

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

The State of Missouri ex rel.,)	
Eric S. Schmitt,)	
)	
Plaintiff,)	
v.)	No.: 21BA-CV02754
)	
)	
COLUMBIA PUBLIC SCHOOLS, and all others)	
similarly situated, et al.,)	
)	
Defendants.)	

INTERVENOR-DEFENDANT A.M., M.L., AND A.D.’s ANSWER AND AFFIRMATIVE DEFENSES

Comes now Intervenor-Defendant A.M., by and through her parent and next friend Ashley Irwin, Intervenor-Defendant M.L., by and through his parent and next friend Christopher LaCour, Intervenor-Defendant A.D., by and through her parent and next friend Alison Durphy, and as their Answer, Responses, and Affirmative Defenses to the Petition filed herein state as follows:

1. The allegations in ¶ 1 contain legal conclusions to which no response is required; the allegations in ¶ 1 are not factual allegations and therefore no response is required; to the extent any facts are asserted in an attempt to state a claim against Defendants, such facts are denied.
2. Intervenor-Defendants deny the allegations in ¶ 2.
3. Intervenor-Defendants deny the allegations in ¶ 3.
4. Intervenor-Defendants deny the allegations in ¶ 4.
5. Intervenor-Defendants deny the allegations in ¶ 5.
6. Intervenor-Defendants deny the allegations in ¶ 6. The allegations in ¶ 6 also contain a legal conclusion to which no response is required.

7. Intervenor-Defendants are without sufficient information or knowledge to admit or deny the allegations in ¶ 7, and therefore deny those allegations. The allegations in ¶ 7 also contain a legal conclusion to which no response is required.

8. Intervenor-Defendants deny the allegations in ¶ 8. The allegations in ¶ 8 also contain a legal conclusion to which no response is required.

9. Intervenor-Defendants admit only that “some public school districts require all students to wear a mask on school buses, school property, and while engaging in school activities.” Intervenor-Defendants deny all other allegations in ¶ 9. The allegations in ¶ 9 also contain legal conclusions to which no response is required.

10. Intervenor-Defendants are without sufficient information or knowledge to admit or deny the allegations in ¶ 10, and therefore deny those allegations.

11. Intervenor-Defendants are without sufficient information or knowledge to admit or deny the allegations in ¶ 11, and therefore deny those allegations.

12. Intervenor-Defendants are without sufficient information or knowledge to admit or deny the allegations in ¶ 12, and therefore deny those allegations. The allegations in ¶ 12 also contain legal conclusions to which no response is required.

13. Intervenor-Defendants are without sufficient information or knowledge to admit or deny the allegations in ¶ 13, and therefore deny those allegations.

14. Intervenor-Defendants are without sufficient information or knowledge to admit or deny the allegations in ¶ 14, and therefore deny those allegations.

15. Intervenor-Defendants are without sufficient information or knowledge to admit or deny the allegations in ¶ 15, and therefore deny those allegations.

16. Intervenor-Defendants admit the allegations in ¶ 16.

17. Intervenor-Defendants admit that Eric S. Schmitt is the 43rd Attorney General of the State of Missouri as alleged in ¶ 17 and that § 27.060, RSMo, speaks for itself.

18. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 18, and therefore deny those allegations.

19. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 19, and therefore deny those allegations.

20. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 20, and therefore deny those allegations.

21. Intervenor-Defendants admit the allegations in ¶ 21.

22. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 22, and therefore deny those allegations.

23. Intervenor-Defendants admit the allegations in ¶ 23.

24. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 24, and therefore deny those allegations.

25. Intervenor-Defendants admit that Dr. Brian Yearwood is the Superintendent of Columbia Public Schools and that he is sued in his official capacity as alleged in ¶ 25. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the remaining allegations in ¶ 25, and therefore deny those allegations.

26. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 26, and therefore deny those allegations.

27. The allegations in ¶ 27 incorporate other allegations and therefore require no separate response.

28. Intervenor-Defendants admit the allegations in ¶ 28 but deny any allegation that COVID-19 symptoms are temporary in nature.

29. The allegations in ¶ 29 are not factual and require no response.

30. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 30, and therefore deny those allegations. Data reported on the Missouri Department of Health & Senior Services COVID-19 dashboard, a public document available at <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/data/public-health/statewide.php>, speaks for itself; however, COVID-19 data and statistics are changing on a daily basis as the virus continues to spread throughout Missouri.

31. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 31, and therefore deny those allegations.

32. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 32, and therefore deny those allegations. The cited material speaks for itself.

33. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 33, and therefore deny those allegations. The cited material speaks for itself.

34. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 34, and therefore deny those allegations. The cited material speaks for itself.

35. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 35, and therefore deny those allegations. The cited material speaks for itself.

36. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 36, and therefore deny those allegations. The cited material speaks for itself.

37. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 37, and therefore deny those allegations. The cited material speaks for itself.

38. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 38, and therefore deny those allegations. The cited material speaks for itself.

39. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 39, and therefore deny those allegations. The cited material speaks for itself.

40. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 40, and therefore deny those allegations. The cited material speaks for itself.

41. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 41, and therefore deny those allegations. The cited material speaks for itself.

42. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 42, and therefore deny those allegations.

43. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 43, and therefore deny those allegations.

44. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 44, and therefore deny those allegations. The cited material speaks for itself.

45. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 45, and therefore deny those allegations. The cited material speaks for itself.

46. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 46, and therefore deny those allegations. The cited material speaks for itself.

47. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 47, and therefore deny those allegations. The cited material speaks for itself.

48. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 48, and therefore deny those allegations. The cited material speaks for itself.

49. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 49, and therefore deny those allegations. The cited material speaks for itself.

50. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 50, and therefore deny those allegations. The cited material speaks for itself.

51. Intervenor-Defendants admit that the COVID-19 vaccine was available to certain individuals in March 2021 but is without sufficient information or knowledge to either admit or

deny the allegation that “teachers in Missouri have been eligible” to receive the vaccination since early March 2021 and therefore deny those allegations in ¶ 51.

52. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 52, and therefore deny those allegations.

53. Intervenor-Defendants deny the allegations in ¶ 53.

54. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 54, and therefore deny those allegations. The cited material speaks for itself.

55. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 55, and therefore deny those allegations. The cited material speaks for itself.

56. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 56, and therefore deny those allegations. The cited material speaks for itself.

57. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 57, and therefore deny those allegations. The cited material speaks for itself.

58. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 58, and therefore deny those allegations. The cited material speaks for itself.

59. Intervenor-Defendants deny the allegations in ¶ 59.

60. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 60, and therefore deny those allegations. The cited material speaks for itself.

61. Intervenor-Defendants deny this allegation.

62. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 62, and therefore deny those allegations. The cited material speaks for itself.

63. The allegations in ¶ 63 are vague and ambiguous and therefore Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations, and therefore deny those allegations.

64. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 64, and therefore deny those allegations. The cited material speaks for itself.

65. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 65, and therefore deny those allegations. The cited material speaks for itself.

66. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 66, and therefore deny those allegations. The cited material speaks for itself.

67. Intervenor-Defendants admit that the cited material in ¶ 67 states: “[t]he Columbia City Council voted 3-3 on the proposed mask mandate. The council needed a unanimous vote to pass the proposed city ordinance. Councilmember Ian Thomas was not in attendance.” The cited material speaks for itself.

68. Intervenor-Defendants admit the allegation in ¶ 68 that the Columbia Public Schools instituted a mask mandate in advance of the 2021-2022 academic school year. The cited material speaks for itself.

69. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 69, and therefore deny those allegations.

70. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 70, and therefore deny those allegations. The cited material speaks for itself.

71. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 71, and therefore deny those allegations.

72. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 72, and therefore deny those allegations.

73. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 73, and therefore deny those allegations.

74. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 74, and therefore deny those allegations.

75. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 75, and therefore deny those allegations.

76. The allegations contained in ¶ 76 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

77. The allegations contained in ¶ 77 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

78. Intervenor-Defendants admit that the State is attempting to certify a class of defendant school districts to the extent that is alleged in ¶ 78. The State's request for relief speaks for itself. Intervenor-Defendants deny that any class has been or should be certified.

79. Intervenor-Defendants admit that the State is attempting to certify a class of defendant school districts to the extent that is alleged in ¶ 79. Intervenor-Defendants deny that any class has been or should be certified.

80. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 80, and therefore deny those allegations.

81. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 81, and therefore deny those allegations.

82. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 82, and therefore deny those allegations.

83. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 83, and therefore deny those allegations.

84. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 84, and therefore deny those allegations. The allegations in ¶ 84 also contain legal conclusions to which no response is required.

85. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 85, and therefore deny those allegations. The allegations in ¶ 85 also contain legal conclusions to which no response is required.

86. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 86, and therefore deny those allegations. The allegations in ¶ 86 also contain legal conclusions to which no response is required.

87. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 87, and therefore deny those allegations. The allegations in ¶ 87 also contain legal conclusions to which no response is required.

88. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 88, and therefore deny those allegations. The allegations in ¶ 88 also contain legal conclusions to which no response is required.

89. Intervenor-Defendants admit the allegations in ¶ 89.

90. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 90, and therefore deny those allegations.

91. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 91, and therefore deny those allegations. The allegations in ¶ 91 also contain legal conclusions to which no response is required.

92. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 92, and therefore deny those allegations. The allegations in ¶ 92 also contain legal conclusions to which no response is required.

93. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 93, and therefore deny those allegations. The allegations in ¶ 93 also contain legal conclusions to which no response is required.

94. The allegations in ¶ 94 are not factual and require no response. Intervenor-Defendants incorporate by reference all answers in preceding paragraphs as though fully set forth herein.

95. The allegations contained in ¶ 95 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied. The relief requested speaks for itself.

96. The allegations contained in ¶ 96 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

97. Intervenor-Defendants admit that mask mandates require school children attending public schools in which mask mandates have been instituted to wear masks. The allegations contained in ¶ 97 regarding whether the mask mandate is an agency decision is a legal conclusion that need be neither admitted nor denied.

98. The allegations contained in ¶ 98 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

99. The allegations contained in ¶ 99 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

100. The allegations contained in ¶ 100 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied. The cited material speaks for itself.

101. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 101, including subparts (a)-(j), and therefore deny those allegations. The cited material speaks for itself.

102. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 102, and therefore deny those allegations.

103. The allegations contained in ¶ 103 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

104. The allegations in ¶ 104 are not factual and require no response. Intervenor-Defendants incorporate by reference all answers in preceding paragraphs as though fully set forth herein.

105. The request for relief speaks for itself; to the extent any facts are asserted in ¶ 105, such facts are denied.

106. Intervenor-Defendants admit that Columbia Public Schools is a political subdivision. Allegations in ¶ 106 regarding the application of § 67.265, RSMo, are legal conclusions need not be admitted nor denied.

107. Intervenor-Defendants admit that public schools are governed by boards of education. Allegations in ¶ 107 regarding the application of § 67.265, RSMo, are legal conclusions need not be admitted nor denied.

108. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 108, and therefore deny those allegations.

109. The allegations contained in ¶ 109 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

110. The allegations contained in ¶ 110 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

111. The allegations contained in ¶ 111 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

112. The allegations contained in ¶ 112 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

113. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 113, and therefore deny those allegations.

114. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 114, and therefore deny those allegations.

115. Whether § 67.265, RSMo., applies to this case as alleged in ¶ 115 is a legal conclusion that need not be admitted nor denied.

116. Whether § 67.265, RSMo., applies to this case as alleged in ¶ 116 is a legal conclusion that need not be admitted nor denied.

117. Whether § 67.265, RSMo., applies to this case as alleged in ¶ 117 is a legal conclusion that need not be admitted nor denied.

118. Whether § 67.265, RSMo., applies to this case as alleged in ¶ 118 is a legal conclusion that need not be admitted nor denied.

119. The allegations in ¶ 119 are not factual and require no response. Intervenor-Defendants incorporate by reference all answers in preceding paragraphs as though fully set forth herein.

120. The allegations contained in ¶ 120 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied. The relief requested speaks for itself.

121. The allegations contained in ¶ 121 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

122. The allegations contained in ¶ 122 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

123. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 123, and therefore deny those allegations.

124. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 124, and therefore deny those allegations.

125. Intervenor-Defendants are without sufficient information or knowledge to either admit or deny the allegations in ¶ 125, and therefore deny those allegations.

126. The allegations contained in ¶ 126 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

127. The allegations contained in ¶ 127 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

128. The allegations contained in ¶ 128 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

129. The allegations contained in ¶ 129 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

130. The allegations contained in ¶ 130 are legal conclusions that need be neither admitted nor denied; to the extent any facts are asserted, such facts are denied.

ADDITIONAL RESPONSES AND AFFIRMATIVE DEFENSES

Intervenor-Defendants A.M., M.L., and A.D., by and through Ashley Irwin, Christopher LaCour, and Alison Durphy set forth the following additional responses and affirmative defenses to the State's Petition:

1. Intervenor-Defendants deny each allegation in the Petition not otherwise responded to or specifically admitted herein.
2. Intervenor-Defendants deny that the State is entitled to any of the relief requested.
3. The State uses the term "Mask Mandate" repeatedly but fails to ever define it, and then requests relief with respect to the "Mask Mandates," another undefined term.
4. In a case involving the mask (or face covering) requirement in St. Louis County, a September 20, 2021 court order noted "that the Attorney General and Defendants all agree that

there is a serious health risk occurring in the State of Missouri Relating to the COVID-19 pandemic and its numerous variants.” See *Missouri ex rel. Eric Schmitt v. Page, et al.*, Case No. 21SL-CC03334, (21st Jud. Cir.), Court Order dated September 20, 2021, at ¶ 5, available at https://ago.mo.gov/docs/default-source/press-releases/2021-09-20-stl-county-order.pdf?sfvrsn=b23f6392_2.

5. There has been a death of a child in the St. Louis area attributed to COVID-19. *Id.*

6. Intervenor-Defendant A.M. is a five-year-old child attending fulltime in-person public school in the Blue Springs School District in Blue Springs.

7. Intervenor-Defendant A.M. is in kindergarten.

8. Intervenor-Defendant A.M. is too young to receive a COVID-19 vaccine.

9. Intervenor-Defendant A.M. is a student with a disability, cystic fibrosis, a progressive, genetic disorder that causes chronic lung infections, severe lung damage as well as damage to other organs, limits the ability to breathe over time, and puts A.M. at a heightened risk of serious illness due to COVID-19, long-term effects from COVID-19, and substantially limits one or more of her major life activities. Over time, cystic fibrosis limits one’s ability to care for oneself because so much effort and energy is exerted breathing that there is not sufficient energy to perform other tasks or activities. A.M. is on a high calorie and high fat diet so that her body can absorb sufficient nutrients. A.M.’s sleep is impaired due to frequent and chronic coughing. A.M.’s learning has been impaired because she has had to miss school due to frequent hospitalizations. A.M.’s concentration is impacted when she suffers from an infection or illness.

10. Intervenor-Defendant M.L. is an 11-year-old child attending a fulltime in-person public school in the Park Hill School District in Kansas City.

11. Intervenor-Defendant M.L. is in sixth grade.

12. Intervenor-Defendant M.L. is too young to receive a COVID-19 vaccine.

13. Intervenor-Defendant M.L. is a student with a disability, Langerhans Cell Histiocytosis (LCH), a rare disorder that can damage tissue or cause lesions on the body. The cells affected by this disorder are the cells that normally help a person's body fight infections.

14. The primary treatment for Intervenor-Defendant M.L.'s LCH is chemotherapy. M.L. receives chemotherapy treatment every three weeks.

15. Intervenor-Defendant M.L. was diagnosed with LCH in early 2021 and began receiving chemotherapy treatment in January 2021. His chemotherapy will continue until at least January 2022.

16. Intervenor-Defendant M.L.'s diagnosis and treatment have weakened his immune system, making him immunocompromised.

17. Intervenor-Defendant M.L.'s diagnosis and treatment for LCH put him at heightened risk of serious illness due to COVID-19, long-term effects from COVID-19, and substantially limits one or more of his major life activities. The chemotherapy depresses M.L.'s immuno-responses and any infection or fever can turn serious very quickly. Because of this, M.L. must be extra vigilant about his own hygiene in order to stay healthy. Chemotherapy and the accompanying steroid regimen prescribed to increase his appetite and prevent him from losing weight has caused him to gain weight over a short period of time and the result of this is that any kind of physical activity is painful and difficult. The treatment also negatively impacts M.L.'s sleep causing him to have several nights a month where he gets very little or no sleep. M.L.'s walking is impaired and he now attends physical therapy weekly in an attempt to keep his leg muscles and connective tissue in a condition that will allow him to walk without limping. M.L. gets fatigued easily which makes it difficult to stand for a long period of time and also affects his

ability to concentrate. M.L.'s LCH is centered in his spine, limiting his ability to lift anything or bend over. Since his diagnosis, M.L. has had three episodes where breathing became so painful and difficult that he was taken to the emergency room.

18. Intervenor-Defendant A.D. is a 10-year-old child attending fulltime in-person public school in the St. Louis City School District in St. Louis.

19. Intervenor-Defendant A.D. is in fifth grade.

20. Intervenor-Defendant A.D. is too young to receive a COVID-19 vaccine.

21. Intervenor-Defendant A.D. is a student with a disability. A.D. was born with microcephaly (missing brain matter). A.D. has a seizure disorder, is grossly developmentally delayed, and has a history of aspiration pneumonia. A.D. cannot walk, talk, or care for herself. She requires fulltime assistance with all major life functions and is completely dependent on the care of others for survival and to complete daily tasks. A.D.'s condition puts her at heightened risk of serious illness due to COVID-19, long-term effects from COVID-19, and substantially limits one or more of her major life activities.

22. Intervenor-Defendants are persons with a disability under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act, as amended. *See* 29 U.S.C. § 705(9)(B); 42 U.S.C. § 12102(1).

23. The Blue Springs School District has implemented a mask mandate for all students and teachers in an attempt to limit the spread of COVID-19, including to A.M. and other students with disabilities at heightened risk from COVID-19.

24. The Park Hill School District has implemented a mask mandate for all students and teachers in an attempt to limit the spread of COVID-19, including to M.L. and other students with disabilities at heightened risk from COVID-19.

25. The St. Louis City School District has implemented a mask mandate for all students and teachers in an attempt to limit the spread of COVID-19, including to A.D. and other students with disabilities at heightened risk from COVID-19.

26. Parents of children with disabilities that put them at risk of severe illness or possible death should they contract COVID-19 face a dilemma: whether to send their children to school and risk their health and life or keep them at home at the expense of their education, mental health, and development.

27. “According to the American Academy of Pediatrics (AAP), ‘the Delta variant has created a new and pressing risk to children and adolescents across this country’ and pediatric cases of COVID-19 have been ‘skyrocketing.’” Letter from American Academy of Pediatrics to Acting FDA Commissioner Janet Woodcock (Aug. 5, 2021), https://downloads.aap.org/DOFA/AAP%20Letter%20to%20FDA%20on%20Timeline%20for%20Authorization%20of%20COVID-19%20Vaccine%20for%20Children_08_05_21.pdf.

28. A September 9, 2021 AAP report summarizing State-level data indicates that cases of COVID-19 in children as well as hospitalizations are rising. *See* <https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20-%20Children%20and%20COVID-19%20State%20Data%20Report%209.9%20FINAL.pdf>.

29. Children “with medical complexity, with genetic, neurologic, metabolic conditions, or with congenital heart disease might be at increased risk for severe illness from COVID-19.” *See* <https://www.cdc.gov/coronavirus/2019-ncov/hcp/pediatric-hcp.html>. Children with obesity, diabetes, asthma, chronic lung disease, sickle cell disease, and immunosuppression are also likely to be at increased risk of severe illness from COVID-19. *Id.*

30. Denying school-aged children a free public education violates the U.S. Constitution. *Plyler v. Doe*, 457 U.S. 202, 230–31 (1982).

31. Federal law requires that children have the opportunity to receive an education in the least-restrictive and most-integrated environment, without putting lives at risk.

32. The proposed class of Defendant Public School Districts are public entities subject to Title II of the ADA.

33. Prohibiting mask mandates in public schools would exclude Intervenor-Defendants from participation in and the benefits of a safe public education in violation of the ADA because the ADA requires that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

34. Prohibiting mask mandates excludes and/or causes Intervenor-Defendants to be excluded from participation in and the benefits of a safe public education. 42 U.S.C. § 12132; 28 C.F.R. § 35.130.

35. Prohibiting mask mandates fails to make a reasonable modification of authorizing universal masking in schools in order to give students with disabilities, including Intervenor-Defendants, equal access to education. 28 C.F.R. § 35.130(b)(7).

36. The State seeks to prevent the Defendant School Districts from making a reasonable modification for students with disabilities under circumstances where it is required. 28 C.F.R. § 35.130(b)(7).

37. The State’s action, if successful, would cause the public schools in Missouri to fail to make services, programs, and activities “readily accessible” to individuals with disabilities. 28 C.F.R. § 35.150.

38. The State's requested relief would create a policy that (1) has the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability and that has the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities, and/or (2) perpetuates the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State. 28 C.F.R. § 35.130 (b)(3)(i) & (iii).

39. The State's requested relief would prevent a public entity from administering services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. § 35.130(d). Relegating students with disabilities into a separate classroom or remote learning "for their safety" would violate this integration mandate.

40. The State does not have the authority to circumvent the ADA and protections for students with disabilities.

41. As public entities and instrumentalities of the State, the Defendant School Districts are prohibited from providing "a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others." 28 C.F.R. § 35.130(b)(1)(iii).

42. The Defendant School Districts are recipients of federal financial assistance and are obligated to provide a free appropriate public education to each qualified individual with a disability who is in the recipient's jurisdiction. 34 C.F.R. § 104.33.

43. Prohibiting mask mandates would violate the rights of students, including Intervenor-Defendants under Section 504 of the Rehabilitation Act by discriminating on the basis of disability.

44. Prohibiting mask mandates would cause the Defendant School Districts to violate the regulations and provisions of Section 504 of the Rehabilitation Act as follows:

- a. The prohibition would exclude, and/or cause Defendant School Districts to exclude, Intervenor-Defendants from the participation in public education in violation of 29 U.S.C. § 794(a), 42 U.S.C. § 12132; and 34 C.F.R. § 104.4(a) and (b)(1)(i);
- b. The prohibition would be a policy that has the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability with the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities. 34 C.F.R. § 104.4 (b)(4);
- c. The State's prohibition fails to permit a public entity to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 34 C.F.R. § 104.4(b)(2).

45. Intervenor-Defendants qualify under Section 504 of the Rehabilitation Act because they meet the essential eligibility requirements for public education and for the services offered by public school districts at all times material hereto.

46. The State lacks the authority to mandate a policy that violates Section 504 of the Rehabilitation Act.

47. The State's requested relief of a prohibition on mask mandates is unlawful because it is preempted by the American Rescue Plan Act of 2021 (ARPA).

48. Federal law is the "supreme Law of the Land," and must prevail over any contrary provision of state law. U.S. CONST. art. VI, cl. 2.; *Felder v. Casey*, 487 U.S. 131, 138 (1988) ("[A]ny state law, however clearly within a State's acknowledged power, which interferes with

or is contrary to federal law, must yield.”). Under the doctrine of preemption, a state law is preempted by federal law when it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Pac. Gas & Elec. Co. v. State Energy Res. Conserv. & Dev. Comm’n*, 461 U.S. 190, 204 (1983).

49. The United States Congress enacted ARPA as a comprehensive legislative response to the COVID-19 pandemic. According to House Budget Committee Chairman John Yarmuth, the Act was enacted to “provide economic relief to nearly every American family and hard-working individual, get vaccines into the arms of millions of Americans, *and get our schools open safely.*”¹

50. To that end, ARPA allocated huge sums of money to state school districts. Missouri school districts were allocated over \$1.9 billion in Elementary and Secondary School Emergency Relief (ESSER) to prepare for a safe return to in-person schooling.² Section 2001(e)(2)(Q) of ARPA explicitly gives local school districts the authority to use these ARPA ESSER funds for “developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.” *Id.* § 2001(e)(2)(Q). The CDC’s guidance specifically recommends universal indoor masking in all K-12 schools.

51. The interim guidance for ESSER adopted by the U.S. Department of Education (USDOE) sheds further light on the intent and purpose of ARPA. In directing school districts how their ARPA funds must be used, USDOE advised that each district must explain: “the extent to which

¹ <https://budget.house.gov/news/press-releases/house-sends-yarmuth-led-american-rescue-plan-act-president-biden-s-desk> (last visited Sept. 20, 2021).

² <https://www.mobudget.org/arp-state-local-funds-mo/>.

it has adopted policies, and a description of any such policies, on each of the following safety recommendations established by the CDC...”, specifically including “universal and correct wearing of masks.” *See* Am. Rescue Plan Act Elementary and Secondary School Emergency Relief Fund, 86 Fed. Reg. 21195, 21200 (April 22, 2021).

52. Although USDOE did not go so far as to mandate that local school districts adopt CDC guidance, the department’s interim guidance required each district to “describe in its plan the extent to which it has adopted the key prevention and mitigation strategies identified in the guidance,” which include both “[u]niversal and correct wearing of masks[.]” *Id.* Of particular relevance here, the interim guidance further directed local school districts to pay special attention to “those students disproportionately impacted by the COVID-19 pandemic, including . . . children with disabilities.” *Id.*

53. To mitigate spread of COVID-19, “[t]he CDC recommends ‘universal indoor masking for all teachers, staff, students, and visitors to K-12 schools, regardless of vaccination status.’” *Guidance for Covid-19 Prevention in K-12 Schools*, Ctrs. for Disease Control & Prevention (Aug. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>; *see also American Academy of Pediatrics Updates Recommendations for Opening Schools in Fall 2021*, Am. Acad. Pediatrics (July 19, 2021), <https://www.aap.org/en/news-room/news-releases/aap/2021/american-academy-of-pediatrics-updates-recommendations-for-opening-schools-in-fall-2021> (recommending “that everyone older than age [two] wear masks, regardless of vaccination status . . . because a significant portion of the student population is not yet eligible for vaccines, and masking is proven to reduce transmission of the virus and to protect those who are not vaccinated”).

54. Rather than affording discretion to local school boards to develop and implement safety protocols as envisioned by ARPA, the State's requested relief would *prohibit* local school districts, including all Defendant School Districts in the proposed class, from implementing precisely the type of safe return-to-school policies encouraged by ARPA. As explained by Secretary Cardona, a prohibition on mask mandates "restrict[s] the development of local health and safety policies and is at odds with the school district planning process embodied in the U.S. Department of Education's (Department's) interim final requirements."

55. To the extent that Missouri law imposes onerous administrative requirements or obligations upon school districts before they may utilize a universal-masking requirement to accommodate students with disabilities, those requirements or obligations violate and are preempted by the ADA, the Rehabilitation Act, and ARPA; thus, Count I should be dismissed for failure to state a claim upon which relief may be granted.

56. To the extent that the use of a universal-masking requirement to accommodate students with disabilities is restricted or prohibited by § 67.265, § 67 .265 violates and is preempted by the ADA, the Rehabilitation Act, and ARPA; thus, Count II should be dismissed for failure to state a claim upon which relief may be granted.

57. To the extent that § 190.020 or 19 C.S.R. § 20-20-040.2(6) operate to prohibit school districts from accommodating students with disabilities by requiring universal masking, that operation, those provisions, or both, violate and are preempted by the ADA, the Rehabilitation Act, and ARPA; thus, Count III should be dismissed for failure to state a claim upon which relief may be granted.

WHEREFORE, having provided answers and affirmative defenses to the State's Petition, Intervenor-Defendants A.M., M.L., and A.D., by and through Ashley Irwin, Christopher LaCour, and Alison Durphy, respectively, respectfully request that this Court enter judgment in their favor, dismiss the Petition with prejudice, award them their attorneys' fees and costs, and provide to them such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 22, 2021, the foregoing was filed electronically and thereby served upon counsel of record for all parties.

/s/ Anthony E. Rothert