

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CHRISTY MCCRANIE as next)
best friend of JOHN DOE 1)
AND JANE DOE 1, JAMI TUCKER)
AND BRETT CHROMY as next)
best friend of JOHN DOE 2,)
JOHN DOE 3 AND JANE DOE 2,)
HEATHER KLATT AND)
TIM KLATT as next best)
friend of JOHN DOE 4, JORDAN)
CHADWELL as next best)
friend of JOHN DOE 5 AND)
JOHN DOE 6, JILL WRIGHT AND)
MARC WRIGHT as next best)
friend of JANE DOE 3 AND)
JOHN DOE 7, SUNG YANG as)
next best friend of JOHN)
DOE 8 AND JANE DOE 4, ERIN)
MEADE as next best friend)
of JOHN DOE 9, MICHAEL PALAZZO)
as next best friend of JOHN DOE 10,)
DANIELLE DENLEIN AND SHAWN)
DENLEIN as next best friend of JANE)
DOE 5 KRISSANY TAUBER AND)
ANTHONY TAUBER as next best)
friend of JANE DOE 6 AND JANE)
DOE 7, BRAD BOWERS as next best)
friend of JOHN DOE 11 AND JOHN)
DOE 12)

Plaintiff,)

v.)

FULTON COUNTY SCHOOL BOARD,)
KATHA STUART, in her official)
Capacity as Fulton County School)
Board Member, KATIE REEVES,)
in her official capacity as Fulton)
County School Board Member,)
GAIL DEAN, in her official capacity)
as Fulton County School Board)
Member, FRANCESCA WARREN,)
in her official capacity as Fulton)

Civil Action File No.

County School Board Member, LINDA)
MCCAIN, in her official capacity as)
Fulton County School Board Member,)
KIMBERLY DOVE, in her official)
capacity as Fulton County School Board)
Vice President, JULIA BERNATH,)
in her official capacity as Fulton County)
School Board President, MIKE)
LOONEY, in his official capacity as)
Fulton County School Superintendent)
)
Defendants.)
_____)

**VERIFIED PLAINTIFFS' EMERGENCY COMPLAINT FOR
DECLARATORY RELIEF AND INJUNCTIVE RELIEF
WITH INCORPORATED MOTION FOR PRELIMINARY INJUNCTION
AND MEMORANDUM OF LAW**

Plaintiffs', Christie McCranie as next best friend of John Doe 1 and Jane Doe 1, Jami Tucker and Brett Chromy as next best friend of John Doe 2, John Doe 3, and Jane Doe 2, Heather and Tim Klatt as next best friend of John Doe 4, Jordan Chadwell as next best friend of John Doe 5 and John Doe 6, Jill and Marc Wright as next best friend of Jane Doe 3 and John Doe 7, Sung Yang as next best friend of John Doe 8 and Jane Doe 4, Erin Mead as next best friend of John Doe 9, Michael Palazzo as next best friend of John Doe 10, Danielle and Shawn Denlein as next best friend of Jane Doe 5, Krissany and Anthony Tauber as next best friend of Jane Doe 6 and Jane Doe 7, and Brad Bowers as next best friend of John Doe 11 and John Doe 12, (collectively "Plaintiffs") by and through their attorneys, and pursuant to O.C. G.A § 9-11-65, respectfully move this Court to grant a Temporary Restraining Order or Preliminary Injunction against the Defendants', Fulton County Schools ("FCS")and Mike Looney, to enjoin them from mandating students to wear face masks in order to attend school. Affidavits of each Plaintiff are filed contemporaneous hereto in support of the relief sought by the Complaint in this action.

INTRODUCTION

1.

Starting in early 2020, the world was presented with the issue of the novel coronavirus, SARS-CoV-2, as it was spreading quicker than any other virus in modern times. The virus can lead to the COVID-19 disease that has varying symptoms and degrees of severity. Because of the unknowns involved at that time, countries began implementing various means to slow the spread of the disease. In April 2020, the World Health Organization (WHO) recommended using masks for health care workers, symptomatic, and ill individuals. Two meta-analyses were performed later in 2020, both confirming that there was weak evidence at best for the benefit of mask in general everyday use.

2.

In March 2020, Governor Kemp issued Executive Order No. 03.14.20.01 (“March 2020 Executive Order”) to declare a Public Health State of Emergency with the powers enumerated in O.C.G.A § 38-3-50 *et seq.* In that order, he allowed school districts in Georgia the ability to issue involuntary masking policies only under these emergency powers. Without the March 2020 Executive Order, schools did not have the power to issue masking policies. Further, Governor Kemp ended the Public Health State of Emergency, specifically rescinding the school districts’ emergency powers for mask mandates, on July 1, 2021. The only COVID related powers retained by Governor Kemp are specified in renewed State of Emergency for Continued COVID-19 Economic Recovery. This declarative directive does not grant schools the authority to require involuntary masking.

3.

As the school year was nearing, FCS had informed parents and students that they would have a mask optional policy. Then, in a hasty and ill-thought-out update sent out on August 5, 2021, FCS shocked parents with a new policy mandating masks for all students that are in attendance. This Mask Mandate was announced merely four (4) days before the start of the school year. At that time, parents had already prepared for the year and were left with the choice of being forced to mask their children or incur the offensively large expense of home care or alternative schools. Additionally, the parents and children were left with a large decision in a short time that left few available options. While some parents were able to alter plans, most had their hands tied with the plans already in place due to the incredibly short notice. Essentially, FCS made it financially impossible for parents to plan for their children's individual needs.

4.

Undoubtedly, FCS administrators presume to have good intentions. But this lawsuit perfectly illustrates the risks of giving unilateral "emergency powers" to well-meaning but poorly informed, fast-reacting, and unwise executive agents.

5.

It is undisputed that the Mask Mandate has caused both physical and mental health issues across all ages. Several students report having been short of breath as well as parents noticing unusual fatigue. Additionally, the students suffer from the concerns with mental health, the aggravation of the masks, and the teachers' aggravation. Finally, the children are suffering in the scope of their education because of the disruptive nature, especially for younger children who are not used to masks. Studies show that lip reading and facial expressions are

essential for early learning. Further, FCS has caused issues with the continued last minute changes, including less than 24 hours of notice to put third graders into virtual learning for a week and a failure to address the concerns, medical issues, and mental health issues of their students.

6.

Parents and students cannot keep track of the turmoil involved and have had their lives turned upside down and left and right over and over again. This only proves to further health concerns creating anxiety and exacerbating any existing anxiety or mental health disorders. In fact, psychologists have seen an upturn in “depression, anxiety, eating disorders, self-injurious behaviors, suicide attempts, drug use, alcohol abuse, physical/sexual/emotional abuse and neglect.”

7.

Rather than respecting each parent’s right to choose what is best for their child’s health, the school board and teachers are overstepping beyond their roles as administrators and educators. The rules that they are enforcing are well beyond their power under Georgia law and the Georgia Constitution and FCS’s own district policy which limits school authority and places health care decisions on the parents of the students.

8.

We all want safe learning environments for the students, staff, and visitors; but only a ‘mask optional’ policy will allow both freedom and safety. FCS must now prove masks are the least restrictive way for the schools to move forward and have taken no steps to determine this.

JURISDICTION

9.

This is an action for declaratory and injunctive relief against the Fulton County School Board, located in Fulton County, Georgia.

10.

Venue is properly in Fulton County because it is where the Defendant is located, it is where the causes of action accrued, and it relates to certain orders issued by the Defendant or its purported agents in Fulton County.

11.

Jurisdiction is appropriate in the Superior Court of Fulton County.

12.

The Court has authority to review the Mask Mandate.

13.

The Plaintiffs also seek emergency injunctive relief from the Mask Mandate.

14.

This lawsuit challenges: (i) FCS's rational basis for the Mask Mandate, (ii) the facial and as-applied constitutionality of the Mask Mandate under the Georgia Constitution, and (iii) the delegated statutory authority of FCS to implement the Mask Mandate in the first place.

PLAINTIFFS

15.

CHRISTIE MCCRANIE is a resident of Fulton County, whose children, JOHN DOE 1 and JANE DOE 1 attend ninth and sixth grade in Fulton County Schools. Mrs. McCranie moved her children to FCS knowing that no mask mandate was implemented for the 2021-2022 school year.

Mrs. McCranie and her children have been harmed by the mask mandate. Her children both have been diagnosed with attention deficit disorder (ADD) and the mask wearing has made it exponentially more difficult for them to hear, understand, focus, learn, and retain information. The masks have hindered the most basic functions of a school, to help children learn. *See Affidavit of Christie McCranie filed contemporaneously.*

16.

JAMI TUCKER and BRETT CHROMY are residents of Fulton County, whose children, JOHN DOE 2, JOHN DOE 3, and JANE DOE 2 attend twelfth, tenth, and eighth grade in Fulton County Schools. Mrs. Tucker and Mr. Chromy and their three children have been harmed by the Mask Mandate. The family moved their children from California to Georgia specifically for in person learning. All three children have long standing learning disabilities and two of her children have inhalers for medical issues. The combination of the learning disabilities and the health issues make the mask mandate particularly harmful to the health and well being of these three children, each experiencing psychological trauma from not feeling comfortable in their school and their ability to make friends. The school failed to provide a safe environment for the children as the mask directly cause them harm emotionally and physically. *See Affidavits of Jami Tucker and Brett Chromy filed contemporaneously.*

17.

HEATHER AND TIM KLATT are residents of Fulton County, whose child, JOHN DOE 4 attended Fulton County Schools through the fourth grade and was planning on returning to FCS for the 2021-2022 school year. Heather and Tim Klatt and JOHN DOE 4 have been harmed by the Mask Mandate. When FCS abruptly changed their mask policy four (4) days before the start of school, the Klatts decided they could not put their child's education at risk by continuing to send

JOHN DOE 4 to an FCS school. JOHN DOE 4 experience headaches from wearing a mask all day and grew frustrated as the instruction from his teacher was difficult to hear and understand through the mask. JOHN DOE 4 and his parents are not receiving the state constitutionally mandated benefit of “free public education.” *See Affidavits of Heather and Time Klatt filed contemporaneously.*

18.

JORDAN CHADWELL is a resident of Fulton County, whose children, JOHN DOE 5 and JOHN DOE 6 attend seventh and third grade in Fulton County Schools. Both Mrs. Chadwell and JOHN DOE 5 and JOHN DOE 6 have been harmed by the Mask Mandate. JOHN DOE 6, after the mask mandate was announced, was removed from school, and placed into a homeschool pod. JOHN DOE 5 decided he wanted to return to school despite the mask requirement. After only two weeks, JOHN DOE 5 was experiencing headaches and felt dizzy throughout the day, he and his parents decided that FCS was no longer a viable option for his education. Mrs. Chadwell has had to find private educational options because the public free education promised by the state constitution was not viable for her children. *See Affidavit of Jordan Chadwell filed contemporaneously.*

19.

JILL and MARC WRIGHT are residents of Fulton County, whose children, JANE DOE 3, and JOHN DOE 7 attend twelfth and tenth grade in Fulton County Schools. Mr. and Mrs. Wright and their children have been harmed by the Mask Mandate. At the end of the first full week of require mask wearing in 2020 both children developed sore throats and chronic headaches. The children’s pediatricians diagnosed them with acute pharyngitis, directly connected to daily long-term mask use. Because masks were mandated for in-person school, the only responsible choice

Mr. and Mrs. Wright could make as parents was to pull them from their FCS, out of serious concern for our children's health and well-being. The children's continued health problems were ignored by school administration when brought to their attention after the announcement of the mask mandate for the 2021-2022 school year. *See Affidavits of Jill and Marc Wright filed contemporaneously.*

20.

SUNG YANG is a resident of Fulton County, whose children, JOHN DOE 8 and JANE DOE 4 attend twelfth and eighth grade in Fulton County Schools. Both Dr. Yang and JOHN DOE 8 and JANE DOE 4 have been harmed by the Mask Mandate. While JOHN DOE 8 and JANE DOE 4 would both prefer to attend school in-person, they have found that sitting in a classroom and wearing a face mask with the teacher also trying to teach to a computer screen for the virtual class, has made classroom learning ineffective. Additionally, coaching staff requirement of JOHN DOE 8 to continue to wear a face covering while participating in strenuous exercise put JOHN DOE 8's health at risk as he was later found to have hypoxia. The mask requirement directly caused physical harm to JOHN DOE 8. *See Affidavit of Sung Yang filed contemporaneously.*

21.

ERIN MEADE is a resident of Fulton County, whose child, JOHN DOE 9 attends fourth grade in Fulton County Schools. Both Mrs. Meade and JOHN DOE 9 have been harmed by the Mask Mandate. JOHN DOE 9 has learning disabilities. When in-person school was available and FCS mandated that all children must wear face masks at school, Mrs. Meade immediately witnessed JOHN DOE 9's learning struggles increase greatly, especially with reading. Mask-wearing prevents JOHN DOE 9 from seeing teachers' mouths and the words being pronounced and prevents JOHN DOE 9's teachers from seeing JOHN DOE 9 pronounce words. The mask

mandate is delaying and prohibiting the education that is demanded in the state constitution. *See Affidavit of Erin Meade filed contemporaneously.*

22.

MICHAEL PALAZZO is a resident of Fulton County, whose child, JOHN DOE 10 attends the first grade in Fulton County Schools. Both Mr. Palazzo and JOHN DOE 10 have been harmed by the Mask Mandate. JOHN DOE 10 has had a change in his energy levels and wiliness to attend school. The mandate has cause JOHN DOE 10 stress that puts his education at risk. *See Affidavit of Michael Palazzo Chromy filed contemporaneously.*

23.

DANIELLE and SHAWN DENLEIN are residents of Fulton County, whose child, JANE DOE 5 attends the seventh grade in Fulton County Schools. Mr. and Mrs. Denlein and JANE DOE 5 have been harmed by the Mask Mandate. JANE DOE 5 has a medical condition which caused a narrowing of her airway and improper neck and jaw alignment. Her condition cause JANE DOE 5 to struggle to breath through her nose. JANE DOE 5's doctor informed Mr. and Mrs. Denlein that wearing a mask reduced her oxygen intake by 20% because of her condition. The school has not allowed for any accommodation for JANE DOE 5's medical conditions but rather her teachers and administrators admonish the child for trying to breath. *See Affidavits of Danielle and Shawn Denlein filed contemporaneously.*

24.

KRISSANY and ANTHONY TAUBER is a resident of Fulton County, whose children, JANE DOE 6 and JANE DOE 7 attend first grade and kindergarten in Fulton County Schools. Mr. and Mrs. Tauber and their children have been harmed by the Mask Mandate. JANE DOE 7 has had an especially hard time adjusting to school, in part because mask-wearing prevents her from

seeing the faces of her teachers and her friends, so she cannot fully hear or comprehend what they are saying. This leads to her feeling frustrated, unsafe, insecure and unsure about those around her. The mask mandate has created an environment hostile to educating children. *See Affidavits of Kissany and Anthony Tauber filed contemporaneously.*

25.

BRAD BOWERS is a resident of Fulton County, whose children, JOHN DOE 11 and JOHN DOE 12 attend seventh and fifth grades in Fulton County Schools. Both Mr. Bowers and JOHN DOE 11 and JOHN DOE 12 have been harmed by the Mask Mandate. After only two weeks in school, on August 24th, 20221, Mr. Bowers received a voicemail from the school clinic Nurse, describing JOHN DOE 12's visit to the clinic at 10:48am, suffering from 'headache, dizziness, and blurred vision.' The Nurse's first instruction to JOHN DOE 12 was to "take off your mask", so he could "breathe freely". The mask was the first thing the medical professional removed as to alleviate the symptoms. Wearing a mask for 7 plus hours a day is harming the children physically and mentally. Both JOHN DOE 11 AND JOHN DOE 12 have begun to see a counselor to deal with harm of wearing a mask all day. *See Affidavit of Brad Bowers filed contemporaneously.*

PLAINTIFFS' CHILDREN

26.

Except where otherwise noted, the Plaintiffs' children attend schools within Fulton County that are subject to, and are being harmed by, the Mask Mandate.

27.

At this time, the Plaintiffs' children have not been allowed any exemption from the Mask Mandate.

28.

The Plaintiffs' children have been harmed, and are continuously being harmed, as a direct result of the proper and improper application of the FCS Mask Mandate.

29.

Plaintiffs' children do not have Covid-19 and are incapable of transmitting it to anyone.

30.

It is an undisputed fact that school children like the Plaintiffs' children are at low-risk for acquiring a serious case of Covid-19.

31.

It is an undisputed fact that students — including the Plaintiffs' children — have less risk of dying from Covid-19 than from influenza even when unmasked.

32.

It is an undisputed fact that school children like the Plaintiffs' children are not the primary drivers of community spread of Covid-19.

33.

It is an undisputed fact that all Fulton County teachers and staff have had a full and fair opportunity to be vaccinated against Covid-19 with vaccines having over 90% effectiveness.

34.

It is an undisputed fact that many, if not most, Fulton County teachers and staff have been vaccinated against Covid-19 with vaccines having over 90% effectiveness.

35.

Children, like the Plaintiffs' children, normally acquire lifelong immunities through ordinary exposure to a wide variety of common diseases at school, including respiratory viruses like Covid-19.

36.

Plaintiffs desire that their children can benefit from, and not be deprived of, their singular opportunity to encounter Covid-19 naturally at school and develop lifelong natural immunity to the virus and its variants.

37.

Plaintiffs' children will be further harmed if they are deprived of their opportunity to encounter Covid-19 naturally at school and develop lifelong natural immunity to the virus and its variants.

DEFENDANTS

38.

Fulton County Schools is a political subdivision of the State of Georgia managed by Superintendent Mike Looney, who acts as Fulton County Schools' chief executive, as well as a School Board comprised of 7 members representing their respective districts within Fulton County (the "Board").

39.

Fulton County Schools is an agency under O.C.G.A. §20-2-50 and its rule making authority is provided under O.C.G.A. §20-2-59.

40.

Julia Bernath is the President of the Board (the “Board President”). Service under Georgia law can be served on the Board President, or on the Superintendent if the chair is unavailable per O.C.G.A. § 9-11-4(e).

The Mask Mandate

41.

Four (4) days before the school year that all parents and students were preparing to participate in person classes FCS decided unilaterally to change the requirement for attendance to mandate masking.

42.

At that time, most parents and children had made decisions based on the previously noted optional mask policy that had been in place.

43.

These individuals, as shown in the Affidavits file herein, were faced with the withdrawal of their children, entry into private schooling (where possible both monetarily and situationally) or having them stay home, or face the harmful repercussions of forcing the harmful masks on their children impairing their education and health.

44.

In Georgia approximately 33 percent of parents were stay at home parents in 2019. During the COVID-19 pandemic, the vast majority of parents were relegated to trying to both work and take care of children as if they were the teacher despite the virtual learning.

This included single parents reliant on the school system in order to fulfill their own work duties.

45.

Costs for someone to help with the necessary schooling or childcare at home amount to several thousands of dollars in excess of the already paid taxes for the schooling that have been contributed.

46.

This amount of money is unconscionable for the vast majority of parents, especially with only four days to attempt any changes to childcare plans, so as a result of the current situation, there is a monetarily forced mechanism of masking children to go to school for some parents despite their preference and autonomy over their child's health.

47.

FCS presented the idea of a specific campus for unmasked students at the time in which they would not invoke the mask mandate, which again was at the last minute, requiring parents to commit before August 27, 2021.

48.

That program failed due to the lack of individuals committing to it within that three-week period. This is not a shock based on the lack of information and the lack of time to consider.

49.

Most parents are concerned about the interaction of their child or children. There is a large concern as far as socialization and normalizing the children's education. If they are unable to socialize, the whole idea is a moot point.

50.

Further examination of the virus and its spread shows that children are unlikely to spread the virus.

51.

Currently, studies definitively show that the hypoxia-hypercapnia caused by masking influences cognitive function and could result in chronic obstructive pulmonary disease (COPD).

52.

The extended time frame in which children are being mandated to wear the masks contributes even more to the hypoxia-hypercapnia.

53.

FCS has failed to provide any documentation to parents and students regarding investigation into the source of the infection as well as failed to explain the fluctuations in infection.

54.

FCS has failed to provide proper notice under Georgia law allowing for proper argument and communication.

55.

FCS has failed to show any authority that it has to promulgate rules outside of the legislative branch's law, which does not give FCS the authority to unilaterally make rules.

56.

The Mask Mandate also brings concerns about the use of masks that remain on children all day and the level of bacteria, spit, and other soiling being placed in such a way that children are continuing to breathe the germs.

57.

Further, there have been studies that masking does not in fact avoid the transmission of Covid-19.

58.

Masks are harmful to children. Experts' analysis provided through contemporaneously filed affidavits show that masks do more harm to the physical health and mental health than the perceived good argued by FCS. Specially the affidavit of Dr. Scott A. Barbour states "The effects on self-esteem, difficulty in communication, and the facial irritation that causes people to touch their faces and spread secretions are just a few of the unintended negative consequences of masking school aged children." *See Affidavit of Dr. Scott A. Barbour filed contemporaneously.*

59.

Further, Dr. Ashley Loyd affidavit shows that masking children harms their mental health as well as their ability to learn and express themselves particularly using nonverbal communication. *See Affidavit of Dr. Ashley Loyd filed contemporaneously.*

**COUNT I – REQUEST FOR DECLARATORY JUDGEMENT THAT THE MASK
MANDATE VIOLATES ARTICLE I, SECTION II, PARAGRAPHS I AND III OF THE
GEORGIA CONSTITUTION**

60.

Paragraphs 1-59 are incorporated herein by reference.

61.

Article I, Section II, Paragraph I of the Georgia State Constitution declares, "All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them."

62.

Article I, Section II, Paragraph III of the Georgia State Constitution states, “The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided.”

63.

FCS is an agency under the Executive Branch of the Georgia government.

64.

FCS cannot institute policies that are “laws” or “regulations” that are properly instituted under the legislative branch of the Georgia government.

65.

FCS’s authority to make rules similar to the Mask Mandate is derived from Georgia Statute. The code delegates specific authorities to schools.

66.

O.C.G.A. § 20-2-61 states that the “[t]he fundamental role of a local board of education shall be to establish policy for the local school system with the focus on student achievement.”

67.

O.C.G.A. Title 20 – EDUCATION, Chapter 2 – ELEMENTARY AND SECONDARY EDUCATION lists the rules that school districts must follow and their rights and obligation under those rules.

68.

O.C.G.A. § 20-2-109 explicitly provides the duties of the local superintendent, stating that the local superintendent shall:

1. be the executive officer of the local board of education;
2. shall be the agent of the local board in procuring such school equipment and materials as it may order;
3. shall ensure that the prescribed textbooks are used by students;
4. shall verify all accounts before an application is made to the local board for an order for payment;
5. shall keep a record of all official acts, which, together with all the books, papers, and property appertaining to the office, shall be turned over to the successor;
6. enforce all regulations and rules of the State School Superintendent and of the local board according to the laws of the state and the rules and regulations made by the local board that are not in conflict with state laws; and
7. to visit every school within the local school system to become familiar with the studies taught in the schools, observe what advancement is being made by the students, counsel with the faculty, and otherwise aid and assist in the advancement of public education.

69.

FCS has not been granted any express authority to institute its Mask Mandate.

70.

The legislative branch has enacted law that reserves decisions of health-related matters at the state level, not at the county level. O.C.G.A. §§ 20-2-770 to 20-2-778

71.

The reservation of health-related protocols at the state level was the reason that Governor Kemp had to issue the aforementioned Executive Orders.

72.

As an example of the express authority for health retained at the state level, with regard to vaccines, the state legislature granted authority under O.C.G.A. § 20-2-771 to the Department of Community Health to determine the vaccination requirements of students in public schools.

73.

There is no provision in Georgia Statutes allowing or authorizing FCS to determine the use of any medical devices or the procedures involved with such use of any medical device.

74.

It is clear that the state legislature has not granted school districts the ability institute the requirement of, without any other express authority, any medical devices or procedures.

75.

The Georgia state legislature even enacted laws that specify how safety is to be handled at the state and county levels that are being complete circumvented by the actions of FCS.

76.

O.C.G.A. § 20-2-1185 SCHOOL SAFETY PLANS, provides for the authority for individual schools, not the school district, to implement plans under the guise of “safety,” stating, “Every public school shall prepare a school safety plan to...provide a safe learning environment for Georgia's children, teachers, and other school personnel. Such plan shall also address preparedness for natural disasters, hazardous materials or radiological accidents, acts of violence, and acts of terrorism.” O.C.G.A. 20-2-1185.

77.

The code further states, “School safety plans of public schools shall be prepared with input from students enrolled in that school, parents or legal guardians of such students, teachers in that school, community leaders, other school employees and school district employees, and local law enforcement, fire service, public safety, and emergency management agencies.” Id. (Emphasis Added).

78.

Thus, it is the schools individually, in consultation with the students attending those schools, the parents of those students, and the other listed authorities, that are authorized to institute a school safety plan.

79.

Upon information and belief, even if the FCS had authority under the Safety statute, which the Plaintiffs do not agree with, the FCS and its individual schools have not met the requirements listed in the Code.

80.

Further, there is no authority under this section that gives any authority to make medical decisions relating to health, such as mask policies.

81.

Prior to the overreach of the mask mandate, the FCS District policy stated “Student health services are not intended to replace parental responsibility. Medical and health care of the individual student is the responsibility of the parents/legal guardians.”

82.

FCS has now made rules and laws extending well beyond their authority under the Georgia Constitution and Georgia statutes.

83.

FCS’s authority cannot exceed the specified powers in the statutes.

84.

FCS’s actions are in direct violation of the nondelegation doctrine as the Mask Mandate requires bypassing the authority of the Georgia legislature.

85.

In this violation, FCS is robbing Plaintiffs of the rights protected by the separation of powers directly expressed in the Georgia Constitution as branches that “shall forever remain separate and distinct”

**COUNT II – REQUEST FOR DECLARATORY JUDGEMENT THAT THE
MASK MANDATE VIOLATES ARTICLE I, SECTION I, PARAGRAPH I (DUE
PROCESS) OF THE GEORGIA CONSITUTION**

86.

Paragraphs 1-85 are incorporated herein by reference.

87.

Article I, Section I, Paragraph I of the Georgia Constitution states, “No person shall be deprived of life, liberty, or property except by due process of law.”

88.

FCS has failed to provide any legal authority for the Mask Mandate and in addition, has deprived the students and their parents of their personal liberty.

89.

Under FCS’s District Policy, “medical and health care of the individual student is the responsibility of the parents/legal guardians.”

90.

FCS is now exceeding their authority while taking the individual liberty of the students and parents from them in their decision making despite specifying this in their *own* policy.

91.

General delegations are ineffective and do not explain the basis for FCS's implementing the Mask Mandate.

92.

The authority of FCS's rules falls under the Georgia Administrative Procedure Act (hereinafter "APA") Title 50, Chapter 13 of the Georgia Code.

93.

The procedure in the Code dictates that FCS **shall**:

- (a) Give at least **30 days notice** of its intended action.
- (b) Afford all interested persons to submit data, views, or arguments, orally or in writing.
- (c) The agency shall transmit the notice provided for in paragraph (1) of subsection (a) of this Code section to the legislative counsel. The notice shall be transmitted at least 30 days prior to the date of the agency's intended action for a notice and objection process promulgated in § 50-13-4(f).

94.

FCS did not attempt to provide this notice, thereby ignoring the clear guidelines and duties to the children and parents.

95.

Further, there was no allowance of data views and arguments that, again, the code specifically requires.

96.

The Mask Mandate and the way in which it was brought to fruition are an obvious violation of Due Process rights of the Plaintiffs as well as a blatant disregard for the legislature's code and the Georgia Constitution.

**COUNT III – REQUEST FOR DECLARATORY JUDGEMENT THAT THE MASK
MANDATE VIOLATES ARTICLE I, SECTION I, PARAGRAPH II (EQUAL
PROTECTION) GEORGIA CONSTITUTION**

97.

Paragraphs 1-96 are incorporated herein by reference.

98.

Article I, Section I, Paragraph II of the Georgia Constitution states, "Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws."

99.

The Mask Mandate violates the Right of Privacy, the Protection to Person and Property, and Bodily Integrity guaranteed by the Georgia Constitution.

100.

As previously mentioned, multiple studies by several different countries and departments have expressly stated there is no association between mask mandates and reduced spread of Covid-19.

101.

Any such mandate, again, is a state level decision and FCS is overstepping their powers all over the parents, students, and the Georgia laws.

102.

This divests parents and children of the ability to avail themselves of their fundamental right and treats certain individuals differently based on arbitrary measures.

103.

WHEREFORE Plaintiffs ask the Court to declare that the Mask Mandate is void because the Mask Mandate violates the Equal Protection Rights of the Plaintiffs and issue an order to enjoin FCSs from enforcing the Mask Mandate.

**COUNT IV – REQUEST FOR DECLARATORY JUDGEMENT THAT THE MASK
MANDATE VIOLATES ARTICLE I, SECTION I, PARAGRAPH I (RIGHT OF
PRIVACY) AND PARAGRAPH II (PROTECTION TO PERSON AND PROPERTY) OF
THE GEORGIA CONSTITUTION**

104.

Paragraphs 1 - 103 are incorporated herein by reference.

105.

Article I, Section I, Paragraph I of the Georgia Constitution states, “No person shall be deprived of life, liberty, or property except by due process of law.”

106.

Article I, Section I, Paragraph II of the Georgia Constitution states, “Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.”

107.

The Mask Mandate violates the Right of Privacy, the Protection to Person and Property, and Bodily Integrity guaranteed by the Georgia Constitution.

108.

A rule that requires the alteration of physical appearance is a invasion of privacy and bodily autonomy.

109.

The Mask Mandate requires the children to cover their identity with a mask or cloth removing.

110.

The reasoning FCS uses for the use of the mask contradicts aforementioned studies that show the virus is airborne, but not spread by respiratory droplets further explaining the CDC information on masks.

111.

The U.S. Food and Drug Administration (hereinafter “FDA”) regulates the use of medical devices.

112.

The FDA has provided the face masks used for medical purposes, such as “to help stop the spread of the disease” is considered a medical device under the purview of the FDA regulations.

113.

FCS has further overstepped by regulating a medical device outside any authority under Georgia law.

114.

Plaintiff’s report several physical and mental harms when forced to mask for extended periods of time, i.e. full school days five days a week.

115.

The harms have been noted in the expert affidavits provided to this Court.

116.

Georgia court have consistently held the right to privacy in the Georgia Constitution as far reaching and more inclusive than the U.S. Constitution.

117.

Georgia courts continue to find that the right to privacy "[has] a value so essential to individual liberty in our society that [its] infringement merits careful scrutiny by the courts." *Ambles v. State*, 259 Ga. 406 (1989).

118.

In order to justify the invasion of the Plaintiffs' right to bodily integrity, the FCS must show that it acted pursuant to a statute which effectuates the compelling state interest, and which is narrowly tailored to promote only that interest. *Powell v. State*, 270 Ga. 27 (1998).

**COUNT V – REQUEST FOR DECLARATORY JUDGEMENT THAT THE MASK
MANDATE VIOLATES ARTICLE VIII, SECTION I, PARAGRAPH I (RIGHT TO
FREE PUBLIC EDUCATION) OF THE GEORGIA CONSITUTION**

119.

Paragraphs 1 - 118 are incorporated herein by reference.

120.

Article VIII, Section I, Paragraph I of the Georgia Constitution states, "Public education; free public education prior to college or postsecondary level; support by taxation. The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia. Public education for the citizens prior to the college or postsecondary level shall be free

and shall be provided for by taxation. The expense of other public education shall be provided for in such manner and in such amount as may be provided by law.”

121.

The mask mandate also violates the Right to Free Public Education, as the Georgia constitution emphasized in the Bill of Rights as a fundamental right.

122.

The Plaintiffs and their children have been stripped of this right due to FCS’s mandate. They are unable to fully participate in the fundamental right due to the taking away of their decision making for masking.

123.

Further, the parents and students have also, in some instances, been forced to virtual learning, which additionally violates the rights to free public education.

124.

Virtual learning requires home care for a large portion of parents.

125.

The taxpayer money that Plaintiff’s have contributed to fcs is all the Georgia constitution mentions. Education is otherwise free.

126.

Virtual learning is not free education and infringes on parents.

127.

Further, studies provide data that the education from home is less effective and distracting for children. This does not satisfy the right listed as “adequate” education.

**COUNT VI – REQUEST FOR DECLARATORY JUDGEMENT THAT THE MASK
MANDATE VIOLATES ARTICLE I, SECTION I, PARAGRAPH V (FREEDOM OF
SPEECH) OF THE GEORGIA CONSITUTION**

128.

Paragraphs 1-127 are incorporated herein by reference

129.

Article I, Section I, Paragraph V of the Georgia Constitution states, “No law shall be passed to curtail or restrain the freedom of speech or of the press.”

130.

The Mask Mandate compels parents and children to symbolic speech.

131.

Masks have become highly politicized and a statement of beliefs.

132.

Plaintiffs have suffered from the highly polarizing statement that the masks involve, even if inadvertently, in and of themselves being worn or not.

133.

Further, masks quite literally impair the ability to speak in violation of the Right to Free Speech. The coverage of the face hides facial expressions and hinders the ability to speak and be heard.

134.

Masks also hide facial features and create difficulty for those who express themselves outwardly through clothing, jewelry, art, and other means to fully express their beliefs in violation of freedom of speech.

**COUNT VII – REQUEST FOR DECLARATORY JUDGEMENT THAT THE MASK
MANDATE IS VOID FOR VAGUENESS**

135.

Paragraphs 1-134 are incorporate herein by reference.

136.

The Void for Vagueness doctrine of the due process clause requires that a statute or rule give a person of ordinary intelligence fair warning that a specific conduct is forbidden or mandated and provide sufficient specificity so as to not encourage arbitrary and discriminatory enforcement.

Parker v. City of Glennville, 288 Ga. 34, 35 (2010).

137.

The Mask Mandate provided to Plaintiffs by FCS gave no particular direction of the type of mask, and exemptions to the masking, and the fashion in which masking would be enforced or implanted throughout the day.

138.

Further the lack of instruction for the type of mask creates a bigger concern for the effectiveness and health aspect of the masks as the studies provide that the cloth masks are in fact unhealthy with repeated use and can even lead to pathogens being transferred to hands or spread due to the repetition.

139.

In addition, the filtration of the cloth masks was deemed “extremely poor,” which can lead to the Hypoxia-Hypercapnia even faster and is connected to cognitive disabilities as well as physical health issues.

140.

While the policy deems the CDC guidelines for appropriate masks, there is no further information of enforcement.

141.

The website continues to change and leaves parents with confusion and further instability.

COUNT VIII – NEGLIGENCE

142.

Paragraphs 1-146 are incorporated herein by reference.

143.

FCS had a duty of care to create a policy that did not harm students and staff.

144.

FCS had a duty of care to study potential harms that could result to children and staff from the extended wearing of face masks.

145.

FCS had a duty of care to study the actual harms that did result to children and staff from the extended wearing of face masks.

146.

FCS had a duty of care to promptly respond to parent, school nurse, and teacher reports of harms from extended mask wearing and immediately mitigate those harms.

147.

FCS had a duty of care to properly train its staff in how to effectively enforce the Mask Mandate.

148.

FCS had a duty of care to properly supervise its staff in its enforcement of the Mask Mandate.

149.

FCS had a duty of care to create and deploy a reasonable accessible procedure whereby a parent or student or teacher could obtain an exemption to the Mask Mandate.

150.

FCS did none of those things.

151.

FCS breached its duties of care to parents, children, teachers, and staff.

152.

FCS was negligent.

153.

The School District was grossly negligent.

154.

As a result of FCS's breach of its duties of care, Plaintiffs have been injured by, without limitation, aggravation of existing physical and psychological conditions, creation of new physical and psychological disorders, anxiety, loss of educational attainment, cost of private school, loss of earning potential due to lowered academic performance, loss of enjoyment of life, and other similar and related harms.

**COUNT IX – REQUEST FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

155.

Paragraphs 1-154 are incorporated herein by reference.

156.

Plaintiffs seek an emergency temporary restraining order as well as a preliminary and permanent injunctive relief pursuant to O.C. G.A § 9-11-65.

157.

In the absence of an emergency temporary restraining order and preliminary and permanent injunctions, Plaintiffs will suffer irreparable harm for which there is no adequate remedy at law, while injunctive relief will cause no harm to respondents.

158.

Immediate and irreparable injury, loss, or damage will result to Plaintiffs if the requested emergency injunctive relief is not granted.

159.

There will be immediate and irreparable damage to the students of FCS by allowing a harmful mask mandate to continue that threatens the students' health and education.

160.

There will be immediate and irreparable damage to the parents of students of FCS by allowing the harmful mask mandate to continue that threatens the free education promised in the State Constitution of Georgia.

161.

Plaintiffs will be irreparably injured in the event the prayed for injunctive relief is not granted.

162.

Plaintiffs are further entitled to the injunctive relief sought because there is a substantial likelihood of success on the merits.

163.

The damage to Plaintiffs is not readily compensable by money

DEMAND FOR JURY TRIAL

164.

Plaintiffs demand a jury trial on all issues so triable.

REQUEST FOR EXPEDITED CONSIDERATION

165.

Plaintiffs respectfully request that this Court expedite consideration of this action.

WHEREFORE Plaintiffs respectfully ask the Court to:

- a) Declare that the Mask Mandate is void because the Mask Mandate violates the separation-of-powers provision of the Georgia constitution and is an unconstitutional and unlawful overreach of authority by FCS that exceeds the powers granted by statute and issue an order to enjoin the FCS from enforcing the Mask Mandate;

- b) Declare that the Mask Mandate is void because the Mask Mandate violates the Due Process rights of the Plaintiffs and issue an order to enjoin FCSs from enforcing the Mask Mandate;
- c) Declare that the Mask Mandate is void because the Mask Mandate violates the Right to Free Public Education of the Plaintiffs and issue an order to enjoin FCSs from enforcing the Mask Mandate;
- d) Declare that the Mask Mandate is void because the Mask Mandate violates the Plaintiffs' Right of Privacy and their Due Process Rights and issue an order to enjoin the School District from enforcing the Mask Mandate;
- e) Declare that the Mask Mandate is void because the Mask Mandate violates the Plaintiffs' Free Speech Rights and issue an order to enjoin FCS from enforcing the Mask Mandate;
- f) Declare that the Mask Mandate is void for vagueness and issue an order to enjoin FCS from enforcing the Mask Mandate;
- g) Find FCS negligent;
- h) Issue a Temporary Restraining order against FCS from enforcing the Mask Mandate;
- i) Issue an order to permanently enjoin FCS from enforcing the Mask Mandate;

[Signatures to Follow]

This 17th day of September, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I have served all parties with a copy of *Verified Plaintiffs' Emergency Complaint For Declaratory Relief And Injunctive Relief With Incorporated Motion For Preliminary Injunction and Memorandum Of Law* by electronic mail and/or by depositing a copy of the same with the United States Postal Service, proper postage prepaid for delivery by first class mail, addressed as follows or by using *Odyssey* e-File GA filing system, which automatically sends email notification of such filing to all attorneys of record as follows:

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This 17th day of September, 2021.

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CHRISTY MCCRANIE as next)
best friend of JOHN DOE 1)
AND JANE DOE 1, *et al.*,)
)
Plaintiff,)
)
v.)
)
FULTON COUNTY SCHOOL BOARD,)
et al.,)
)
Defendants.)
_____)

Civil Action File No.

VERIFICATION OF COMPLAINT

Personally appeared before the undersigned officer, duly authorized to administer oaths, CHRISTY MCCRANIE as next best friend of JOHN DOE 1 AND JOHN DOE 2, who upon first being duly sworn on oath, deposes and states that to the best of her knowledge, information, and belief, the facts contained in the **VERIFIED PLAINTIFFS' EMERGENCY COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF** are true and correct.

By: Christy McCranie
Christy McCranie

SWORN TO AND SUBSCRIBE TO ME

THIS 17ⁿ DAY OF September, 2021.

Paul J. Humphreys
NOTARY PUBLIC

MY COMMISSION EXPIRES 02/06/23
[NOTARY PUBLIC]

