated Aug. 5, 2021); *id.*, “Summary of Recent Changes” (updated Aug. 4, 2021).

⁶ See Ariz. Dep’t of Health Servs., K-12 School Guidance for COVID-19, <https://www.azdhs.gov/covid19/documents/schools> at 1 (revised Apr. 19, 2021) (“Universal and correct use of masks” is one of the “**key mitigation strategies**” that schools should use); Maricopa Cnty. Dep’t of Pub. Health, “K-12 School Guidance for Covid-19,” <https://www.maricopa.gov/DocumentCenter> at 1 (updated Aug. 12, 2021) (“The most effective prevention strategies to protect unvaccinated students are consistent and correct use of masks and physical distancing . . .”).

requirements if exposed students were wearing masks, even if they were within 3-6 feet of each other.⁷ Thus, requiring students to consistently wear masks at school is an important method to ensure that they may remain in school for in-person instruction as much as possible.

Notwithstanding the clear health threat that COVID-19 presents to children, and the science-based consensus of public health authorities regarding masking, HB 2898 prohibits public schools from protecting their students and staff by requiring universal masking. The Legislature did not apply this prohibition to private schools.

This disparate treatment of public-school students as compared to private-school students violates the Equal Protection clause of Arizona's Constitution, which provides:

No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

[Ariz. Const. art. II, § 13.](#)

⁷ See CDC "Appendix A - Glossary of Key Terms," "Close Contact," <https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing>; Maricopa Cnty. Dep't of Pub. Health. "Quarantine Guidance for Household and Close Contacts of a Person with Covid-19," <https://www.maricopa.gov/DocumentCenter> (revised Aug 30, 2021).

I. Education is a fundamental right under the Arizona Constitution.

Article XI, §§ 1.A. and 6 of the Arizona Constitution “establish education as a fundamental right of pupils between the ages of six and twenty-one years.” *Shofstall v. Hollins*, 110 Ariz. 88, 90 (1973). Those sections read, in part:

Section 1.A. The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system.

...

Section 6. The legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years.

[Ariz. Const. art. XI, §§ 1.A., 6.](#)

Many other states have also recognized education as a fundamental right based on similar state constitutional provisions. *See, e.g., Serrano v. Priest*, 557 P.2d 929, 951-52 (Cal. 1976) (en banc); *Horton v. Meskill*, 376 A.2d 359, 374 (Conn. 1977); *Skeen v. State*, 505 N.W.2d 299, 312-13 (Minn. 1993); *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1358-59 (N.H. 1997); *Pauley v. Kelly*, 255 S.E.2d 859, 878 (W.Va. 1979); *Washakie Cnty. Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 333 (Wyo. 1980).

The State incorrectly asserts that *Roosevelt Elementary School District No. 66 v. Bishop*, 179 Ariz. 233, 238 (1994), undermined *Shofstall*'s holding that education is a fundamental right under the Arizona Constitution. (Op. Br. at 11-12.) It did not. *Roosevelt* noted that there is no *federal* fundamental right to education "because education was nowhere to be found in the United States Constitution." *Roosevelt*, 179 Ariz. at 238. But the court then acknowledged that "[u]nlike the United States Constitution, education is the subject of an entire article of the Arizona Constitution." *Id.*

II. This Court must strictly scrutinize Section 12 of HB 2898.

Roosevelt noted that *Shofstall* posed a "conundrum," because it declared education a fundamental right but then failed to apply strict scrutiny. *Id.* ("If education is a fundamental right, the compelling state interest test (strict scrutiny) ought to apply.") (citation omitted); *see also id. at 245* (Feldman, J., concurring) (explicitly recognizing education as a fundamental right and stating that the *Shofstall* court should have applied strict scrutiny). *Roosevelt* declined to resolve this conundrum because it did not reach the equal protection claim, ruling for the plaintiffs on the more specific "general and uniform" constitutional claim instead. *See id. at 238* (declining to resolve the "conundrum and noting that "[w]e do not

understand how the rational basis test can be used when a fundamental right has been implicated. They seem to us to be mutually exclusive. . . .”). *Roosevelt* thus supports the argument that the Arizona Constitution establishes a fundamental right to education and that strict scrutiny should apply.

The historical context in which *Shofstall* was decided helps explain the conundrum of why the court did not apply the strict scrutiny test after declaring that education was a fundamental right under the Arizona Constitution. When *Shofstall* was decided in 1973, the Arizona Supreme Court had never mentioned, much less adopted, the strict scrutiny test for laws limiting fundamental rights. The Arizona Supreme Court did not adopt the strict scrutiny test for fundamental rights until eight years *after* *Shofstall* was decided. See *Ariz. Downs. v. Ariz. Horsemen’s Found.*, 130 Ariz. 555 (1981) (holding that if a “challenged statute is aimed at limiting a fundamental right,” the court will use a strict scrutiny test). It is therefore not particularly surprising that *Shofstall* found education to be a

fundamental right without applying the strict scrutiny test that a modern court would apply.⁸

Under a strict scrutiny analysis, “a discriminatory statute may be upheld only if there is a compelling state interest to be served and the regulation is necessary to achieve the legislative objective.” *Kenyon v. Hammer*, 142 Ariz. 69, 78 (1984) (internal quotation marks omitted). As described below, the State cannot provide even a rational basis for depriving public schools of the ability to protect their students using mask requirements while allowing private schools to do so. Because this deprivation does not serve a compelling state interest, it fails strict scrutiny.

III. Section 12 of HB 2898 cannot survive rational basis review, let alone strict scrutiny.

The State erroneously asserts that this court must find education to be a fundamental right to grant ASBA’s requested relief on its equal protection claim. (Op. Br. at 12.) While PXU maintains that education is a fundamental right, such a finding is not necessary to grant relief here. Regardless of

⁸ Consistent with that position, the District of Arizona has considered *Shofstall* and *Roosevelt* and concluded that “the Arizona Constitution establishes education as a fundamental right” for which “strict scrutiny” applies. *Magyar By & Through Magyar v. Tucson Unified Sch. Dist.*, 958 F. Supp. 1423, 1442-43 (D. Ariz. 1997).

whether this court applies strict scrutiny or the rational basis test, Section 12 of HB 2898 is unconstitutional.

A. There is no rational basis for allowing private schools to provide a safe learning environment for their students while prohibiting public schools from doing so.

Under a rational basis analysis, courts will uphold a “legislative regulation which imposes burdens on one class but not another so long as (1) the court can find some legitimate state interest to be served by the legislation and (2) the facts permit the court to conclude that the legislative classification rationally furthers the state’s legitimate interest.” *Kenyon*, 142 Ariz. at 78.

The inequity imposed by Section 12 of HB 2898 is clearly illustrated on Central Avenue in Phoenix, where Brophy College Preparatory and Central High School (a PXU school) are separated only by an irrigation canal. Brophy serves a predominately affluent population and charges \$16,900 per year in tuition.⁹ Since the beginning of the school year, everyone on Brophy’s campus has been required to wear a mask indoors, because “[l]ocal transmission rates [were] high” and masks have been demonstrated to

⁹ Brophy, “2021-2022 Brophy Tuition and Fees Schedule,” <https://brophyprep.myschoolapp.com>.

reduce virus transmission.¹⁰ Brophy has subsequently announced that as of October 13, masking among students and staff is optional.¹¹ The announcement cited a decline in transmission rates, a low number of COVID-19 cases on campus, and a high student vaccination rate, attributing these improved outcomes to Brophy's "boldest mitigation strategy."¹² Of course, Brophy is free to revert to a mask requirement if the facts warrant such a policy change.

Just next door at PXU's Central High School, 92% of students qualify for free or reduced lunch, an indication of low-income status.¹³ If this court reverses the lower court's ruling, Central High will no longer be able to require its students to wear masks to mitigate the spread of COVID-19, when necessary.

¹⁰ Brophy, Aug. 4, 2021 (link in Sept. 8th letter) and Sept. 8, 2021 Letters from the Principal's Office, <https://brophyprep.myschoolapp.com/podium>.

¹¹ Brophy, Oct. 1, 2021 Letter from the Principal's Office, <https://brophyprep.myschoolapp.com/podium/push/default.aspx?i=448362&s=750&snd=15801906-ea47-41b5-818a-d92b9160adb7>.

¹² *Id.*

¹³ Central High Sch., "School Profile," <https://www.pxu.org/site/handlers>; 42 U.S.C. § 1758(b).

The strong consensus of medical and public health experts is that consistent and universal masking in schools significantly reduces the spread of COVID-19.¹⁴ This is proving true in Maricopa County, where schools without mask mandates have been 3.5 times as likely to experience outbreaks of COVID-19 than schools that mandate face coverings.¹⁵

If Section 12 of HB 2898 is upheld, it will increase the risk that public-school students will contract COVID-19, which could result in serious health complications or even death and prevent them from attending school in-person for some period of time. It also increases the risk that public-school employees will also contract COVID-19, disrupting the educational process as these employees, including teachers, are replaced by a series of substitutes.

¹⁴ CDC, “Science Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2,” <https://www.cdc.gov/coronavirus/2019-ncov/science> (updated May 7, 2021) (“At least ten studies have confirmed the benefit of universal masking in community level analyses.”).

¹⁵ CDC, Morbidity and Mortality Weekly Report, “Association Between K-12 School Mask Policies and School-Associated COVID-19 Outbreaks – Maricopa and Pima Counties, Arizona, July-August 2021” (Oct. 1, 2021) https://www.cdc.gov/mmwr/volumes/70/wr/mm7039e1.htm?s_cid=mm7039e1_w.

Private schools, by contrast, will be able to use masks to protect their students and staff from the spread of COVID-19 when they deem it necessary, thereby providing not only a safer environment, but less educational disruption. And by requiring masks, private schools will also be better able to avoid quarantining students, allowing those students to continue with uninterrupted in-person education, while their public-school peers who cannot be required to wear masks would be required to quarantine in the event of a COVID-19 outbreak. In other words, Section 12 will deprive public school students, whose parents often cannot afford private school, of an equally safe and adequate education compared to their peers who are able to attend private school.

The State asserts that although children may have a right to attend school, that right does not extend to attending school *safely*. (Op. Br. at 11, 13.) But a safe learning environment is a necessary component of a student’s fundamental right to an education. A school system must be “open to all pupils,” and the state violates this obligation by failing to provide a safe environment in which they can learn. [Ariz. Const. art. XI, § 6](#). Contrary to the State’s argument otherwise (at 11), this court has previously recognized that funding safe and adequate school facilities is intrinsic to the legislature’s

constitutional responsibility to provide a public education system. *See Roosevelt*, 179 Ariz. at 235, 242 (holding legislature’s mechanism for funding public schools unconstitutional and noting “[s]ome districts have schoolhouses that are unsafe, unhealthy, and in violation of building, fire, and safety codes”); *Hull v. Albrecht*, 190 Ariz. 520, 524 (1997) (“[A] constitutionally adequate system will make available to all districts financing sufficient to provide [necessary and appropriate] facilities and equipment.”).

And as this court recently recognized, schools have a general obligation to protect students from unreasonable risks of harm on their campuses. *See, e.g., Dinsmoor v. City of Phoenix*, 492 P.3d 313, 316-17, ¶ 15 (Ariz. 2021) (“[T]he school-student relationship imposes an affirmative duty on schools to protect students from unreasonable risks of harm.”). Upholding Section 12 of HB 2898 would prohibit schools from acting upon that affirmative duty and taking steps to protect students’ health when the facts indicate that such steps are appropriate.

There is simply no conceivable state interest (let alone a compelling one) served by forcing public school students into a potentially unsafe

educational environment, while allowing private schools to enact such policies as are necessary to protect their students.

B. Parental rights do not provide a rational basis for the law.

The State asserts that it has a compelling interest in “maintaining a distinction between public and private schools” because such a distinction “ensures freedom of choice in education” and protects “parental autonomy and parents’ rights to make decisions concerning the education of their children.” (Op. Br. at 12-13.) But the State does not explain how prohibiting public schools from adequately protecting students and staff from a global pandemic – regardless of current community positivity rates – “ensures freedom of choice in education” or “parental autonomy.” To the contrary, because Section 12 allows *only private schools* to take actions that may be appropriate to protect students and staff, it deprives the multitude of Arizona parents who cannot afford or do not live reasonably near a private school the ability to freely choose an educational option that can best safeguard *their* children’s health when the facts indicate that a universal mask policy is appropriate.

Freedom of choice and parental autonomy are better accomplished by allowing public schools to make appropriate masking decisions based on the

facts on the ground. Given Arizona's broad public school choice options, all parents could then choose a school based on what they believe is in the best interests of their children. See [A.R.S. § 15-181](#) (establishing charter schools); *id.* [§§ 15-816, 15-816.01](#) (expanding open enrollment for school districts).

The State asserts (at 13) that the public school/private school distinction created by the statute is further justified by the fact that public schools receive state funding and are regulated state entities. But funding public schools does not provide a reasonable basis for making public schools *less safe* than private schools. And indeed, the Legislature has enacted several laws regulating health and safety standards in public schools *and* private schools. See, e.g., [A.R.S. §§ 13-3411](#) (drug-free school zones); [15-151](#) (protective eyewear); [15-872](#) (proof of immunization); [37-1385](#) (fire safety and evacuations). PXU is not asserting that public schools and private schools must be treated similarly in all respects, but instead that the state may not enact laws that jeopardize public school students' health and safety as compared to their private school peers.

There simply can be no conceivable rational basis for allowing private schools to protect the health of their students and staff but denying public schools the same ability, and this disparate treatment does not serve any

legitimate governmental interest. *See McClane v. Arkansas*, No. 60CV-21-4692, ¶ 15 (Pulaski Cnty. Circuit Ct., Ark., Aug. 6, 2021) (finding legislative ban on mask mandates violates the equal protection provisions of the Arkansas Constitution, because it discriminates “between minors in public schools and minors in private schools.”), *request to stay denied by McClane v. Arkansas*, No. CV-21-421 (Ark., Sept. 30, 2021) (Orders attached as Exs. 1 & 2); *Ritter, et al. v. Oklahoma*, No. CV-2021-1918 (Okla. Cnty. Dist. Ct., Okla., Sept. 8, 2021) (granting temporary injunction based in part violation of equal protection clause of state constitution) (Order and Am. Pet. attached as Exs. 3 & 4).

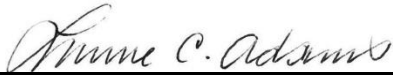
CONCLUSION

Section 12 of HB 2898 eliminates one of PXU’s best tools to protect its students and staff from the dangers of COVID-19. Moreover, the prohibition on mask mandates in public schools while permitting them in private schools bears no rational relationship to any legitimate government interest. To the contrary, HB 2898 harms the compelling government interest of protecting the health and safety of children while they are at school.

Section 12 of HB 2898 therefore violates the equal protection guarantee of the Arizona Constitution.

RESPECTFULLY SUBMITTED this 15th day of October, 2021.

OSBORN MALEDON, P.A.

By 

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EXHIBIT 1

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION**

VERONICA MCCLANE, *ET AL*

PLAINTIFFS

v.

60CV-21-4692 ✓

STATE OF ARKANSAS, *ET AL*

DEFENDANTS

LITTLE ROCK SCHOOL DISTRICT, *ET AL*

PLAINTIFFS

v.

60CV-21-4763

**HONORABLE ASA HUTCHINSON,
in his Official Capacity as Governor of
the State of Arkansas, *ET AL***

DEFENDANTS

**ORDER FOR DECLARATORY RELIEF
AND PRELIMINARY INJUNCTION**

On the 6th day of August 2021, came on for hearing all pending motions by the parties in the captioned cases, and from the pleadings filed herein and the argument of counsel, the court doth find as follows:

1. Plaintiffs' *Motion for Consolidation Pursuant to Rule 42(a) of the Arkansas Rules of Civil Procedure*, filed on August 5, 2021, in *Little Rock School District and Marion School District v. Honorable Asa Hutchinson*, 60CV21-4763 is granted. Both cases shall hereafter be styled as 60CV-21-4692, which is the earlier case number of the two previously separate cases.

2. The *Motion to Intervene* of Barry Hyde, in his Official Capacity as the County Judge for Pulaski County and Eric Higgins, in his Official Capacity as Pulaski County Sheriff, filed on August 5, 2021, is granted.

3. All of the moving parties allege that Act 1002 of 2021 is unconstitutional in one or more respects and have requested relief pursuant to Rule 65 of the Arkansas Rules of Civil Procedure.

4. The parties requested that the court issue a *Temporary Restraining Order*. TROs are customarily issued without notice to any of the defendants and are viable only for a short period of time until a hearing can be arranged. Given the parties, the constitutional issues involved, and the fact that the court was able to expedite the matter on its calendar, the court chose not to issue a TRO. As a hearing was held, the procedural posture shifted to being one of a request for issuance of a preliminary and/or permanent injunction.

5. There are no allegations that the language of Act 1002 is ambiguous or reasonably susceptible to more than one interpretation. In cases challenging the constitutionality of “plain language” legislative enactments, it is the obligation of the courts to give the wording of such enactments their “usual and customary meaning.”

6. In cases challenging the constitutionality of legislative enactments, if there is offending language or punctuation that can be stricken and leave a constitutional remainder, it is the obligation of the courts to strike through the offending language or punctuation and salvage the remainder of the legislative enactment. The courts are, however, prohibited from rewriting or adding language to legislative enactments to make such legislative enactments constitutional.

7. Article 4, §2 of the Arkansas Constitution provides for the constitutional separation of powers doctrine on state-related causes of action.

8. Each of the state’s seventy-five counties is a “political subdivision of the state,” which are included within the language of Act 1002 of 2021.

9. Amendment 55, §3 to the Arkansas Constitution, states:

The County Judge, in addition to other powers and duties provided for by the Constitution and by law, shall preside over the Quorum Court without a vote but with the power of veto; authorize and approve disbursement of appropriated county funds; operate the system of county roads; administer ordinances enacted by the Quorum Court; **have custody of county property**; hire county employees, except those persons employed by other elected officials of the county. (emphasis added)

10. Amendment 80, §4 to the Arkansas Constitution, states, in part, “The Supreme Court shall exercise **general superintending control** over all courts of the state...” (emphasis added)

11. A.C.A. §12-75-107, as amended by Act 403 of 2021, legislatively delegates emergency declaration and emergency action authority to the Governor, as the chief executive officer of the state.

12. Act 1002 of 2021, as enacted, facially violates the separation of powers clause in that it attempts to usurp the constitutional authority granted to county judges over county buildings and property.

13. Act 1002 of 2021, as enacted, facially violates the separation of powers doctrine in that it attempts to usurp the exclusive superintending authority concerning the procedure and conduct in the courts of the state that is granted to the Arkansas Supreme Court.

14. Act 1002 of 2021, facially violates the separation of powers doctrine as it usurps the authority specifically granted to the Governor with respect to declarations of emergency as set forth in A.C.A. §12-75-107 (as modified by Act 403 of 2021.)

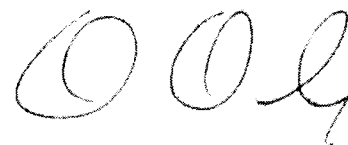
15. Act 1002 of 2021, as enacted, facially violates the equal protection provisions of Article 2 of the Arkansas Constitution, in that it discriminates, without a rational basis, between minors in public schools and minors in private schools.

16. All other causes of action alleging Act 1002 to be unconstitutional, by any party, for any reason, not specifically addressed herein, are denied without prejudice. The court has determined that resolution of such additional causes of action will require the introduction of testimony and evidence and/or stipulation of facts by and between the parties.

17. Because there is no method by which the court can cure the unconstitutionality of Act 1002 of 2021 without substantially rewriting such legislative enactment, it is the obligation of the court to preliminarily declare that Act 1002 of 2021, in its entirety, is unconstitutional under both the separation of powers clause and the equal protection clause of the Arkansas Constitution.

18. Pending further order of this court, or of a court of superintending jurisdiction, Act 1002 of 2021 is declared unconstitutional and its application, in any manner, is hereby preliminarily enjoined.

IT IS SO ORDERED AND ADJUDGED.



TIMOTHY DAVIS FOX
CIRCUIT JUDGE

8/6/21
DATE

EXHIBIT 2

FORMAL ORDER

STATE OF ARKANSAS,)
)
) **SCT.**
)
SUPREME COURT)

BE IT REMEMBERED, THAT A SESSION OF THE SUPREME COURT BEGUN AND HELD, ON SEPTEMBER 30, 2021, WAS THE FOLLOWING PROCEEDING, TO-WIT:

SUPREME COURT CASE NO. CV-21-421

JIMMY HICKEY, JR., IN HIS OFFICIAL CAPACITY AS PRESIDENT PRO TEMPORE OF THE ARKANSAS SENATE; AND MATTHEW SHEPHERD, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE ARKANSAS HOUSE OF REPRESENTATIVES APPELLANTS

V. APPEAL FROM PULASKI COUNTY CIRCUIT COURT, SIXTH DIVISION – 60CV-21-4692 AND 60CV-21-4763

VERONICA MCCLANE, AS PARENT AND NEXT FRIEND OF HER MINOR CHILDREN, WALTER AND BECKETT MCCLANE; ASHLEY SIMMONS, AS PARENT AND NEXT FRIEND OF HER MINOR CHILDREN, AUGUST AND HENRY SIMMONS; THE STATE OF ARKANSAS, ACTING THROUGH THE 93RD GENERAL ASSEMBLY; HON. ASA HUTCHINSON, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF ARKANSAS; BARRY HYDE, IN HIS OFFICIAL CAPACITY AS THE COUNTY JUDGE FOR PULASKI COUNTY; ERIC HIGGINS, IN HIS OFFICIAL CAPACITY AS PULASKI COUNTY SHERIFF; LITTLE ROCK SCHOOL DISTRICT; AND MARION SCHOOL DISTRICT APPELLEES

APPELLANTS’ MOTION FOR IMMEDIATE STAY OF PRELIMINARY INJUNCTION AND FOR STAY OF CASE WITH INCORPORATED MEMORANDUM OF AUTHORITIES IS DENIED. WOMACK AND WEBB, JJ., WOULD GRANT. WOOD, J., NOT PARTICIPATING.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF THE ORDER OF SAID SUPREME COURT, RENDERED IN THE CASE HEREIN STATED, I, STACEY PECTOL, CLERK OF SAID SUPREME COURT, HEREUNTO SET MY HAND AND AFFIX THE SEAL OF SAID SUPREME COURT, AT MY OFFICE IN THE CITY OF LITTLE ROCK, THIS 30TH DAY OF SEPTEMBER, 2021.



Stacey Pectol

CLERK

ORIGINAL TO CLERK

CC: RANDALL L. BYNUM AND MARK H. ALLISON
JOHN C. EVERETT
THOMAS A. MARS
RYAN K. CULPEPPER
WALTER A. PAULSON
ADAM FOGLEMAN, VELETTA SMITH, FRANK W. JENNER, AND AMANDA
SIMMONS
DAVID R. MATTHEWS AND SARAH L. WADDOUPS
CHRISTOPHER HELLER AND KHAYYAM MARICE EDDINGS
W. CODY KEES, JAY BEQUETTE, AND KEITH I. BILLINGSLEY
RENAE HUDSON AND DARNISA EVANS JOHNSON, DEPUTY ATTORNEYS
GENERAL
VINCENT M. WAGNER, DEPUTY SOLICITOR GENERAL
HON. TIMOTHY DAVIS FOX, CIRCUIT JUDGE

EXHIBIT 3



IN THE DISTRICT COURT OF OKLAHOMA COUNTY SEP - 8 2021
STATE OF OKLAHOMA

RICK WARREN
COURT CLERK

109 _____

DR. VALERIE RITTER, KIMBERLY BUTLER,)
MARY ANN MARTIN, DR. BRITNEY ELSE, and)
THE OKLAHOMA STATE MEDICAL)
ASSOCIATION, an Oklahoma Not for Profit)
Corporation,)

Plaintiffs,)

v)

THE STATE OF OKLAHOMA,)
ACTING THROUGH THE 57TH LEGISLATURE;)
and, THE HONORABLE KEVIN STITT, in his)
official capacity as GOVERNOR OF)
THE STATE OF OKLAHOMA,)

Defendants.)

Case No. CV-2021-1918

Hon. Natalie Mai

**ORDER GRANTING, IN PART, PLAINTIFFS' AMENDED MOTION FOR
TEMPORARY INJUNCTION**

NOW, on this 1st day of September, 2021, Plaintiffs' Amended Motion for Temporary Injunction comes on for consideration. Plaintiffs appear through counsel Chad C. Taylor, Sharon K. Weaver, Robert A. Nance, and Donald M. Bingham of Riggs, Abney, Neal, Turpen, Orbison, and Lewis, P.C. The State of Oklahoma and Governor Kevin Stitt appear through Assistant Solicitor General Bryan Cleveland. Upon reviewing the Amended Motion, the Response, and Replies, and having heard arguments from counsel, the Court finds that the Amended Motion should be GRANTED in part.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, that Plaintiffs' Amended Motion for Temporary Injunction is granted in part. The State of Oklahoma and Governor Kevin Stitt are enjoined from enforcing certain sections of SB658 enacted in 2021 against any board of education of a public school district that has exemptions as described herein, specifically 70 O.S.

§1210.189(A)(3) prohibiting a mask mandate for unvaccinated K-12 students and 70 O.S. §1210.190 prohibiting a board of education of a public school district from implementing a mandate to wear a mask against K-12 public schools until further order of this Court. Any mask mandate or requirement for students in a K-12 public school must include the same exemptions that are present in 70 O.S. §§1210.192-1210.193. ~~Any public school board may impose a masking mandate for K-12 students consistent with the law addressed in this ruling should it so choose.~~

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this injunction shall not operate until Plaintiffs give an undertaking, with sufficient surety, to be approved by the clerk of this Court in the amount of \$1,000.00, which shall be given.


JUDGE OF THE DISTRICT COURT

September
8, 2021

Approved only as to form:

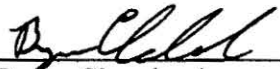

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Attorneys for Plaintiffs

and


Bryan Cleveland
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313 NE 21st St.
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*Counsel for the State of Oklahoma
and Gov. Kevin Stitt*

EXHIBIT 4



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

DR. VALERIE RITTER for herself as)
an individual and for and on behalf of)
her minor children RR and ER;)
KIMBERLY BUTLER for herself as)
an individual and for and on behalf)
of her minor child HB; MARY)
ANN MARTIN for herself as an)
individual and for and on behalf of)
her minor children KM, EM, and MM;)
DR. BRITNEY ELSE for herself as an)
individual and for and on behalf of her)
minor child BJ; and)
THE OKLAHOMA STATE)
MEDICAL ASSOCIATION, an)
Oklahoma Not for Profit Corporation,)

Plaintiffs,)

vs.)

THE STATE OF OKLAHOMA and)
THE HONORABLE KEVIN STITT,)
in his official capacity as GOVERNOR)
OF THE STATE OF OKLAHOMA,)

Defendants.)

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

Case No. CV-2021-1918

AUG 20 2021

Hon. Natalie Mai

RICHA WARKEN
COURT CLERK

42_____

PLAINTIFFS' AMENDED MOTION FOR TEMPORARY INJUNCTION

The Plaintiffs respectfully move the Court, pursuant to 12 O.S. § 1384.1, for a temporary injunction, pending the resolution of this action on the merits, temporarily prohibiting the State of Oklahoma from enforcing certain provisions of Senate Bill No. 658 which prohibit local school districts from imposing a mask mandate.

Plaintiffs present, as exhibits to the First Amended Petition and to this Amended Motion, affidavits executed by parents, educators, and medical professionals detailing the massive

irreparable harm which will be suffered if the State is not temporarily enjoined from enforcing the provisions of SB 658.

Plaintiffs have filed a First Amended Petition asking the Court to declare SB 658 in violation of the Oklahoma Constitution.

1. The Plaintiffs are likely to prevail in their effort to have SB 658 declared to be in violation of the Oklahoma Constitution. The Plaintiffs are likely to prevail on their arguments that SB 658 violates the due process provision of the Oklahoma Constitution, Article 2 Section 7 because the bill interferes with our children's fundamental right to receive a reasonably safe public education, and the State cannot demonstrate a compelling State interest served by the bill. The bill is arbitrary and has no substantial relation to public health, safety, or morals. With regard to masking, local school districts should be permitted to determine for their own students what is necessary to make their classrooms reasonably safe. The Plaintiffs are also likely to prevail on their additional argument that the bill fails to provide equal protection to students and staff/faculty in public schools, by denying students and staff/faculty in public schools a COVID-19 mitigation tool which can be made available to protect students and staff/faculty in private schools. The Plaintiffs are likely to prevail on their argument that the bill violates the Oklahoma Constitution, Article 5, § 46, because it creates a special class of school children and staff/faculty to be treated differently from others similarly situated. The Plaintiffs are likely to prevail in their argument that SB 658 violates the rights of Oklahoma children to an education in a reasonably safe environment, in violation of Article 1, § 5 of the Oklahoma Constitution. Finally, the Plaintiffs are likely to prevail in their argument that SB 658 violates the single-subject rule of the Oklahoma Constitution. Finally, SB 658 is infirm under the Oklahoma Constitution, because it impermissibly legislates upon a matter of local concern, *i.e.* whether school districts should require masking.

2. The harm if the injunction is not entered will be the sickness and likely death of Oklahoma public school children and their family members, especially those who are immunocompromised, as well as the creation of stress on the already strained Oklahoma hospital and medical care system. This harm cannot be remedied after the illness, death, and inability to care for patients occurs.

3. The threatened injury – illness, death, and the potential collapse of our health care system – far outweighs the inconvenience the State will suffer by being required to allow local school districts to decide what is best for their own students and staff/faculty members, based upon the specific circumstances present in their districts and upon the advice of the districts' physician-consultants.

4. An injunction is in the public interest, as the public has a strong interest in protecting public school children and staff/faculty members from illness, possible long-term adverse health consequences, and possible death. Issuance of an injunction would serve the public interest also by lessening the critical burden that recently has been placed upon Oklahoma hospitals and medical professionals.


5. Plaintiffs' arguments in support of this Amended Motion are set forth in the Plaintiffs' Opening Brief in Support of Amended Motion for Temporary Injunction filed contemporaneously herewith. Those arguments are incorporated herein.

6. Plaintiffs' counsel have notified the Oklahoma Attorney General of the filing of this action and the filing of this Amended Motion.

WHEREFORE, the Plaintiffs pray that the Court enter a temporary injunction prohibiting the Defendants from enforcing the contested provisions of Senate Bill No. 658, pending the resolution of this action on its merits.

Respectfully submitted,

**RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS**

By: 
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and

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stheban@riggsabnev.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the above and foregoing was transmitted by electronic mail to the Honorable John M. O'Connor, Attorney General of the State of Oklahoma, on the 20th day of August, 2021.

Bryan Cleveland
Assistant Solicitor General
OKLAHOMA ATTORNEY GENERAL'S OFFICE
313 NE 21st St.
Oklahoma City, OK 73105


Chad C. Taylor



TULSA PUBLIC SCHOOLS BOARD OF EDUCATION

PUBLIC SAFETY RESOLUTION

REGARDING COVID-19 AND THE 2021-2022 SCHOOL YEAR

Whereas Tulsa Public Schools is committed to keeping our students, teachers, support professionals, families, and community members safe and healthy;

Whereas Tulsa Public Schools recognizes the importance of in-person teaching and learning to support children's academic success and their social and emotional wellbeing;

Whereas both the Centers for Disease Control and Prevention (CDC) and the American Academy of Pediatrics recommend that children return to in-person education where it is safe to do so;

Whereas the current COVID-19 prevention and spread-mitigation guidelines from the CDC recommend that individuals, regardless of vaccination status, wear masks indoors in the presence of others, particularly in areas of substantial or high transmission;

Whereas the Tulsa County Health Department currently reports that, with regard to daily new active COVID-19 case rates, 5 zip codes in the county are in a "high" risk category, 27 in a "severe" risk category, and 10 an "extreme severe" risk category;

Whereas the CDC has recognized that the Delta variant of Covid-19 is significantly more contagious than the original strain of the virus;

Whereas, the new Delta variant has caused an increase in the number of children in Oklahoma who have been hospitalized, placed on ventilators, and put into intensive care;

Whereas the CDC and the Federal Drug Administration have recognized that COVID-19 vaccines are safe and effective, but children younger than twelve years old are not yet eligible to be vaccinated;

Whereas children under the age of twelve represent the largest portion of the student body enrolled at Tulsa Public Schools;

Whereas the Mayo Clinic reports that only 6.9% of Oklahomans under age 18 are currently fully vaccinated;





Whereas there are Tulsa Public Schools students, teachers and staff who are immuno-compromised --a class of individuals identified by the CDC as being more vulnerable to COVID;

Whereas new restrictions in state law (Oklahoma Senate Bill 658--namely, Okla. Stat. tit. 70, § 1210.189 - §1210.190), currently prohibit any Oklahoma public school district from requiring the use of masks in their schools;

Whereas, local communities should be empowered to implement common-sense public-health precautions, including requiring masks, in order to keep their students and employees safe; and

Whereas but for Senate Bill 658's statutory prohibitions, the Board of Education would implement a policy requiring the use of masks on its property to safeguard the health of its students and staff and support in-person learning;

Be it resolved that we, the Tulsa Public Schools Board of Education:

- Endorse the Tulsa Public Schools 2021-2022 COVID-19 safety guidance and protocols-- specifically the expectation that individuals should wear masks while on Tulsa Public Schools property; and
- Urge all eligible Tulsans to protect in-person learning--and more generally the community, students, and families it serves--by getting vaccinated for COVID-19 as soon as possible; and
- Encourage Tulsans to maximize protection from the Delta variant by wearing a mask indoors in public as recommended by the CDC for areas with substantial or high transmission.

BOARD OF EDUCATION
INDEPENDENT SCHOOL DISTRICT NO. 1
OF TULSA COUNTY, OKLAHOMA

By 
President, Board of Education



AFFIDAVIT

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Valerie N. Ritter, DO, of lawful age, having first-hand knowledge and being first duly sworn on oath deposes and states:

1. I am Valerie N. Ritter, DO, a resident of Broken Arrow, OK.
2. I grew up in Tulsa and attended Union High School before attending Oklahoma State University in Stillwater and obtaining a bachelor's degree in physiology.
3. I then attended Oklahoma State University College of Osteopathic medicine and received my Doctor of Osteopathic Medicine degree in May 2006.
4. I completed my residency at the University of Florida in Gainesville, Florida and then returned to Oklahoma to practice medicine.
5. I have been in private practice pediatrics for 12 years in Tulsa.
6. In August 2016, I opened my own private practice, Ritter Pediatrics, in south Tulsa.
7. I have 2 children, both enrolled in Union Public School, 1 in middle school and 1 in elementary school.
8. My son has a history of bronchiectasis and has been hospitalized twice with respiratory distress and pneumonia. He also has asthma. He is at higher risk for COVID19 complications including pneumonia, respiratory distress and failure, and hypoxia due to his history of respiratory problems.
9. Both of my children attended school virtually last year through their public elementary school, but were hoping to attend school in person this year.
10. I have worked so hard to keep them from contracting COVID19, they have not participated in sports since March 2020, they have not attended school, they have not gone to a birthday party, they have not traveled, they have had very limited contact with their friends and family.
11. I enrolled my children in a Pfizer vaccine trial that is double blinded and traveled out of state twice for them to receive 2 doses of vaccine or placebo in hopes that they might have a chance of getting vaccinated before school starts this year.
12. As a pediatrician, I took care of patients last year with COVID19. There were many exposure to COVID in the school system last year, but with universal masking and distancing precautions I had very few, if any, patients who contracted COVID from a classmate. Already this summer I have had patients who contracted COVID from a classmate at camp or summer school when both students were unmasked.
13. Vaccines are the best prevention for COVID19, but are unavailable at this time for children under the age of 12 years old.
14. Even people who have been vaccinated can contract COVID and can spread it to other people.
15. It is my medical opinion that the use of masks is the best way to prevent the spread of COVID19 in classrooms this school year. COVID19 is usually contracted by inhalation

of infected particles that were exhaled by an infected person nearby. Masks have been shown to limit the number of viral particles that are aerosolized when an infected person talks, breathes, sneezes, coughs, laughs, etc. Masks also reduce the velocity of which the viral particles leave the infected persons mouth and nose, reducing the range of spread of the virus.

16. Schools should have the ability to require masks regardless of vaccination status to prevent the spread of COVID19 from student to student, student to teacher/staff, teacher/staff to student and teacher/staff to teacher/staff.

Further Affiant says: not.

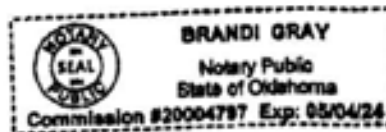
Valerie N. Ritter, DO
Valerie N. Ritter, DO

Subscribed and sworn to before me this 13 day of August, 2021.

Brandi Gray
Notary Public

My commission expires:

20004797



AFFIDAVIT

STATE OF OKLAHOMA)
) ss.
COUNTY OF Cleveland)

MaryAnn Martin, of lawful age, having first-hand knowledge and being first duly sworn on oath deposes and states:

1. My name is MaryAnn Elizabeth Martin. I live in Norman, Oklahoma, with my husband, Eric, and our three daughters: (14), (11), and (7). Our children are students in Norman Public Schools. Our daughter is currently in treatment at the Jimmy Everest Center at the Children's Hospital in Oklahoma City for Stage 4 Rhabdomyosarcoma. She was first diagnosed in September 2019 and underwent four 21-day cycles of chemotherapy for Sertoli-Leydig Ovarian Cancer and rhabdomyosarcoma. In December 2020, the rhabdomyosarcoma came back and she started chemotherapy on January 8th, 2021. She has been in treatment since and has one more 21-day cycle of treatment that completely wipes out her immune system. With each cycle this summer of a new chemotherapy regimen, she has spent 2 days in patient for treatment and up to four to five additional days inpatient for neutropenic fevers and related infections. At this time, she may start six months of maintenance chemotherapy after the final cycle of chemotherapy in September and after that will be considered immune compromised for six more months, unless the cancer returns. also has an IEP for three diagnosed learning disorders (dyslexia, dysgraphia, and ADHD), as well as cerebral palsy and hemiparesis from a stroke in utero.

2. has missed numerous days of school due to treatment, in addition to school closures and quarantine from the COVID-19 pandemic. Due to her learning disorders and fine motor deficits from cerebral palsy, in-person learning and instruction have proven to be optimal to ensure her academic success and maintaining her work at grade level. Online, virtual instruction introduces added obstacles due to her reduced processing speed and sustained attention and additional needs for one-on-one instruction by resource teachers. In-person instruction reduces distraction and gives her the necessary repetition of educational concepts and learning strategies that have enabled her academic success, despite the two academic years fighting cancer.

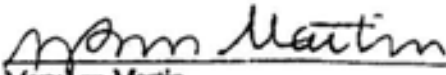
3. My husband and I both work full-time and cannot stay home to serve as teachers for our children. Therefore, online or virtual education is not an option for our family as a mitigation effort against COVID-19.

4. Our youngest child is not yet eligible for the vaccine. Our oldest child is fully vaccinated. However, with all three children in an academic setting in public schools where masking is merely optional and not required, there is a heightened risk that not only will one of our

other daughters become gravely ill with COVID-19, but that our daughter fighting cancer may risk her life by attending school in-person or risk infection from her younger sister. Our youngest unvaccinated daughter, without masking as a mitigation in school, could also make my husband and I sick, and even though we are fully vaccinated, it would render us unable to care for any of our children, much less our daughter with cancer, for extended periods of time.

5. Due to our local school's inability to mandate masks from SB 658, we are terrified that our children may become ill with a disease variant that increasingly sickens the young, or that they may bring home a disease that renders us as caregivers unable to care for our family. With the increased community spread and infectiousness of the COVID-19 delta variant, our children are at a greater risk of infection than if universal masking were the norm. We are worried that our children who willingly wear masks are nonetheless threatened in an academic setting where social distancing is impossible and masking optional. There are 35 to 50 students in a classroom with very little ventilation in our middle school and high school.
6. We therefore feel SB 658 has rendered our schools as unsafe environments for our children without the school district's ability to mandate masking indoors at school, particularly given our daughter's immunocompromised status. We wish for her and her sisters to have as normal a year as possible after two years of turmoil and disruption from cancer and COVID. Currently, her life is jeopardized not only by cancer at this point, but also by our school's inability to protect her, her sisters, and their classmates through masking mandates in accordance with local public health authority's guidance and policy decisions.

Further Affiant sayeth not.

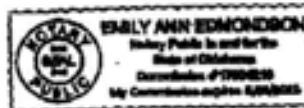

Mary Ann Martin

Subscribed and sworn to before me this 12th day of August, 2021.


Notary Public


My commission expires:

May 2, 2025



first shot on August 11, 2021. It is our expectation that next semester, he will be able to return to in-person classrooms as that would be optimal for his education, as well as his social-emotional progress. SB658 has prevented me from taking any additional actions at the local level to protect our son.

Further Affiant sayeth not.



Preston Boffo

Subscribed and sworn to before me this 12th day of August, 2021.



Notary Public

My commission expires:

May 2, 2025




AFFIDAVIT

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Susan E. White, M.D., of lawful age, having first-hand knowledge and being first duly sworn on oath deposes and states:

1. I am a resident of Edmond, Oklahoma and graduate of the University of Oklahoma and the University of Oklahoma College of Medicine. I completed my residency at Oklahoma Children's Hospital. I have been practicing medicine for 6 years in Guthrie and Edmond, Oklahoma. I am a mother of 6 children, 5 of them are younger than 12 and currently not eligible for a COVID vaccine. 4 of my children attend Edmond public schools.
2. It is my medical opinion that the use of masks is an important part of preventing the spread of Covid in public and specifically the prevention of the spread of Covid in young children who are not vaccinated against COVID. It is well established that COVID can be transmitted through respiratory droplets. The use of masks helps to reduce the spread of the virus that causes COVID. They do this by reducing the spread of respiratory droplets containing the virus when an infected individual sneezes, coughs or talks.
3. It is my professional opinion that schools need the ability to require the use of masks to reduce the ability of COVID to be transmitted from person to person within the school. This will increase the safety of students and staff and help to reduce the number of COVID infections.

Further Affiant sayeth not.

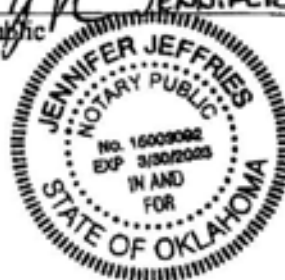

Susan E. White M.D.

Subscribed and sworn to before me this 18 day of AUGUST, 2021.

 JENNIFER JEFFRIES
Notary Public

My commission expires:

3/30/2023



AFFIDAVIT

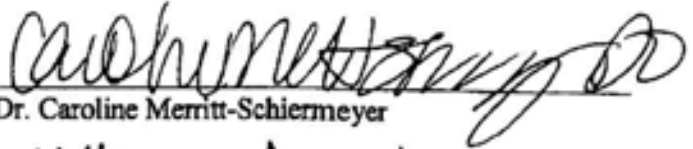
STATE OF OKLAHOMA)
)
) ss.
COUNTY OF Oklahoma)

Dr. Caroline Merritt-Schiermeyer, of lawful age, having first-hand knowledge and being first duly sworn on oath deposes and states:

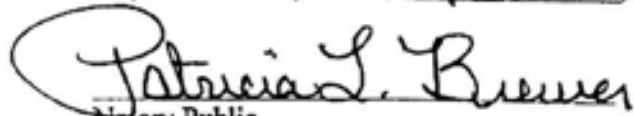
1. My name is Dr. Caroline Merritt-Schiermeyer. I am a Board-Certified Internal Medicine physician. I am a graduate of Oklahoma State University College of Osteopathic Medicine. I have been in practice for 14 years.
2. I have followed the scientific information and developments with COVID for the last 18 months. This includes reading medical journals, reports from various hospital/research systems, CDC reports, conferences, and discussions with other informed physicians. I helped develop our office protocols for safe evaluation and testing for possible COVID patients. I have counseled many patients and staff members about COVID protocols, safety measures, and vaccinations.
3. The vaccination rate in Oklahoma has not been adequate. Children under 12 are not eligible for vaccination. I have vaccinated myself and my family, including my 2 older children, in order to protect my family's health. My youngest child is 9 years old and not eligible for vaccine. They attend public schools in Oklahoma. As a physician, I know that masks and vaccines can help prevent this crippling and deadly disease. As a mother, I will do anything to protect my children's health. It is frustrating to feel that the Oklahoma government is not helping me protect my child from COVID.
4. Last year we had several other mitigation strategies in place to try to protect ourselves and our children. Yet this year, Governor Stitt and our State legislature passed laws to prohibit any city or municipality or school to require masks. My child cannot get the vaccine to protect him, so the adults must protect him. The CDC recommends that children return to in person school, wear a mask, vaccinate, and social distance. While I agree that is it best for children to be in person for social, emotional, and mental support, Governor Stitt is blocking the school district from protecting my child's physical health. It is also frustrating that the State Governor is taking this control over from our local city and school board.
5. The Delta variant (currently 94% of circulation strain in Oklahoma) is highly transmissible. The number of viral particles in the respiratory tract is 1000x more than the original strain. This is why masks are so important at this time. They help prevent the

spread of COVID. Schools need to have the option to require masks to protect our children.

Further Affiant sayeth not.


Dr. Caroline Merritt-Schiermeyer

Subscribed and sworn to before me this 16th day of August, 2021.


Notary Public

My commission expires:

8-18-22

AFFIDAVIT

STATE OF OKLAHOMA)
) ss.
COUNTY OF Tulsa)

Kendra Krahenbuhl, of lawful age, having first-hand knowledge and being first duly sworn on oath deposes and states:

1. My name is Kendra Krahenbuhl. My husband and I have two children, one of whom is enrolled in Tulsa Public Schools for the upcoming academic year. SB 658 presents us and parents across Oklahoma with an unthinkable dilemma, forcing us to choose between our children's education or their health—despite the fact that it is indeed possible (and simple) to prioritize both.
2. For the past 18 months, we have drastically changed our day-to-day behavior as a family to minimize to every possible extent our children's risk of becoming infected with SARS-CoV-2. As parents, we felt a palpable sense of relief to see vaccination rates increasing and cases of COVID-19 steadily declining within our state and local community during the early summer months of 2021. We were optimistic about the possibility of being able to safely allow our child the opportunity for in-person learning for the 2021-2022 academic year. However, our optimism quickly faded as the highly transmissible delta variant was first identified in our community, and has further faded as our local case numbers continue to grow at an alarming rate and a large portion of the local, regional and state population remains unvaccinated. Our county is once again in the "red," per the Tulsa Health Department.
3. This is especially unfortunate timing, as we quickly approach the start of a new school year. Like many parents, we feel it is in our child's best interest academically, socially and emotionally to learn in person. However, we must balance these intangible needs with the physical health and safety of our children, not only for the immediate future but also long-term. Our oldest is under the age of 12 and thus has not yet had the opportunity to receive a COVID-19 vaccine; therefore we must employ other methods of protection for the time being, which, frustratingly, may include pivoting to a virtual education or home-school option.
4. Due to SB 658, which was signed into law by Governor Stitt, we feel deeply concerned that local institutions such as school districts are unable to self-govern and decide the best possible way to mitigate risk of spreading COVID-19. SB 658 was passed during a period where positive cases and hospitalizations were at an unprecedented low since the beginning of the pandemic and vaccinations were increasing, offering hope of a return to a pre-pandemic lifestyle. Since that time, the waning risk reduction and mitigation efforts within the community have led to another surge of infections.

5. It's not only the health of our older child that leaves us concerned. We have a toddler at home who is also indirectly impacted by public safety measures such as masking — or the lack thereof. Additionally, both my spouse and I are physicians. While we have received our COVID-19 vaccinations, the risk of our older child contracting COVID-19 in a mask-less environment at school and bringing it home has further reaching implications, given that if my husband or I contract a breakthrough case of COVID-19, we would be forced to quarantine and would be unable to provide healthcare to our community — and perhaps even our children — at a time when the demand for healthcare providers is higher than ever.
6. In sum, it is my personal and professional opinion that it is prudent to overturn SB 658 and allow local school boards the opportunity to self-govern and determine if a mask mandate is necessary to mitigate the spread and reduce the risk of COVID-19 in Oklahoma's schools and, by extension, our communities.

Further Affiant sayeth not.

Kendra Krahenbuhl
Kendra Krahenbuhl

Subscribed and sworn to before me this 17th day of August, 2021.



Valerie J. Bailey
Notary Public

My commission expires:

6-11-2024

Norman, Oklahoma

August 11, 2021

Dear Oklahoma State Regents for Education, Members of the Board of Regents of the University of Oklahoma, President Harroz, Provost Wright, Deans, Chairs, and Directors:

At the end of this extraordinary summer, the fifth academic term of the Covid-19 global pandemic, we write to request your necessary and compassionate action. We write to urge you to fulfill the responsibility the people of the State of Oklahoma have placed on you, to enact policies that will preserve the teaching and research excellence of the University of Oklahoma. We appeal to you to enact effective, evidence-based policies to protect the community: vaccine and mask mandates and incentives, and remote work and study options for all students, staff, and faculty at OU.

The current phase of the pandemic includes some of our state's worst days for public health, as the numbers of Covid-19 infections, hospitalizations, and deaths rise substantially. At the same time, we are optimistic because, unlike a year and a half ago, we are equipped with a wealth of knowledge that allows us to meet this challenge. It is only through vaccinations, use of masks, and regular testing that we will ensure the health and safety of our campus community and the residents of our state.

While many of us have already been vaccinated, large numbers of our faculty, staff, and student communities are responsible for caretaking for children who are ineligible for vaccination, are immunocompromised, or care for people whose immune systems are compromised. As of today, the CDC reports¹ that only 40.1% of Cleveland County residents are fully vaccinated, while the level of community transmission is High. This constitutes a public health emergency.

Currently, OU's response to this public health emergency is "strongly encouraging" but not requiring OU students, faculty, and staff to obtain vaccines and wear masks on campus. Public health experts have argued for mandatory vaccinations since long before the current global pandemic.² OU is also holding temporary voluntary vaccination clinics during student move-in and the first week. While it is a good step to hold these mass vaccination clinics they are also limited in that, because they are not mandatory, they will not provide vaccinations to all students, staff, and employees. Scientists estimate that vaccination campaigns will be effective when at least 70%³ of the population is immunized against Covid-19; in order to reach such proportions, we must add Covid-19 to the list of required immunizations for OU employees and students.

¹ See "CDC COVID Data Tracker," *Centers for Disease Control and Prevention*, accessed August 7, 2021, <https://covid.cdc.gov/covid-data-tracker/#csovinty-view>.

² See, for example, Jessica Flanigan, "A Defense of Compulsory Vaccination," *HEC Forum* 26 (2014): 5-25, accessed August 8, 2021, <https://doi.org/10.1007/s10730-013-9221-5>; and Roland Pierik, "Mandatory Vaccination: An Unqualified Defence," *Journal of Applied Philosophy*, 35 (2018): 381-398, accessed August 8, 2021, <https://doi.org/10.1111/japp.12215>.

³ See Gypsyamber D'souza And David Dowdy, "What is Herd Immunity and How Can We Achieve It With COVID-19?" COVID-19: School of Public Health Expert Insights, *Johns Hopkins Bloomberg School of Public Health*, April 6, 2021, <https://www.jhsph.edu/covid-19/articles/achieving-herd-immunity-with-covid19.html>.

Given current vaccination rates, it is clear that strong encouragement of optional mask use and vaccinations are not enough for achieving effective community protection, and that in-person work and study poses a lethal risk to employees, students, and those we interact with off-campus. The OU Together website, however, states that the University cannot take necessary, life-saving measures because of Oklahoma Senate Bill 658.⁴ These claims of inability to act are inimical to larger public and community interests and will likely and directly result in Covid-19 infections including severe ones. The statutes in question have been analyzed as legally dubious by experts in the field, and a similar statute has been ruled quite likely unconstitutional.⁵ Legal experts publicly note their interpretation that the law does not prohibit departments or colleges or individual professors from providing their own masking rules.⁶ Moreover, other Oklahoma political and administrative bodies, like Muskogee County⁷ and OU's own Athletics⁸ department, have chosen to take bold action and interpret the statutes to their own advantage, declaring public health emergencies and enacting policies that protect those in their charge.

Additionally, under the OSHA Act of 1970 SEC. 5. (1) 29 USC 654, "Each Employer shall furnish to each of his [sic.] employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."⁹ In a public health emergency like the one we currently face, it is your responsibility to do everything in your power to prevent the death of and serious physical harm to your employees. Scientific data shows that the only way to stop the transmission of the extremely contagious and deadly Covid-19 virus is through vaccination, with masking as an intermediate measure.

While the University has made it possible for individuals to request (with no guarantee) approval of remote work or possible online teaching / learning options via OU Human Resources or the Americans with Disabilities Act, a global pandemic, by its very nature, applies to everyone and cannot be mitigated on a case-by-case basis. Public health is just that: public. As a public university, we must lead by example.

We demand that OU immediately provide the following health and safety protections for the campus community:

⁴ See "Why is OU not mandating COVID-19 vaccinations for students and employees?" Frequently Asked Questions, *OU Together*, accessed August 8, 2021. <https://www.ou.edu/together/faq>.

⁵ See Richard Fausset, "An Arkansas judge temporarily blocks the state's ban on mask mandates." *The New York Times*, August 6, 2021.

<https://www.nytimes.com/2021/08/06/world/arkansas-mask-mandate-asa-hutchinson.html>.

⁶ See Jillian Taylor, "Inconsistent masking policy between university academics, athletics calls interpretation of state law into question, legal experts say." *OU Daily*, August 7, 2021.

https://www.oudaily.com/news/inconsistent-masking-policy-between-university-academics-athletics-calls-interpretation-of-state-law-into-question-legal/article_6fdb7e1a-f714-11eb-8f7a-cbbd97737694.html.

⁷ See Amelia Mugavero, "Muskogee County Commissioners Declare State of Emergency," *News on 6*, August 6, 2021.

<https://www.news6.com/story/610df74ff08bea0c288efb3e/muskogee-county-commissioners-declare-state-of-emergency>.

⁸ See Taylor, "Inconsistent masking policy."

⁹ See "General Duty Clause," OSH Act of 1970, *Occupational Safety and Health Administration*, accessed August 8, 2021.

<https://www.osha.gov/laws-regs/oshact/section5-duties>.

- Publicize a legal rebuttal to Oklahoma Senate Bill 658 and Executive Order 2021-16 or challenge both of these statutes in the state courts;
- Add the Covid-19 vaccine to its list of required immunizations¹⁰ for employees and students, or create policies that ensure a vaccinated campus community;
- Engage in all aspects of robust, effective and *ongoing* public health vaccination promotion campaigns as recommended in Section 1 of CDC's *Considerations for Institutions of Higher Education* published on July 23, 2021¹¹;
- Enact a mandatory mask mandate in all indoor public spaces whenever Cleveland County's Covid-19 community transmission rate is rated as Substantial or High by the CDC¹²;
- As long as the global pandemic continues, allow all workers and students to complete their activities remotely, to the extent that it is possible;
- Grant hazard pay to compensate employees for using their home utilities to complete remote work or working on campus under hazardous conditions;
- Create and publicize -- through inclusive shared governance¹³ and allowing for public comment -- a pandemic plan outlining OU's preparedness and response to the current and other further scenarios related to the Covid-19 situation. This plan should include outlining how OU will act to limit the spread of a pandemic while sustaining OU infrastructure and mitigating impact to OU operations, with clear benchmarks and planned responses to various scenarios. This plan should include protocols for booster vaccinations due to the expectation of current Covid-19 vaccinations wearing off over time, and public health protections for those who are immuno-compromised.

These demands stem from the premise that our policies should be based on evidence, not politics, if the University of Oklahoma is truly to become a top-tier public research institution. Your faculty and staff support that goal, but we need and expect you to lead the way by implementing common sense policies. Indeed, our future depends on it. Instead of reacting to political winds we must set the course for our state. Our future depends on it.

Thank you for your attention and swift response to our concerns.

Lead on, University.

The University of Oklahoma Chapter of the American Association of University Professors and

¹⁰ See "Immunizations," Health Services, *University of Oklahoma*, accessed August 7, 2021.

<https://www.ou.edu/healthservices/medical-services/immunizations>.

¹¹ See "Section 3: Guidance for IHEs Where not Everyone is Fully Vaccinated," Guidance for Institutions of Higher Education (IHEs), *Centers for Disease Control*, accessed August 8, 2021.

<https://www.cdc.gov/coronavirus/2019-nCoV/community/colleges-universities/considerations.html#section3>.

¹² See "CDC COVID Data Tracker."

¹³ See "Shared Governance" *American Association of University Professors*, accessed August 11, 2021.

<https://www.aaup.org/our-programs/shared-governance>.

Wayne Riggs, Faculty
Madison Wooldridge,
Community Member
Jill Hicks-Keeton, Faculty
Kelli Alvarez, Faculty
Stephen Ellis, Faculty
Chase Watkins, Community
Member
Sarah Flanagan, Staff
Tiffany A. Legg Ramsel, Alumni
Ian Hill, Graduate Student
Melissa Frey, Faculty
Lisa D. Zambrano, Alumni
Emilie Gordon, Staff
Slike Feltz, Faculty
Dr. Lindsey Meeks, Faculty
Anonymous, Graduate Student
Kathryn Schumaker, Faculty
Brenda Wheelock, Community
Member
Anonymous, Staff
Anonymous, Faculty
Nathaniel Pipkin, Community
Member
Lindsay Hightower, Community
Member
Amanda Klinger, Faculty
Caelli Dedmon, Undergraduate
Student
Anonymous, grandparent
Julie Ward, Faculty
Christina maria audas, Faculty
Roxanne Mountford, Faculty
Anonymous, Spouse
Erin J Maher, Faculty
Jeanette R. Davidson, Faculty
Michael Givel, Faculty
Jon Otto, Community Member
Kasey Jones-Matrona, Faculty
Lauren Lee-Lewis, Staff
Hunter Heyck, Faculty
Samuel J. Huskey, Faculty
Dr. Ingo Schlupp, Faculty
Bailey Hoffner, Metadata and
Collections Management
Archivist, Staff

Rebecca Huskey, Faculty
Megan Maher, family
Emily Crider, Graduate Student
Melissa Frey, Faculty
Lauren Ethridge, Faculty
Vicki Moore Lavastida, Graduate
Student
Julian Palmer, Community
Member
Anonymous, Community
Member
Savannah Dillard,
Undergraduate Student
Peter Soppelsa, Faculty
Amit R Balshya, Faculty
Pixie Quigley, Community
Advocate
Jenna Holt, Graduate Student
Jennifer Shaw, Community
Member
Karin Teresa Fain, Former OU
student
Amy McGovern, Faculty
Linnzi Rich, Community
Member
Kenneth Ethan Frantz, Graduate
Student
Rachel Tharp, Graduate Student
Ashley Beardsley, Graduate
Student
Kristen Wheaton, Graduate
Student
Sarah Olzawski, Alumni, former
staff
Anonymous, Staff
Marley Lunsford,
Undergraduate Student
Kristin Riggs, Faculty
Rustin Sparks, Community
Member
Anonymous, Graduate Student
Warner West, Graduate Student
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Joyce Coleman, Faculty
Susan Kates, Faculty
Emily Reel, Alumni

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KL Jaco, Community Member
Jason D. Lubinski, Faculty
Cheryl McCain, Faculty
Hannah Wyatt, Undergraduate
Student
Caroline T. Schroeder, Faculty
Sage Mauldin, Graduate Student
Eileen Grzybowski, Community
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Amanda Pence, Community
Member
Gregory Kyl Noland, Parent
Jordan Grunawalt, Alumni
Brian Daffron, Graduate Student
Amy Olberding, Faculty
Jordan Droira, Graduate Student
Diego
Valdecantos-Monteagudo,
Faculty
John Stewart, Staff
Jennifer Holland, Faculty
Eddie Majone, Faculty
Courtney Garnand, Community
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Sandie Holguín, Faculty
Andrew H Fagg, Faculty
Eric Bosse, Faculty
Jessie St. Amand, Community
Member
Claire Cox, Alumni
Anonymous, Undergraduate
Student
Trina Hope, Faculty
Karie Antell, Faculty
Alexandra Wood, Graduate
Student
Dylan Alford, Faculty
William H McDonald, Faculty
Rebecca Perot-Tripp,
Community Member
Katelin Frantz, Graduate Student
Anonymous, Community
Member
Richard Cavett, Graduate
Student

Kevin Hochman, Community Member
Lamanda Conrad, Faculty
Maggie Lee, Parent of an employee
Ciarra Osborne, Community Member
Sarah Burstein, Faculty
Cait Anderson, Staff
Julianne Lane, Alumna of OU and community member
Alex Lanphere, Community Member
Anonymous, Staff
Suzette Dyer, OU retiree
Sanna Pederson, Faculty
Anonymous, Undergraduate Student
Mary Anna Evans, Faculty
Michael Lee, Faculty
Natalie Dickson, Full-time staff and graduate student
Calon-Nicole Gunter-Cox, Staff
Misha Klein, Faculty
Courtney Oliphant, Staff
Dr. Armand Ambrosini, Faculty
Sara Vaughan, Alumna
James Zeigler, Faculty
Ben Alpers, Faculty
Regina Cook, Community Member and Staff
Steven Cavallo, Faculty
Cornelia Lambert, Alumna
Aysha Prather, Staff
Maura McAndrew, Staff
Rev. Kaela Burdge, 2012 Alumni
Mariah March, Graduate Student
Virginia Brown, Community Member
Myong McClintock, Graduate Student
Theresa Eagleson, Parent
Noel Stanley, Undergraduate Student
Sam Wargin, Graduate Student

Valarie Shaw, Community Member, Alumni
Crispin South, Undergraduate Student
William Kurlinkus, Faculty
Cecilia Slane, Graduate Student
Mauve Kay, Staff
Robin Cadaret, Alumna and Community Member
Melissa Milburn, Graduate Student
Robert J. Huskey, Alumni
Ryan Meyer, Alumnus & Current Staff
Elizabeth Sammons, Graduate Student
Cynthia Louise Rogers, Faculty
Jay A. Edwards, Staff
Tom Steele, Faculty
Maegan Bryant, Undergraduate Student
Emma Wilson, Undergraduate Student
Eugene Albin, Staff
Anonymous, Undergraduate Student
Emily King, Undergraduate Student
Kassidy Kramer, Undergraduate Student
Laurie Scrivener, Faculty
Cheyanne Weller, Graduate Student, Staff
Deanah L. White, Family member of staff
Denise Beesley, Faculty
Jamil Dye, Staff
Mollie Davis, Community Member
Elliot Sims, Staff
Eileah Hale, Undergraduate Student
Tyler D. Pearson, Staff
Eli S. Bridge, Faculty
Anonymous, Staff
Rita Keresztesi, Faculty

Katie Kernal, Undergraduate Student
Leonard Lee, Parent
Mackenzie Cozort, Undergraduate Student
Anonymous, Undergraduate Student
Jacob Chambliss, Graduate Student
Chad Ambrose, Parent
Judith Coker, Community Member
Katy Krieger, M.A., Graduate Student
Claire Burch, Graduate Student
Adam Feltz, Faculty
Sally Wiser, Graduate Student
Robert John Lemon, Faculty
Jennifer DuBois, Staff
Rebecca Yanez, Undergraduate Student
Lindsay Lee, Immediate family member
Tyrone Kamm, Community Member
Raphael B. Folsom, Faculty
Jen Elsner, Staff
Laura Westley, Friend of Family
Jeremy A Fried, Graduate Student
Bailey Brooks, Adjunct Instructor
Sandra Tarabochia, Faculty
Jacque Braun, Community Member
Betty J. Harris, Faculty
Edward Sankowski, Faculty
Tavana Farzaneh, Undergraduate Student
niki wilson, Community Member
Kate Cruickshank, Undergraduate Student
Sheryl Schmidt, Community Member
Mark J. Laufersweiler, Staff

Mary Catherine Wells, Undergraduate Student
Rhona Seidelman, Faculty
Susan E. Hahn, Faculty
Gail Holloway, Staff
Laurah Graham, Community Member
Emily Ramsey, Community Member
Hailey Carrell, Community Member
Emma Pignato, Undergraduate Student
Ping Zhu, Faculty
David Mahaffey, Community Member
Robert Bailey, Faculty
Gloria Mahaffey, Alumna
Karen Mahaffey, Retired Faculty
Allen Gregg Fryday, Jr., Community Member
Kendall Few, Undergraduate Student
Sarah Miles, Alumni
Megan Johnson, Staff
Emily Johnson, Faculty
Rachel Cortest, Faculty
Carrie Eldridge, Alumni
Mahak Merchant, Undergraduate Student
Afshin Marashi, Faculty
Sarah Hines, Faculty
Anonymous, Faculty
Anonymous, Undergraduate Student
Luvia Estrella Morales, Faculty
Camilo Aponte Duque, Undergraduate Student
Ed Rymes, Parent
Aleithia Stephens, Staff
Emma Cockrell, Staff
Samer Shehata, Faculty
Lilly Amechi, Undergraduate Student
Karl Schmidt, Staff

Anonymous, Student
Employee/Undergraduate Student
Carolina Rueda, Faculty
Jennifer Kay Hackney, Faculty
Anonymous, Faculty
Paula Cimprich, Graduate Student
Victoria Sturtevant, Faculty
Alexander Jabbari, Faculty
Michelle Morales de Sa e Silva, Faculty
Marcelo A. Rioseco, Faculty
Eric Heinze, Faculty
Dr Lisa Funnell, Faculty
Rilla Askew, Faculty
Gordon D. Carrie, Staff
Man-Fung Yip, Faculty
Celina Lautzenheiser, Parent
Jared D. Nabhan, Graduate Student
Joseph Niekamp, Community Member
Lillian Jones, Undergraduate Student
Susan K Miller, Community Member
Jennifer J. Davis, Faculty
Kermyt G. Anderson, Faculty
Sarah Trabert, Faculty
Amanda Wright, Community Member
Isha Patel, Undergraduate Student
Anonymous, Parent
Claudia Cavallin, Graduate Student
Daniel Allen, Faculty
Jack Williams, Graduate Student
Howard Grider, Community Member
Mary Francis, Alumni
Teri Pennington, Community Member
Kevin Grane, Recent graduate

Anonymous, Community Member
Kathleen Crowther, Faculty
Barbara Laufersweiler, Staff
Catherine Mintler, Faculty
Robert Scafe, Faculty
Andreana Prichard, Faculty
Rebecca Maldonado, Alumni
David Chappell, Faculty
Fabio de Sa e Silva, Faculty
Dr. Sabrina Drill, Visiting Researcher, Community Member
Chelsea Pruitt, Community Member
Molly Bachmann PT, DPT, Alumna
Val Conway, Alumni
Anonymous, Community Member
Anna Ho, Community Member
Carlos Simonini, Community Member
Jessica Blanchard, Faculty
Zach Yarbrough, Undergraduate Student
Peter Gibson, Graduate Student
Lindsay Marshall, Faculty
Emma Kasahara, Undergraduate Student
Karln Schutjer, Faculty
Hannah Thompson, Undergraduate Student
Conner Hildenbrand, Alumnus
Tim Gehrsitz, Graduate Student
Susan Laird, Professor Emeritus, ELPS at OU
Dr. Clark Muenzer, Close friend and colleague of OU faculty
Melissa Gray, Parent
Megan Straughan, Alumnae
Tyler J Julian, Graduate Student
Noah Zemlin, Faculty
Carolyn Mahin, Parent
Dahwi Kim, Undergraduate Student

Darcie Woodson , Alumna
Laura Boff-Beliveau, Community
Member
Sadie Wilson, Undergraduate
Student
Sadie Wilson, Undergraduate
Student
Darci Lenker, Community
Member
Kayleigh Clement, Community
Member
Laura Burns, Alumna
Tomasz Kuder, Staff
Linh Nguyen, Undergraduate
Student
Nancy vonBargen, Alumni,
Community Member
Anonymous, Undergraduate
Student
Carol Behrens, Community
Member
Angelika Tietz, Retired staff
Scott Manning, Community
Member
Cheryl Frazier, Graduate Student
Alissa Bretz, Community
Member
Dustin Condren, Faculty
Claudette Grinnell-Davis, Faculty
Anonymous, Faculty
Justin Reedy, Faculty
Madison Metcalfe, Former
student
Anthony Woodall, Graduate
Student
Elisha Oliver, Alumnus
Kalei Reil, Undergraduate
Student
Courtney Jacobs, Graduate
Student
Marisa Flores, Graduate Student
Bette Maffucci, Community
Member
Jona Kay Steed, Community
Member

Aleta Peppier, Community
Member
Jeri L. Reed, Community
Member
Anonymous, Faculty
Anonymous, Faculty
Anonymous, Graduate Student
Jennifer Spence, Community
Member
Erika A. Horton, Alumnus
Kelsey Willems, Graduate
Student
Kelley Tels, Undergraduate
Student
Avery Baker, Undergraduate
Student
anon, Graduate Student
Yvonda Sieber , Community
Member
Rhonda Stock, Faculty spouse
Anonymous, Staff
Duane Stock, Faculty
Chad Prater, Community
Member
Billie Jolene Graves, Community
Member
Gerilyn Soreghan, Faculty
Melissa Weiss, Graduate
Student
Joanna Hearne, Faculty
Madison Wilson, Undergraduate
Student
April Allen-Kirschenman,
Undergraduate Student
Amanda Hollandsworth,
Community Member
Danelle Reil, Parent
Zoe Sherinian, Faculty
Angela Johnson, Community
Member & Alumni
Ryan DeArman, Alum
Makaelah Ross, Undergraduate
Student
Ralph Beliveau, Faculty
Emily Fitzsimmons, Graduate
Student

Shannon Leonard, Community
Member
Jeriah Moenga, Undergraduate
Student
Anonymous, Undergraduate
Student
Paulo Moreira, Faculty
Brent Polise, Undergraduate
Student
Aglala de Biagi, Community
Member
Ellen Fitzsimmons , Alum/family
of student
Hannah Dennis, Undergraduate
Student
Erick Roebuck, Graduate
Student
Anonymous, Undergraduate
Student
Rebecca LaVictoire, Graduate
Student
Daniel Riecke, Undergraduate
Student
Naomi Shofner, Staff
Julia Robinson, Undergraduate
Student
Dakota Desai, Graduate Student
Valerie Moore, Community
Member
Anonymous, Alumni
Anonymous, Alumna
Lara Mayeux, Faculty
Samantha Mason, Alumnus
Dr. Ricardo Souza, Faculty
Anonymous, Parent
Anonymous, Graduate Student
Timothy Bradford, Faculty
Elizabeth Bergey, Faculty
Emily Tucker, Undergraduate
Student
Julia Flores Coelho,
Undergraduate Student
Lauren Vanderburg,
Undergraduate Student
Nicole Wilson, Alumni

Gabriel Clem, Community
Member

Sarah Tracy, Faculty

Jared Patten, Faculty

Odette Horton, Staff

Asa Randall, Faculty

Joshua Landis, Faculty

Whitney Woodward,
Community Member

Evelyn Mary Aswad, Faculty

Fynn Jackson, Undergraduate
Student

Hannah Eoff, Staff

**MASK REQUIREMENT TO PROTECT AGAINST
THE SPREAD OF COVID-19**

It is a high priority of Oklahoma City Public Schools to promote health and safety in our learning and working environments so that our students can remain in full-time, in-person learning this school year with layered prevention strategies in place. Accordingly, the following procedures will be implemented immediately and until revised or revoked, in an effort to provide reasonable protection for the health and safety of students, employees, and any visitors while on school property, in school vehicles, and at school-sponsored events.

Transmission of COVID-19 within schools can be limited with strict implementation of layered mitigation strategies, including universal and correct usage of masks and physical distancing. The CDC and our local city county health department officials recommend universal indoor masking for all teachers, staff, students (age 2 and older), and visitors to K-12 schools, regardless of vaccination status.

While Senate Bill 658 prohibits *school boards* from mandating the wearing of masks, the law does not prohibit the Superintendent and district administration from requiring the wearing of masks by our students, staff, and visitors.

Therefore, it is immediately required that all OKCPS students, employees, and visitors must wear a face covering that covers both the nose and mouth strictly as provided below:

1. Masks are required to be worn by all OKCPS students, employees, parents/legal guardians, and visitors while on school property, in school vehicles, and at school-sponsored events regardless of vaccination status.
2. Masks will be provided, when available. OKCPS cannot guarantee the caliber of protection of such items but seeks to do so to protect the safety and health of staff, students, and visitors.
3. It is the mask wearer's own responsibility to wear, re-use and clean masks according to CDC guidelines.
4. Masks may be removed only (1) when alone in an enclosed private workspace and (2) while participating in activities in which a face mask cannot practically be worn, such as while eating and drinking. When a mask is removed, it is vital that a physical distance of at least six (6) feet be observed, whenever possible.

Medical Restrictions Negating Mask Use

- **Students** - If a parent/legal guardian or eligible student indicates that compliance with mask use is not possible due to medical or religious or strong personal reasons, the parent, legal guardian, or eligible student may request an exemption in writing.
- **Employees** - If an employee indicates compliance is not possible due to medical reasons, the employee should be referred to Human Resources to request accommodations on the basis of disability.

This regulation is subject to change as new or different federal, state, and local guidance may become available.

REFERENCES:

70 O.S. § 1210.190

Centers for Disease Control and Prevention (CDC) Guidance

Oklahoma City County Health Department (OCCHD) Guidance

Oklahoma State Department of Education Return to Learn Oklahoma: A Framework for Reopening Schools (June 3, 2020; updated August 5, 2020)

STATEMENT FROM REPRESENTATIVE KEVIN WEST

It is very disappointing that some school districts are spending a shocking amount of time and resources on trying to find a way around SB658. In doing so, what they are saying is that they know better than parents and that they in fact have greater authority over your children than you, the parent.

It has been said that SB658 removes local control. In truth, SB658 does remove local GOVERNMENT control from unresponsive elected officials that hide behind vague and ever-changing directions from unelected bureaucrats to implement a one-size-fits-all approach, with the ultimate goal being total compliance. SB658 restores the control to the rightful hands of the parents, which is the ultimate local control.

The recent announcement by OKCPS is full of misguided thinking. There are no "loopholes" in the law:

- 1) First and foremost, SB658 is current law in the state of Oklahoma.
- 2) School boards are the duly elected governing body over a school district. They hire the superintendent and as such, any action taken by them is done so with their authority.
- 3) Monday August 9th, the school board voted to authorize the superintendent to "make decisions on how to respond to rising COVID cases...". The board cannot delegate power that is prohibited against them by law.
- 4) The exemptions offered for students to not wear a mask are basically forcing parents to ask permission to follow the law. They don't need to ask permission.

Make no mistake, this is a blatant violation of state law and is designed to take away the rightful authority that parents have to make such decisions for their children. SB658 has given that authority to the individual citizens, period.

Ginnie Graham: Kids are in charge of public health starting this month

Lenzy Krehbiel-Burton

HULBERT — A third Oklahoma public school district is now requiring masks on campus.

As first reported by the Tahlequah Daily Press, Hulbert Public Schools' board of education voted Wednesday night to require every student and employee to wear masks on campus, regardless of vaccination status.

As per a statement posted to the district's website, the only exception to the requirement will be when students are able to maintain social distancing while eating lunch.

"It is the desire of the Board and Administration to keep students safe and able to remain at school for in-person learning," according to the statement.

On Monday, the Cherokee County district announced its middle school and high school would temporarily switch to distance learning after close contact exposure quarantines led to an **absence rate** of more than one-fourth of the student body. As of Thursday morning, secondary students are scheduled to return to campus Friday.

Hulbert Elementary School has remained open. Located 10 miles west of Tahlequah, the district started the 2021-22 school year on Aug. 11.

Oklahoma City Public Schools and Santa Fe South Charter Schools already announced they would require masks on campus. However, with the language in Senate Bill 658 specifically barring boards of education from enacting mask mandates, those decisions were made by superintendents rather than via board vote.

Parents Have Anxiety About Sending the Kids Back to School

Press Release

August 19, 2021

Governor Stitt and Attorney General O'Connor Slam School District Openly Violating State Law

OKLAHOMA CITY (August 19, 2021)— Today Governor Kevin Stitt and Attorney General John O'Connor released the following statements after Hulbert Public Schools openly violated state law by mandating masks for all students and adults:

"It is disappointing that one school district has chosen to openly violate a state law that was supported by 80 percent of the Legislature. The goal of SB658 was to ensure every student in Oklahoma could go to school in person and parents retained the fundamental right to make health care decisions for their children. To be clear, no parent is banned from sending their child to school with a mask and no school may mandate masks or vaccines. I will always stand up for parents' right to decide what is best for their child," said Governor Stitt.

"We are vigorously defending SB658 in court because it is plainly constitutional and helps protect the choices of students and parents. Under the new law, public school boards cannot implement a mask mandate, unless certain conditions are met, including that the school district be in an area under a current state of emergency declared by the Governor. Under our constitution, the Legislature gets to set the policy of the state—especially on controversial issues like this—and schools should not be actively trying to undermine our constitutional structure of government by violating duly-enacted state law," said Attorney General O'Connor.

Governor Stitt signed [Senate Bill 658](#) into law on May 28, 2021. It went into effect on July 1, 2021.

###

CONNECT:



Hulbert Public Schools

316 S Rider Lane, Hulbert, OK 74464

918-772-2501

Jolyn Choate, Superintendent

Chad Botts, HS/MS Principal

Taf Morphis, Elementary Principal



August 19, 2021

Dear Hulbert school family:

Last night, based on recommendations from the CDC, the Hulbert Board of Education voted to require masks for students and staff at school, effective August 19, 2021. The safety of our school family is our greatest priority and increasing cases of COVID-19 in our district made this difficult decision necessary.

Since we started school on August 12, seven individuals have tested positive, resulting in more than 154 people being placed in quarantine. The number of quarantined students required us to temporarily move all middle school and high school students to distance learning. The current situation creates not only a risk to students' health, but also results in a significant loss of in-person instructional time. **By wearing masks in the classroom, we can better protect the health of our students and significantly reduce the number of students who need to quarantine when there is a positive case.**

The cases we experienced in the last week exceeded the numbers we had at any time last school year – when masks were required and before the more aggressive Delta variant of COVID-19 existed. Cases in Cherokee County continue to grow, and – based on the size of our enrollment – our school numbers are increasing at an even faster rate.

Parents, health officials, education officials and state leaders all agree that in-person learning is the best model for students. The tools and resources exist to make this happen, and we cannot allow our district to be hindered in its mission to provide in-person learning. Masking, which is recommended in schools by Cherokee Nation Public Health Guidance for Schools, is a key component for a safe, successful and in-person school year.

Our Return to Learn Plan includes options for students who are unable to wear a mask due to medical exception. The plan can be reviewed at hulbertriders.net. Additionally, the district is providing a virtual learning option for all students who wish to opt-out of the mask requirement or would like to learn virtually for any other reason. If you would like to know more about medical exceptions or our virtual learning program, please contact me at 918-772-2501.

We are grateful for the opportunity to serve you and your family, especially as we face this challenging situation together. Thank you for your support of Hulbert Public Schools.

Sincerely,

Jolyn Choate

Superintendent



Chelsea Public School

12th St



Due to a significant number of students and staff positive for Covid 19, Chelsea Public School will be out through Friday. Buildings are being deep cleaned.

We will release more information regarding resuming classes as soon as possible.



Carney Public Schools

9m · 🌐

August 16, 2021

Dear Carney Families,
Due to a severe covid-19 outbreak among our students and staff, we have made this difficult decision to transition to virtual learning effective tomorrow, August 17.

We will return to in-person learning on Monday, August 30th.

We will serve drive-thru breakfast and lunch from 11:00 to 12:00 daily.

Chrome books, mobile hotspots, and packets can be picked up from 11:00-4:00 tomorrow, August 16th. If this time does not work for you other arrangements can be made by calling the office.

We do not take this decision lightly, as we know the extra burden it puts on families. However, we feel this the best option for the safety of our students and staff.

Sincerely,
Brian Keith
Superintendent



Write a comment...





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Battiest Public School



Friday at 9:06 PM ·

Battiest District News and Alerts: Due to the increase in Covid cases we are going virtual for a week as of Monday, August 16th. We will re-evaluate at the end of the week and see when we can return to in person. Elementary and HS parents can pick up their student's packets on Monday 16th, between the hours of 12-7 pm. When you arrive, call the office at 580-241-5499, and we will set your packet(s) outside the door for you. Thank you and sorry for any inconvenience we hope to be back in school very soon if we can social distance for a week hopefully we can get the students back in school.

15

6 Comments 58 Shares





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Eagletown Public School



Yesterday at 7:46 AM ·

ATTENTION PARENTS PLEASE SPREAD THE WORD!!!
Due to lack of teachers and overwhelming number of staff/students who have tested positive over the weekend we will **CLOSE SCHOOL FOR THE REMAINDER OF THE WEEK.** We will have classes today and then dismiss at regular bus time with no classes until **NEXT MONDAY - August 23rd.** Any student staying home today or who is checked out by the guardian will **NOT** be counted absent.

Learning packets will be available for pick up tomorrow in the high school office - all packets are due when students return Monday.

**SUPPLEMENTAL AFFIDAVIT OF THE OKLAHOMA STATE
MEDICAL ASSOCIATION**

I, Mary Clarke, MD, acting in my capacity as President of the Oklahoma State Medical Association (OSMA), state under penalty of perjury pursuant to the laws of the state of Oklahoma, that the following is true and correct to the best of my knowledge. The numbering of paragraphs below continues the numbering of paragraphs in my original Affidavit, executed on August 12, 2021.

14. Many physician members of the OSMA are on the front line of COVID 19 care in emergency rooms (ERs), Intensive Care Units (ICUs), hospital rooms, and in their medical practice offices. Some OSMA member physicians are required to render care to COVID 19 patients in hospital corridors and other substandard settings. They work long hours under mental and physical stress. This stress is causing exhaustion and emotional trauma to these OSMA members. Many are suffering for their service to the public in fighting COVID 19. Additionally, many of the other professionals assisting them, such as nurses and respiratory therapists, are also suffering from exhaustion and emotional trauma.

15. OSMA member physicians are professionals dedicated to their healing work. However, many OSMA member physicians and their allied professionals such as nurses who are treating COVID 19 patients are burning out and reaching the point where they are considering other jobs which require fewer and more routine work hours. The present COVID 19 onslaught is hurting our healers. They need help. They need more doctors to help, but too few are available. Because of that, the physician doing this job now needs fewer patients whose care is less demanding and who do not present unrelenting and intense needs for life or death treatment. Banning mask mandates in schools will inevitably confront these dedicated OSMA member physicians with more desperately sick patients, both children and adults. For the health and safety of OSMA physician members and their team members, as well as for the health and safety of COVID 19 patients and the public at large, local school officials need the local authority to require masks be worn in schools in appropriate cases.

16. The OSMA can provide Oklahoma-specific data on the effectiveness of masks in preventing the transmission of COVID 19 that will aid and inform the Court. The data emerging daily and weekly will inform the Court to guide the best decisions possible for the public health of all Oklahomans. We believe this evidence will satisfy the Court that the mask mandate ban in SB658 is contrary to the public interest and is hindering the medical recovery response being provided by OSMA member physicians.

FURTHER AFFIANT SAYETH NOT.

By: _____



Mary Clarke, MD
President
Oklahoma State Medical Association
313 NE 50th St.
Oklahoma City, OK 73105

Date: August 12, 2021
Oklahoma City, OK