

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

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

Plaintiffs,

v

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

Defendants.

CV - 2021 - 1918

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

AUG 12 2021

RICK WARREN
COURT CLERK

109 _____

PETITION

COME NOW, individual Plaintiffs, Dr. Valerie Ritter, Kimberly Butler, Mary Ann Martin, Dr. Britney Else as parents of students in public school districts within the State of Oklahoma and, Co-Plaintiff, The Oklahoma State Medical Association, whose membership consists of physicians throughout the State of Oklahoma, many of whom are also parents of Oklahoma public school students, and for their claims against Defendants the State of Oklahoma, acting through the 57th Legislature, and The Honorable Kevin Stitt, in his official capacity as Governor of the State of Oklahoma, respectfully state as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Dr. Valerie Ritter, resides in Tulsa County, Oklahoma, where she is a licensed and practicing doctor of Osteopathic medicine, specializing in Pediatrics. Dr. Ritter is also a parent of two children enrolled in the Tulsa Public School System, one of whom is in elementary school and has a history of bronchiectasis and hospitalizations for respiratory distress and pneumonia. As a

pediatric physician, Dr. Ritter took care of a number of patients with COVID-19 last year, but with universal mask and distancing precautions had very few, if any, who contracted COVID from a classmate. Already this summer, Dr. Ritter has seen patients who contracted COVID from a non-masked classmate at camp or summer school.

2. Plaintiff Kimberly Butler resides in Tulsa County, Oklahoma and is the mother of four children who are enrolled in schools within the Tulsa Public School District. Ms. Butler's nine year-old son has medical conditions, including epilepsy and Autism Spectrum Disorder. Ms. Butler has a graduate degree in Public Health, and she has worked on epidemiology projects related to infectious diseases. Presently, Ms. Butler is employed as the Senior Program Officer overseeing Maternal Child Health at the George Kaiser Family Foundation. In addition, Ms. Butler serves on the Board of Directors for a Tulsa hospital and on the City of Tulsa's COVID-19 Testing Task Force. Her *Affidavit* is attached as Exhibit C.

3. Plaintiff Mary Ann Martin resides in Cleveland County, Oklahoma, and is a parent of three daughters who are enrolled in Norman Public Schools. Her eleven year-old daughter has serious health issues and a compromised immune system. Ms. Martin and her husband both work full time and cannot stay at home, which renders online or virtual education unavailable for them as a mitigation effort against COVID-19.

4. Plaintiff Dr. Britney Else is a parent and resident of the City of Broken Arrow, Tulsa County, State of Oklahoma. Dr. Else is also a practicing family-medicine and sports-medicine physician.

5. Plaintiff The Oklahoma State Medical Association ("OSMA") is a domestic not for profit corporation whose mission is simply "Better Health for Oklahoma." OSMA, at a minimum, has

“public interest standing” to be a Plaintiff in these proceedings. (Attached as Exhibit A is an Affidavit of Mary Clarke, M.D., who is the President of OSMA.)

6. Defendant The State of Oklahoma is one of the fifty states that comprise the United States of America. Acting through its 57th Legislature and its Governor, The State of Oklahoma passed and implemented Senate Bill 658, codified at Okla. Stat. tit. 70, §§ 1210.189-1210.191.

7. Defendant the Honorable Kevin Stitt, in his official capacity, is the duly elected and serving Governor of the State of Oklahoma.

8. Both jurisdiction and venue are proper in this Court.

BACKGROUND FACTS

9. The statements and allegations contained in paragraphs 1-6 above are incorporated herein.

10. COVID-19 is a disease caused by the SARS-CoV-2 virus.¹ It is predominantly spread by infected individuals exhaling, coughing, or sneezing droplets containing the virus and may, in some circumstances, be spread through touching contaminated surfaces and touching the eyes, nose, or mouth with hands that have the virus on them.²

11. Governor Kevin Stitt, by Executive Order 2020-07 entered March 15, 2020, declared a state of emergency for all 77 Oklahoma Counties “caused by the impending threat of COVID-19 to the people of this State and the public’s peace, health, and safety.”³

12. Governor Kevin Stitt, by Executive Order 2021-11 entered on May 3, 2021, withdrew and rescinded, effective May 4, 2021, the state of emergency previously declared due to COVID-19.

¹ Frequently Asked Questions <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Basics> (last visited August 11, 2021).

² Frequently Asked Questions <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Spread> (last visited August 11, 2021).

³ <https://www.sos.ok.gov/documents/executive/1913.pdf>

13. The Oklahoma State Department of Health lists the five key prevention strategies for preventing COVID-19 in schools and higher education as: (1) consistent and correct use of masks; (2) physical distancing and/or use of student/staff grouping; (3) handwashing and respiratory etiquette; (4) cleaning and maintaining healthy facilities; and, (5) contact tracing in combination with isolation and quarantine.⁴

14. Senate Bill No. 658 was passed by the Oklahoma Senate on May 25, 2021 and passed by the Oklahoma House of Representatives on May 26, 2021. It was signed into law by Governor Kevin Stitt on May 28, 2021. (A copy of Senate Bill 658 is attached as Exhibit B to this Petition).

15. Senate Bill No. 658 is codified at Oklahoma Statute Title 70, Sections 1210.189-1210.191.

16. Senate Bill No. 658 created two new sections of law and amended a third section.

17. Newly created Section 1210.189 prohibits a “board of education of a public school district or a technology center school district, the board of regents of an institution within The Oklahoma State System of Higher Education, the governing board of a private postsecondary educational institution, the Oklahoma State Regents for Higher Education, the State Board of Education or the State Board of Career and Technology Education” from requiring a vaccination against Coronavirus disease 2019 (COVID-19)” or requiring a “vaccine passport” as a condition of admittance to or attendance of the school or institution and from implementing a mask mandate for students who have not been vaccinated against COVID-19.

18. Newly created Section 1210.190 prohibits a board of education of a public school district or a technology center school district from implementing a mandate to wear a mask or any other medical device unless first consulting with the local county health department or city-county health

⁴https://oklahoma.gov/content/dam/ok/en/covid19/documents/resources-and-recommendations/Preventing_COVID_in_Schools_July2021_Final.pdf

department within the jurisdiction of where the board is located and when the jurisdiction of where the board is located is under a current state of emergency declared by the Governor.

19. Section 1210.191 was amended to change references contained therein from the State Board of Health to the Commissioner and to add Subsection E requiring the State Board of Education to ensure that each school district in Oklahoma provides notice to parents of immunization record information or exemption therefrom required for school enrollment.

20. Plaintiffs seek to enjoin the State from enforcing Oklahoma Statute Title 70, Sections 1210.189 and 1210.191, and to have those sections declared unconstitutional.

CAUSES OF ACTION

I. Violation of Equal Protection

21. The statements and allegations contained in the foregoing paragraphs are incorporated herein.

22. The newly created statutory Sections 1210.189 and 1210.190 of Title 70, arising from the passage and implementation of SB658, are unconstitutional both on their face and as applied, in violation of equal protection. OKLA. CONST. art. 2, § 7.

23. Equal protection ensures that no state “deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend XIV. The Oklahoma Constitution does not have an express equivalent to the federal Equal Protection Clause; however, the Oklahoma Supreme Court has identified a functional equivalent in Oklahoma’s due process section. OKLA. CONST. art. 2, § 7; *Hendricks v. Jones*, 2013 OK 71, ¶ 8, 349 P.3d 531, 534. Plaintiffs do not invoke any provision of a federal statute or the United States Constitution.

24. As enacted, Oklahoma Statutes Title 70, §§ 1210.189 and 1210.190 apply only to public school districts, public educational boards, and private postsecondary educational institutions,

which arbitrarily treats students and staff members of those identified entities differently from students and staff members of non-public educational institutions with no rational basis for the disparate treatment.

25. No rational basis exists to prohibit mask mandates in one, but permit them in the other.

II. Violation of Oklahoma Constitution Article 5, Section 46

26. The statements and allegations contained in the foregoing paragraphs are incorporated herein.

27. Oklahoma Constitution Article 5, Section 46 prohibits the enactment of special laws regulating the affairs of cities or school districts.

28. Oklahoma Statutes Title 70, §§ 1210.189 and 1210.190 regulate the affairs of school districts by banning public school districts from implementing mask mandates, absent certain circumstances.

29. Oklahoma Statutes Title 70, §§ 1210.189 and 1210.190 regulate the affairs of cities and school districts in banning public school districts from implementing mask mandates unless a state of emergency has been declared by the Governor. As such, even if a city were to enact a mask mandate, if the Governor had not declared a state of emergency for the municipality in which the school district is located, the school district would be placed in an impossible predicament, *i.e.* does it violate the city's mask mandate to remain in compliance with Oklahoma law or violate Oklahoma Statute Title 70 §§ 1210.189 and/or 1210.190 to remain in compliance with the city's mask mandate. The city would, also, be placed in an untenable predicament regarding enforcement of its mask mandate against a school district located in its jurisdiction.

30. Special laws such as those at issue regulating the affairs of cities and school districts are unconstitutional.

III. Senate Bill 658 Violates Article 5, Section 57 of the Oklahoma Constitution

31. The statements and allegations contained in paragraphs 1-30 above are incorporated herein.

32. The Oklahoma Constitution at Article 5, § 57, requires that every act of the Legislature embrace only one subject.

33. On its face, Senate Bill 658 encompasses more than one subject and more than one theme. It concerns the separate and distinct issues of public health (required immunizations and information to parents) and personal autonomy (prohibition of requiring COVID-19 vaccine and restricting conditions for public educational institutions to enact mask mandates).

34. By embracing more than one subject, Senate Bill 658 is unconstitutional on its face in violation of Oklahoma Constitution Article 5, Section 57.

IV. Violation of Due Process

35. The statements and allegations contained in paragraphs 1-34 above are incorporated herein.

36. The newly created statutory Sections 1210.189 and 1210.190 of Title 70, arising from the passage and implementation of SB658, are unconstitutional both on their face and as applied, in violation of due process. OKLA. CONST art. 2, § 7.

37. The due process section of the Oklahoma Constitution is co-extensive with and protects, at a minimum, those rights which are also provided by the Fourteenth Amendment to the United States Constitution.

38. Due process requires that legislation have a rational relationship to a legitimate state interest. Legislation that is unreasonable or arbitrary is unconstitutional even if it does not violate any procedural requirements of the Constitution. A citizen may successfully challenge

a statute or ordinance if the measure is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.

39. As enacted, Oklahoma Statutes Title 70, §§ 1210.189 and 1210.190 have no rational relationship to a legitimate state interest.

V. Violation of Oklahoma Children's Right To A Free Education In A Safe Environment.

40. The statements and allegations contained in paragraphs 1-34 above are incorporated herein.

41. The newly created statutory Sections 1210.189 and 1210.190 of Title 70, arising from the passage and implementation of SB658, are unconstitutional both on their face and as applied, in violation of right of Oklahoma children to a free education in a safe environment. OKLA. CONST art. 1, § 5.

42. The Oklahoma Constitution provides in Article 1, § 5 that there will be established a system of public schools, open to all children of the state.

43. The Oklahoma Constitution provides for mandatory school attendance in Article 13, § 4.

44. Because the right to a free education in a safe environment is provided by the Oklahoma Constitution, it is a fundamental right.

45. As enacted, Oklahoma Statutes Title 70, §§ 1210.189 and 1210.190 deprive Oklahoma children of their fundamental right to a free education in a safe environment.

46. One of the liberties secured by the Due Process Clause of the Oklahoma Constitution is the right of children to not have the government endanger or jeopardize their health. If Senate Bill 658 is enforced, many children will be deprived of this liberty without being afforded Due Process of Law, in that there is no rational basis for depriving them of the opportunity to learn

in a classroom where feasible mitigation measures are used – the same measures that are prohibited by Senate Bill 658.

VI. Injunctive and Declaratory Relief

47. The statements and allegations contained in paragraphs 1-46 above are incorporated herein.

48. As stated above, certain provisions of Senate Bill 658, codified as Oklahoma Statute Title 70, §§ 1210.189-1210.191, are unconstitutional and cannot be enforced.

49. With school having already begun in some districts and on the cusp of beginning in other districts across the State, if Oklahoma’s public education institutions are precluded from evaluating the impact of COVID-19 and the emerging variants in their specific locations and implementing necessary safety precautions, including mask mandates, immediate and irreparable injury, loss, or damage will result.

50. The State should be enjoined from enforcing Oklahoma Statute Title 70, §§ 1210.189-1210.191, and injunctive relief should be issued. This Petition is not based upon, and specifically disclaims any reliance on, federal law or the United States Constitution.

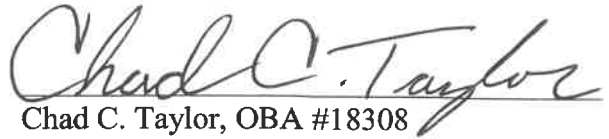
51. Per Local Rule 13(c), Plaintiffs do not seek issuance of any *ex parte* order, but do seek declaratory relief and entry of a temporary injunction and, upon a determination of the merits, a permanent injunction.

52. Plaintiffs will file a separate Motion for Temporary Injunction with supporting affidavits and a supporting brief. All facts, statements, arguments, and authorities set forth in the separate Motion, including Affidavits and authorities, are to be incorporated herein.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants that Oklahoma Statute Title 70, §§ 1210.189-1210.191 be found unconstitutional, and that injunctive relief be granted to prevent the Defendants from enforcement thereof.

Respectfully submitted,

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



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and

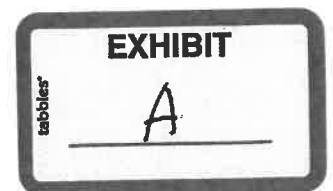
Donald M. Bingham, OBA #794
Thomas M. Askew, OBA #13568
Wm. Gregory James, OBA # 4620
Sharon K. Weaver, OBA #19010
Stephanie L. Theban, OBA #10362
502 West 6th Street
Tulsa, OK 74119-1010
(918) 587-3161
(918) 587-9708 (Facsimile)

Attorneys for Plaintiffs

AFFIDAVIT OF OKLAHOMA STATE MEDICAL ASSOCIATION

I, Mary Clarke, MD, acting in my capacity as President of the Oklahoma State Medical Association, state under penalty of perjury pursuant to the laws of the state of Oklahoma that the following is true and correct to the best of my knowledge.

1. The Oklahoma State Medical Society (OSMA) is a professional society representing nearly 4,000 physicians and medical students across the state.
2. The mission of the OSMA is simply "Better Health for Oklahoma."
3. From the very beginning, OSMA has been one of the leading resources providing timely and factual data on the COVID crisis to health care providers, policymakers, the public and the media. OSMA founded the Healthier Oklahoma Coalition, which has helped bring stakeholders together to discuss the most current science and to provide this information to the public through weekly news conferences.
4. Throughout the pandemic, we have promoted the wearing of masks as a scientifically-proven way of helping to mitigate the spread of COVID. Our *Got Mask?* public awareness campaign was named the state's Best Communication Program of the Year by the Oklahoma Society of Association Executives.
5. Data both nationally and here in Oklahoma have shown that communities with mask mandates exhibited significantly lower infection rates and levels of community spread than those without.
6. We fully recognize the importance of in-person learning for children's social development, psychological wellbeing, food security and safety. A return to distance learning is the last thing that any of us want to see. However, by stripping local school boards' ability to implement mask mandates or other mitigation strategies, the State Legislature and Governor have left districts with very few options other than a return to virtual classrooms when the virus inevitably spreads through a school.
7. During the last legislative session, we actively lobbied against the passage of SB 658, arguing that it was an overreach by the state government, that it stripped away the fundamental principle of local control and that it would unnecessarily tie the hands of local school officials in their efforts to combat COVID. Unfortunately, the rise of the delta variant has shown the truth of these statements as school districts are now virtually powerless to do anything to mitigate the spread of a variant that has shown to be much more contagious among children.
8. It is also of note that state leaders took this action knowing full well that children under the age of 12 were not able to be vaccinated.



9. Additionally, there are thousands of children across Oklahoma who, for a variety of medical reasons, cannot safely be vaccinated. Their health and wellbeing are very literally in the hands of those around them. Denying schools the ability to offer even the most minimal levels of community protection places these students at extremely high risk of serious illness and death simply for exercising their basic fundamental right to receive a public education.
10. While the threat of the spread among children is very real, what happens in school also doesn't take place in a vacuum. Children infected in their classroom can take the virus home to other friends and family, further exacerbating the community spread of a deadly disease.
11. The COVID surge impacts more than just COVID patients. Already, many hospitals report not having any available ICU beds and having difficulty transporting critically ill patients. Other facilities have started limiting non-emergency surgeries. Every bed that is occupied with a COVID patient is a bed that is no longer available for victims of heart attacks, strokes or accidents.
12. Every community is different. Not every local school district wants or needs a mask mandate. But those that do should have the right to protect their students as they best see fit without a politically-motivated power grab by state government.
13. We are respectfully asking the Court to recognize the (possibly literally) fatal flaws in this legislation and to allow local school leaders to make the decisions in the best interests of their students and faculty.

AFFIANT FURTHER SAYETH NOT.

Date: August 12, 2021
Oklahoma City, OK

By:



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

An Act

ENROLLED SENATE
BILL NO. 658

By: Standridge, Bullard,
Hamilton, Quinn, Bergstrom,
Rogers, Burns, Murdock,
Jett, Newhouse, Merrick,
Pederson, Paxton, Stephens,
Dahm and Garvin of the
Senate

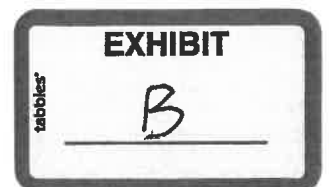
and

West (Kevin), Stearman,
Humphrey, McDugle,
Steagall, Kendrix,
Crosswhite Hader, Roberts
(Sean), Hardin (David),
Olsen, Boles, Lowe (Dick)
and Bashore of the House

An Act relating to schools; amending 70 O.S. 2011, Section 1210.191, which relates to required immunizations; requiring the State Department of Education and school districts to provide certain information to parents; updating statutory term; prohibiting certain entities from implementing specified requirements; establishing criteria for certain entities to implement a mask mandate; specifying requirements for mandate; providing for codification; providing an effective date; and declaring an emergency.

SUBJECT: Schools

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:



SECTION 1. AMENDATORY 70 O.S. 2011, Section 1210.191, is amended to read as follows:

Section 1210.191. A. No minor child shall be admitted to any public, private, or parochial school operating in this state unless and until certification is presented to the appropriate school authorities from a licensed physician, or authorized representative of the State Department of Health, that such child has received or is in the process of receiving, immunizations against diphtheria, pertussis, tetanus, haemophilus influenzae type B (HIB), measles (rubeola), rubella, poliomyelitis, varicella, and hepatitis A or is likely to be immune as a result of the disease.

B. Immunizations required, and the manner and frequency of their administration, as prescribed by the State ~~Board~~ Commissioner of Health, shall conform to recognized standard medical practices in the state. The State Department of Health shall supervise and secure the enforcement of the required immunization program. The State Department of Education and the governing boards of the school districts of this state shall render reasonable assistance to the State Department of Health in the enforcement of the provisions hereof.

C. The ~~State Board of Health~~ Commissioner, by rule, may alter the list of immunizations required after notice and hearing. Any change in the list of immunizations required shall be submitted to the next regular session of the Legislature and such change shall remain in force and effect unless and until a concurrent resolution of disapproval is passed. Hearings shall be conducted by the ~~State Board of Health~~ Commissioner, or such officer, agents or employees as the ~~Board of Health~~ Commissioner may designate for that purpose. The ~~State Board of Health~~ Commissioner shall give appropriate notice of the proposed change in the list of immunizations required and of the time and place for hearing. The change shall become effective on a date fixed by the ~~State Board of Health~~ Commissioner. Any change in the list of immunizations required may be amended or repealed in the same manner as provided for its adoption. Proceedings pursuant to this subsection shall be governed by the Administrative Procedures Act.

D. The State Department of Education and the governing boards of the school districts of this state shall provide for release to

the Oklahoma Health Care Authority of the immunization records of school children covered under Title XIX or Title XXI of the federal Social Security Act who have not received the required immunizations at the appropriate time. The information received pursuant to such release shall be transmitted by the Oklahoma Health Care Authority to medical providers who provide services to such children pursuant to Title XIX or Title XXI to assist in their efforts to increase the rate of childhood immunizations pursuant to the requirements of the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services provisions. The provisions of this subsection shall not be construed to prohibit or affect the eligibility of any child to receive benefits pursuant to Title XIX or Title XXI of the Social Security Act or to require the immunization of any child if such child is exempt from the immunization requirements pursuant to law. The name of any child exempt from immunization pursuant to Section 1210.192 of this title shall not be included in the information transmitted pursuant to this subsection.

E. The State Department of Education shall provide and ensure that each school district in this state provides, on the school district website and in any notice or publication provided to parents regarding immunization requests, the following information regarding immunization requirements for school attendance: "For school enrollment, a parent or guardian shall provide one of the following:

1. Current, up-to-date immunization records; or
2. A completed and signed exemption form."

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1210.189 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. A board of education of a public school district or a technology center school district, the board of regents of an institution within The Oklahoma State System of Higher Education, the governing board of a private postsecondary educational institution, the Oklahoma State Regents for Higher Education, the State Board of Education or the State Board of Career and Technology Education shall not:

1. Require a vaccination against Coronavirus disease 2019 (COVID-19) as a condition of admittance to or attendance of the school or institution;

2. Require a vaccine passport as a condition of admittance to or attendance of the school or institution; or

3. Implement a mask mandate for students who have not been vaccinated against COVID-19.

B. As used in this section, "vaccine passport" means documentation that an individual has been vaccinated against COVID-19.

C. Nothing in this section shall be construed to apply to any public or private healthcare setting.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1210.190 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. A board of education of a public school district or a technology center school district may only implement a mandate to wear a mask or any other medical device as provided in this subsection.

1. A board of education of a public school district or a technology center school district may only implement a mandate to wear a mask or any other medical device after consultation with the local county health department or city-county health department within the jurisdiction of where the board is located and when the jurisdiction of where the board is located is under a current state of emergency declared by the Governor.

2. The mandate shall explicitly list the purposes for the mandate.

3. The mandate shall reference the specific masks or medical devices that would meet the requirements of the mandate.

4. Any mandate to implement wearing a mask or any other medical device shall be reconsidered at each regularly scheduled board meeting.

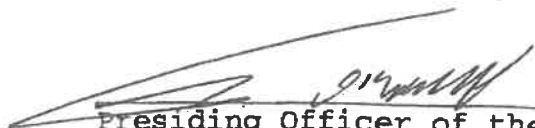
SECTION 4. This act shall become effective July 1, 2021.

SECTION 5. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 25th day of May, 2021.


Presiding Officer of the Senate

Passed the House of Representatives the 26th day of May, 2021.


Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 26th

day of May, 20 21, at 4:42 o'clock p. M.

By: Sumer Curry

Approved by the Governor of the State of Oklahoma this 28th

day of May, 20 21, at 10:15 o'clock p. M.


Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 28th

day of May, 20 21, at 1:15 o'clock P. M.

By: Brian Benjamin

KIMBERLY ANN BUTLER

as the parent and next friend of

her minor child

AFFIDAVIT

Comes now KIMBERLY ANN BUTLER, a resident of Tulsa County, Oklahoma, and being first duly sworn upon her oath, deposes and says:

1. I am KIMBERLY ANN BUTLER, mother of [redacted] who is 9. When [redacted] was 5 he was formally diagnosed with Autism Spectrum Disorder (ASD), and at age 8 he was diagnosed with epilepsy. [redacted] has myoclonic seizures on a daily basis even with high doses of prescription medications. The medicine has reduced the number of larger, more serious and potentially life-threatening seizures that he has. Due to his seizure disorder, spiking a fever poses a dangerous risk for him. High fevers are common with COVID-19, and thus pose a particularly high risk for hospitalization, coma or death for him. Given he also has ASD, in person school is vital to his learning process. He remained home last year until late February 2021, and during that time it was nearly impossible to get him to go to school on Zoom. He became destructive, and declined significantly in developmental, academic and behavioral gains made through hard work in past years. [redacted] needs to be in school in the building, but doing so could kill him without a mask mandate.
2. Keeping him home this school year is unfeasible from a learning and logistics standpoint as both my husband and I work full-time, and [redacted] is unable to learn in an online learning environment. No matter how hard we try, [redacted] will not go to class consistently through Zoom. As you can imagine this has caused quite the bind for our family, as masks are one of the only defenses we have in protecting our high risk son against this deadly virus. [redacted] has struggled with emotional, developmental and behavioral problems due to the isolation at home most of the last 18 months. He has regular violent tantrums, will no longer read and behaves like a toddler. For his developmental and emotional well-being, he needs to attend school face to face. He is entitled to a free appropriate public education, and a safe learning environment is necessary to fulfill that requirement by law. Additionally, we are concerned not requiring all students to wear masks will lead to more outbreaks, forcing students to quarantine. It could also lead to schools shutting down completely and returning to virtual learning.
3. To those that argue if your child is at high risk, then just keep your son at home and go virtual, my son's IEP also guarantees the right to the least restrictive learning environment and being homebound would be the most restrictive learning environment per federal law. We would hope parents would send their children in masks to protect their health and the health of their



community. Unfortunately, we know that will not be the case, and worse yet, there will be some parents who will send their unmasked COVID positive children to school for a variety of reasons. Without a mask mandate for all students, those students who come to school knowingly or not with COVID will spread cases with no mitigation risking all students and staff, not just themselves.

4. I am the main caretaker, and I am immunocompromised. While I am vaccinated, my most recent vaccine spike antibody protein test administered through a study at Johns Hopkins University, showed my antibody levels had dropped significantly and dangerously. According to the latest Johns Hopkins study, researchers found that vaccinated immunocompromised people are 485 times more likely to end up in the hospital or die from COVID compared to the general population that is vaccinated. I have multiple immune diseases related to an overactive immune system. Therefore, I take multiple immunosuppressants on a daily and weekly basis. Furthermore, I have another chronic disease, cancer. I am doing everything in my power to be a good parent for my son for the long-run. If I contract COVID through my son, due to his exposure at school with unmasked students, I risk significant disability or death from the disease. I have four children, and must be around to raise them. If not, this could be a significant burden on the state. One must remember, I am not alone in this immunocompromised category. There are an estimated 9 million immunocompromised Americans. With a 485 times greater risk to end up in the hospital or dead, this is a significant cost to the state to care for potentially orphaned children, or long-term health care expenses that result.

VERIFICATION of KIMBERLY ANN BUTLER

Having been duly sworn before a Notary Public, Kimberly Ann Butler, the undersigned Plaintiff does swear and affirm that: (a) that she has reviewed this Complaint; (b) she knows or believes that all the allegations she has personal knowledge of are true; and (c) that she believes the allegations she does not have personal knowledge of are true based on information she was provided by her attorney, from documents she reviewed, or both.

FURTHER AFFIANT SAYETH NOT.

By: Kimberly Ann Butler
KIMBERLY ANN BUTLER

SWORN TO AND SUBSCRIBED BEFORE ME, this 12th day of August 2021.

My Commission Expires: 6/18/2024
Mindy Galois, NOTARY

