

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION

MATT SITTON and MATTHEW BENNETT
AND ELIZABETH BENNETT,

PETITIONERS

V. Case No. _____

BENTONVILLE SCHOOL DISTRICT,
DR. DEBBIE JONES, Superintendent,
in her official capacity, ERIC WHITE,
School Board President, in his official capacity,
KELLY CARLSON, board member,
in his official capacity, BRENT LEAS,
board member, in his official capacity,
MATT BURGESS, board member, in his official
capacity, WILLIE COWGUR, board member,
in his official capacity, JOE QUINN, board
member, in his official capacity, and JENNIFER
FADDIS, board member, in her official capacity.

RESPONDENTS

VERIFIED PETITION FOR DECLARATORY JUDGMENT

COMES NOW, the Petitioners, Matt Sitton and Matthew Bennett and Elizabeth Bennett,
and in support of their Petition for Declaratory Judgment pursuant to A.C.A. § 16-111-101 et
seq., states and alleges as follows:

1. Petitioners, Matt Sitton and Matthew Bennett and Elizabeth Bennett, are residents of
Benton County, Arkansas, who are the natural parents of school-age children attending
Bentonville Schools and subject to the provisions of the Bentonville Schools Safe Schools Plan
for school year 2021-22 dated August 11, 2021.

2. Respondents are the local school district with its offices located at 500 Tiger
Boulevard, Bentonville, AR 72712, the Superintendent of Schools, and individual members of
the Bentonville School Board, each named in their official capacities.

3. Jurisdiction and venue are proper in this Court pursuant to A.C.A. § 16-111-101 that states “Courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”

4. The United States Supreme Court has recognized that it is a “fundamental liberty interest of natural parents in the care, custody, and management of their child.” *Santosky II v. Kramer*, 455 U.S. 745, 753 (1982).

5. Likewise, it is the opinion of the Arkansas Supreme Court that “[a] parent's right to the care and control of his or her child is a fundamental liberty” *Tuck v. Arkansas Dep't of Hum. Servs.*, 103 Ark. App. 263, 266, 288 S.W.3d 665, 668 (2008).

6. On April 26, 2018, consistent with the power conferred to it by the Arkansas General Assembly appearing in A.C.A. § 20-7-109, and as “general measures for the control of communicable diseases,” the Arkansas State Board of Health adopted Rules and Regulations Pertaining to Reportable Disease, property promulgated under the Arkansas Administrative Procedures Act, approved by the Arkansas legislature and made effective January 1, 2019 (the “2019 Rules”), and states as its purpose, “to provide for the prevention and control of communicable diseases and to protect the public health, welfare and safety of the citizens of Arkansas,” said 2019 Rules are attached hereto as **Exhibit A** and incorporated herein by reference.

7. Assuming, for the sake of argument, that the 2019 Rules apply to COVID-19 or any of its numerous variants without the specific enumeration of that particular family of viruses included within Section V of the Rules, an arguable point not conceded here by Plaintiff, the Rules authorize the Director of the Arkansas Department of Health (“the ADH”) in Section X, to “impose such quarantine restrictions and regulations upon commerce and travel by railway,

common carriers, or any other means, and upon all individuals as in his judgment may be necessary to prohibit the introduction of communicable disease into the State, or from one place to another within the State.”

8. Section I of the 2019 Rules provides definitions of the terms “quarantine” and “isolation” for the powers delegated to ADH exclusively. The term “quarantine” is bifurcated between “complete quarantine,” defined as “the limitation of freedom of movement of such well persons . . . as have been exposed to a communicable disease, for a period of time not longer than the longest incubation of the disease, in such manner as to prevent effective contact with those not so exposed,” and “modified quarantine,” meaning “a selective, partial limitation of freedom of movement or persons . . . commonly on the basis of known or presumed differences in susceptibility, but sometimes because of danger of disease transmission.”

9. The term “isolation,” as it appears in Section IX of the 2019 Rules, is “the duty of the attending physician, immediately upon discovering a disease requiring isolation, to cause the patient to be isolated pending official action by the Director.”

10. In short, the terms isolation and quarantine apply only to persons who have contracted one of the lists of reportable diseases from Section V, those who have been exposed to a communicable disease, or selectively otherwise based on susceptibility. In no instances do the rules account for indiscriminate, arbitrary or capricious quarantine or isolation measures, including but not limited to mask mandates, applicable to otherwise healthy people, i.e., those who have not contracted, been exposed to, or who have been deemed particularly susceptible to COVID-19 proposed by the ADH, and certainly not by a local school board.

11. Nevertheless, Section X of the 2019 Rules holds the authority delegated to the ADH Director, and to him alone, by the Arkansas legislature to impose such quarantine restrictions

upon individuals as in his judgment may be necessary to prevent the introduction of communicable diseases into the State, or from one place to another within the State.

12. No school board within the State of Arkansas has been delegated, directly or indirectly, with isolation or quarantine authority by the Arkansas legislature, the Governor under his emergency authority, or the ADH.

13. The Bentonville Schools Safe Schools Plan for 2021-22, as amended by the School Board on August 11, 2021 states that as its authority to mandate face coverings on Page 4, that “the Arkansas Department of Health Rules Pertaining to the Control of Reportable Diseases provides for the prevention and control of communicable diseases to protect the public health, welfare, and safety of the citizens of Arkansas. Local public schools are granted the authority to quarantine and isolation as designees of the Secretary of Health,” said Plan attached hereto as **Exhibit B** and incorporated herein by reference.

14. Clearly, that statement is nonsense, factually false, and based on no legal authority.

15. The August 11, 2021 version of the Safe Schools Plan replaced the previous version dated July 28, 2021 under which no such authority to issue a face covering mandate was claimed, the only intervening circumstance being the August 10, 2021 5-2 vote of the School Board pursuant to which the Board’s purported authority appeared out of thin air, said July 28, 2021 Safe Schools Plan is attached hereto as **Exhibit C** and incorporate herein by reference.

16. There are only two (2) references to the responsibilities of public schools contained in the 2019 Rules, neither of which endow those schools with the authority to isolate or quarantine students.

17. Section III of the 2019 Rules, entitled “Responsibility for Reporting,” provides that it is “the duty of every superintendent of a public school district of such person(s) he designates, to

report immediately to the Department on the Toll-Free Disease Reporting System any outbreak of three (3) or more cases of any of the conditions declared notifiable.”

18. Likewise, Section XIV of the 2019 Rules states that “[i]t shall be the duty of the principal or other person in charge of any public or private schools, or child care facilities, at the direction of the Department, to exclude therefrom any child, teacher or employee affected with a communicable disease until the individual is certified free of disease, by written notice from a physician, school nurse, public health nurse or the Department.”

19. On July 16, 2020, Governor Hutchinson, by Executive Order 20-43, based on ADH recommendations, ordered the Secretary of the Department of Health to issue a directive “requiring every person in Arkansas to wear a face covering over the mouth and nose in all indoor environments where they are exposed to non-household members and distancing of six (6) feet or more cannot be assured . . . ,” a directive that exempted persons younger than 10 years of age.

20. The Governor’s mask mandate expired on May 30, 2021 and has not been renewed, nor has another similar executive order or ADH directive been issued, so there is currently no mask mandate existing in the State of Arkansas other than the *ultra vires* acts of school districts like Respondents.

21. On August 6, 2021, the Circuit Court of Pulaski County entered an Order for Declaratory Relief in Case No. 60CV-21-4763 in which it declared Act 1002 that prohibited mask mandates passed by the Arkansas legislature earlier this year, and in doing so found that Act 1002 violated the separation of powers doctrine by infringing on the power of county judges, the state Supreme Court, and the emergency authority of the Governor, without mention of infringement of the rights of local school boards. The Court did suggest Act 1002 discriminated

between private and public school children, but private schools are not state actors, and, regardless, parents send their minor children to private schools voluntarily and, therefore, consent to the conditions attendant to private school enrollment, said Order is attached hereto as **Exhibit D** and incorporated herein by reference.

22. Therefore, the Bentonville Schools, acting of its own volition and without the express authority or the Arkansas legislature, the Governor, or the Arkansas Department of Health, pursuant to the August 11, 2021 Safe Schools Plan, as it affects Petitioners and their children, arbitrarily and illegally issued its own mandate for Face Coverings, thereby ordering that “[all students in kindergarten through the 12th grade, staff, and visitors shall be required to wear a mask or face covering (a) while attending school or an indoor school function in any school building, District facility, or (b) when riding in school-provided transportation.”

23. Moreover, and seemingly contrary to the 2019 Rules regarding quarantine of persons exposed to a communicable disease, the Safe Schools Plan arbitrarily provides that “[i]ndividuals exposed to a confirmed case of COVID-19,” who should be subject to quarantine, “will not need to quarantine if the individual exposed has no symptoms and both the infected and exposed individual consistently and correctly were wearing a mask.”

24. Fundamentally, the police power of the state resides in the state legislature, not in the Governor or the Arkansas Department of Health unless circumstances as they have been anticipated by legislation have occurred and been delegated to an administrative agency, and certainly not with any local school board.

25. The Bentonville School board, therefore, had no authority to issue a face coverings rule for children that infringes upon the individual liberties guaranteed to citizens of the State of Arkansas and in particular to Petitioners, in the care, custody and management of their children

recognized under the 14th Amendment to the U.S. Constitution, and Article 2, Section 29 of the Arkansas Constitution.

26. Moreover, the mask mandate is not based on any authority of the Arkansas Department of Health and is, therefore, unconstitutional as applied to Petitioners and their children, as well as being arbitrary and capricious in general as made generally applicable to all students in Bentonville schools.

27. The mask mandate issued by Respondent is, therefore, illegal and unenforceable by the schools as set forth on Page 6 of the Plan as “[s]tudents who refuse to wear a face covering at school or at a school function under this Emergency Policy shall be subject to discipline consistent with District Policy and exclusion from on-site instruction.”

28. That Petitioners have the constitutional right to refuse to place face coverings on their children in their absolute discretion and enforcement of the face coverings mandate as contained in the Bentonville Safe Schools Plan for school year 2021-22 dated August 11, 2021 should be permanently enjoined.

29 It is incumbent upon this Court in determining the rights of Petitioners under the U.S. and Arkansas constitutions to declare that the fundamental liberty interests of parents for the care, custody and management of their children shall not be infringed by the Bentonville School Board in the form of face coverings mandates issued without legal authority and that said mandate found on Page 5 of the Bentonville School Safe Schools Plan dated August 11, 2021 should be enjoined.

30. A.C.A. § 16-111-110 provides that the Court may make such award of costs as may seem equitable and just.

WHEREFORE, Plaintiff prays for the judgment of this Court that it is the fundamental right of Petitioners as recognized under the 14th Amendment to the United States Constitution and Article 2, Section 29 of the Arkansas Constitution in the care, custody and management of their children, and that, therefore, the face coverings mandate contained in the Bentonville Schools Safe Schools Plan dated August 11, 2021 is void and unenforceable as having been issued without legal authority and without due process, for a permanent injunction of said mask mandate, for an award of costs including reasonable attorneys' fees as set forth in A.C.A. § 16-111-110, and for such other and further relief the Court deems just and proper.

[Verification to follow.]

Respectfully submitted,

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