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24 **SUPERIOR COURT OF ARIZONA**

25 **COUNTY OF MARICOPA**

26 ARIZONA SCHOOL BOARDS
ASSOCIATION, INC., an Arizona
nonprofit corporation, et al.,

Plaintiffs,

v.

STATE OF ARIZONA, a body politic,

Defendant.

Case No. CV2021-012741

**MOTION FOR LEAVE TO FILE
AMICUS BRIEF**

(Assigned to the Honorable Katherine
Cooper)

22 The American Academy of Pediatrics and the Arizona Chapter of the American
23 Academy of Pediatrics (“Proposed *Amici*”) move for leave to file an amicus brief in
24 support of Plaintiffs’ motion for a preliminary injunction. The brief is attached as
25 Exhibit A.
26

1 Proposed *Amici* are the leading professional organization of American
2 pediatricians, pediatric medical subspecialists, and pediatric surgical specialists, both
3 nationally and in Arizona. Collectively, they represent more than 67,000 pediatricians
4 and pediatric practitioners, more than 1,100 of whom practice in Arizona. Proposed
5 *Amici* seek to file this brief to provide information regarding the importance and efficacy
6 of maintaining universal mask policies in schools.

7 Courts have “inherent power to do all things reasonably necessary for
8 administration of justice.” *Schavey v. Royston*, 8 Ariz. App. 574, 575 (1968). Consistent
9 with this principle, Arizona trial courts have accepted *amicus curiae* briefs to assist the
10 court even in the absence of a specific trial court rule. *See Home Builders Ass’n of Cent.*
11 *Ariz. v. City of Apache Junction*, 198 Ariz. 493, 496 n.4 (App. 2000) (“Several amici
12 have appeared, both here and in the trial court, supporting the respective positions
13 advanced by the appellants, the City, and the District.”); *see also* Ariz. R. Civ. App. P.
14 16(b)(1)(C)(iii) (*amicus* briefs may be filed where a court determines that *amici* “can
15 provide information, perspective, or argument that can help the appellate court beyond
16 the help that the parties’ lawyers provide.”).

17 The proposed brief provides information based on the AAP’s comprehensive
18 review of the science and medical literature surrounding the use of masks as an infection
19 control measure, including in schools. As explained in the brief, the AAP has reviewed
20 hundreds of articles related to the efficacy and safety of masks, as well as their effects
21 (or lack thereof) on the cognitive, social, and psychological development of children.

22 Counsel for both Plaintiffs and Defendants have informed counsel for Proposed
23 *Amici* that they consent to this motion.

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DATED this 10th day of September, 2021.

PAPETTI SAMUELS WEISS LLP

/s/ Bruce Samuels
Bruce Samuels

*Attorneys for American Academy of Pediatrics
and the Arizona Academy of Pediatrics*

ORIGINAL E-FILED

this 10th day of September, 2021 to:

COPY hand-delivered to:

The Honorable Katherine Cooper
Maricopa County Superior Court
East Court Building, #711
101 W. Jefferson Street
Phoenix, Arizona 85003

and **COPY** e-mailed to:

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EXHIBIT A

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COUNTY OF MARICOPA

ARIZONA SCHOOL BOARDS
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Plaintiffs,

v.

STATE OF ARIZONA, a body politic,
Defendant.

Case No. CV2021-012741

**AMICUS BRIEF OF ARIZONA
CHAPTER OF AMERICAN
ACADEMY OF PEDIATRICS AND
AMERICAN ACADEMY OF
PEDIATRICS IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR A
PRELIMINARY INJUNCTION**

(Assigned to the Honorable Katherine
Cooper)

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INTEREST OF AMICI CURIAE¹

The Arizona Chapter of the American Academy of Pediatrics (“AZAAP”) is a non-profit educational organization and professional society comprising more than 1,100 members including pediatricians, residents, and medical students from Arizona’s hospitals, community clinics, and school-based health centers. AZAAP promotes the optimal health and development of children and adolescents of Arizona, in partnership with their families and communities, and supports the pediatricians who care for them.

The American Academy of Pediatrics (“AAP”) was founded in 1930 and is a national, not-for-profit professional organization dedicated to furthering the interests of child and adolescent health. The AAP’s membership includes over 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists. Over the past year and a half, the AAP has devoted substantial resources to researching the scientific literature regarding how to treat COVID-19 and reduce its spread so that the AAP can provide up-to-date, evidence-based guidance for pediatricians and public health officials. This includes, among other things, interim guidance on the use of face masks as an infection control measure and on operating safe schools during the COVID-19 pandemic.

INTRODUCTION

The public interest is a paramount consideration in adjudicating Plaintiffs’ motion for a preliminary injunction. As the U.S. Supreme Court has explained, “courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Here, there is no question about where the public interest points. Indeed, the issue is so

¹ *Amici* certify that no party’s counsel authored this brief in whole or in part, no party or party’s counsel contributed money intended to fund this brief, and no person other than *Amici*, their members, and their counsel contributed money intended to fund this brief.

1 key issues of pediatric practice and public health. These Policy Statements are written by
2 recognized pediatrician experts who undertake a comprehensive review of the medical
3 literature and available data on the topic at hand. They are then peer-reviewed by
4 additional experts across the AAP and approved by the AAP’s executive staff and board
5 of directors.

6 Since the spring of 2020, as the COVID-19 pandemic began to sweep across the
7 country, the AAP’s top focus has been supporting practicing pediatricians and public
8 health policymakers in treating COVID-19 and reducing its spread, particularly among
9 children. The AAP has issued Interim Guidance Statements on several topics related to
10 COVID-19, including guidance on when and how pediatricians should test patients for
11 COVID-19;² on providing clinical care to patients with COVID-19;³ on treating post-
12 COVID conditions;⁴ on how to safely provide routine medical care such as check-ups,
13 screenings, laboratory exams, treatment, and immunizations during the COVID-19
14 pandemic;⁵ on caring for youth with special health needs during the COVID-19
15 pandemic;⁶ on supporting the emotional and behavioral health needs of children,

17 ² *COVID-19 Testing Guidance*, AAP (last updated July 8, 2021),
18 [https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-testing-guidance/)
19 [guidance/covid-19-testing-guidance/](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-testing-guidance/).

20 ³ *COVID-19 Interim Guidance*, AAP (last updated Aug. 2, 2021),
21 [https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/)
22 [guidance/](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/).

23 ⁴ *Post-COVID-19 Conditions in Children and Adolescents*, AAP (last updated July 28,
24 2021), [https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/post-covid-19-conditions-in-children-and-adolescents/)
25 [infections/clinical-guidance/post-covid-19-conditions-in-children-and-adolescents/](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/post-covid-19-conditions-in-children-and-adolescents/).

26 ⁵ *Guidance on Providing Pediatric Well-Care During COVID-19*, AAP (last updated
Aug. 30, 2021), [https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/guidance-on-providing-pediatric-well-care-during-covid-19/)
[infections/clinical-guidance/guidance-on-providing-pediatric-well-care-during-covid-](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/guidance-on-providing-pediatric-well-care-during-covid-19/)
[19/](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/guidance-on-providing-pediatric-well-care-during-covid-19/).

⁶ *Caring for Children and Youth with Special Health Needs During the COVID-19
Pandemic*, AAP (last updated June 28, 2021), <https://www.aap.org/en/pages/2019-novel->

1 adolescents, and families during the COVID-19 pandemic;⁷ and—most relevant to this
2 case—on the use of face masks as an infection control measure⁸ and on operating safe
3 schools during the COVID-19 pandemic that foster the overall health of children,
4 adolescents, educators, staff, and communities.⁹ The AAP has repeatedly reviewed and
5 updated these Interim Guidance Statements to ensure that they reflect the best medical
6 understanding and current scientific evidence of COVID-19, including its transmission
7 and health effects.

8 **II. The Public Health Benefits of Universal Mask Policies in Schools as an**
9 **Infection Control Measure**

10 Beginning early in the pandemic, members of the AAP began receiving questions
11 from families and school boards about how in-person education could be conducted
12 safely during the pandemic. As pediatrician organizations, the AAP and AZAAP
13 recognize and are seriously concerned about the impact on children of not being able to
14 attend school in person. This can negatively affect children’s cognitive, educational, and
15 social development, as well as children’s short- and long-term mood, behavior, and
16 mental health. Children with special needs suffer the additional loss of access to
17 educational support structures, school-based therapies, school meals, and school-based

18 _____
19 [coronavirus-covid-19-infections/clinical-guidance/caring-for-children-and-youth-with-special-health-care-needs-during-the-covid-19-pandemic/](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/caring-for-children-and-youth-with-special-health-care-needs-during-the-covid-19-pandemic/).

20 ⁷ *Interim Guidance on Supporting the Emotional and Behavioral Health Needs of*
21 *Children, Adolescents, and Families During the COVID-19 Pandemic*, AAP (last
22 updated July 28, 2021), [https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/interim-guidance-on-supporting-the-emotional-and-behavioral-health-needs-of-children-adolescents-and-families-during-the-covid-19-pandemic/)
23 [infections/clinical-guidance/interim-guidance-on-supporting-the-emotional-and-](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/interim-guidance-on-supporting-the-emotional-and-behavioral-health-needs-of-children-adolescents-and-families-during-the-covid-19-pandemic/)
[behavioral-health-needs-of-children-adolescents-and-families-during-the-covid-19-](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/interim-guidance-on-supporting-the-emotional-and-behavioral-health-needs-of-children-adolescents-and-families-during-the-covid-19-pandemic/)
[pandemic/](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/interim-guidance-on-supporting-the-emotional-and-behavioral-health-needs-of-children-adolescents-and-families-during-the-covid-19-pandemic/).

24 ⁸ *Face Masks*, AAP (last updated Aug. 8, 2021), [https://www.aap.org/en/pages/2019-](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/cloth-face-coverings/)
[novel-coronavirus-covid-19-infections/clinical-guidance/cloth-face-coverings/](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/cloth-face-coverings/).

25 ⁹ *COVID-19 Guidance for Safe Schools*, AAP (last updated July 18, 2021),
26 [https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/)
[guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/).

1 professionals who are often the front-line identifiers of special needs.¹⁰ As a result, the
2 AAP decided to develop Interim Guidance for pediatricians and school boards on
3 considerations regarding safe and healthy schooling and recommendations for measures
4 that can decrease the risk and facilitate in-person learning.

5 Based on the AAP’s expert review of the scientific literature and the guidance
6 outlined by the World Health Organization (“WHO”), United Nations Children’s Fund
7 (“UNICEF”), and Centers for Disease Control and Prevention (“CDC”), along with
8 AAP’s members’ collective expertise as pediatricians and researchers, the AAP
9 concluded that “[e]verything possible must be done to keep students in schools in-
10 person.” *COVID-19 Guidance for Safe Schools*, *supra* n. 9. This is because “[s]chools
11 and school-supported programs are fundamental to child and adolescent development
12 and well-being and provide our children and adolescents with academic instruction;
13 social and emotional skills, safety, reliable nutrition, physical/occupational/speech
14 therapy, mental health services, health services, and opportunities for physical activity,
15 among other benefits.” (*Id.*) By contrast, “[r]emote learning highlighted inequities in
16 education, was detrimental to the educational attainment of students of all ages, and
17 exacerbated the mental health crisis among children and adolescents.” (*Id.*)

18 The initial AAP Interim Guidance, developed in the spring of 2020, was drafted
19 and reviewed by a number of pediatricians with expertise in a wide variety of
20 disciplines. The drafters reviewed dozens of articles and available data to determine
21 whether and how children could safely attend school during the pandemic.

24 ¹⁰ Amy Houtrow, et al., *Children with disabilities in the United States and the COVID-*
25 *19 pandemic*, 13 J. of Pediatric Rehabilitation Med., 415, 415-24 (2020), available at
26 [https://content.iospress.com/articles/journal-of-pediatric-rehabilitation-](https://content.iospress.com/articles/journal-of-pediatric-rehabilitation-medicine/prm200769)
[medicine/prm200769](https://content.iospress.com/articles/journal-of-pediatric-rehabilitation-medicine/prm200769).

1 The result was the AAP Interim Guidances on Face Masks¹¹ and Safe Schools.¹²
2 These statements were first issued in the spring of 2020 and have been continually
3 reviewed and updated since that time. By this point, the AAP’s experts have reviewed
4 hundreds of articles related to the efficacy and safety of masks, as well as their effects
5 (or lack thereof) on the cognitive, social, and psychological development of children.
6 The following discussion is based principally on the current (summer 2021) iterations of
7 these interim guidance documents.

8 Based on this review of the medical literature, the AAP has determined that “at
9 this point in the pandemic, given what we know now about low rates of in-school
10 transmission *when proper prevention measures are used*, together with the availability of
11 effective vaccines for those age 12 years and up, that the benefits of in-person school
12 outweigh the risks in almost all circumstances.” *COVID-19 Guidance for Safe Schools*,
13 *supra* n. 9 (emphasis added). Among the recommended prevention measures (such as
14 immunization of all eligible individuals and adequate and timely COVID-19 testing),
15 one of the most important is that “[a]ll students older than 2 years and all school staff
16 should wear face masks at school (unless medical or developmental conditions
17 prohibit use).” *Id.* (emphasis in original).

18 The AAP’s strong recommendation of universal masking for students, teachers,
19 and support staff in school has remained consistent from the beginning—because masks
20 are a safe, effective, and critical infection control measure. This conclusion has been
21 consistently reinforced by all relevant data and credible research regarding the
22 transmission and health risks of COVID-19 and the effect of wearing masks on
23 children’s education, health, and development.
24

25

¹¹ *Face Masks*, *supra* n. 8.

26 ¹² *COVID-19 Guidance for Safe Schools*, *supra* n. 9.

1 After significant analysis, including analysis of the emerging Delta variant, the
2 AAP reaffirmed its recommendation of universal masking in school settings on July 19,
3 2021. Eight days later, on July 27, 2021, the CDC followed suit, recommending
4 “universal indoor masking for all teachers, staff, students, and visitors to schools,
5 regardless of vaccination status.”¹³

6 There are several reasons for AAP’s (and the CDC’s) recommendation of
7 universal masking in school. These include:

- 8 a. a significant portion of the student population is not eligible for
9 vaccination;
- 10 b. the need to protect unvaccinated students from COVID-19 and to reduce
11 transmission;
- 12 c. the lack of systems to monitor vaccine status among students, teachers and
13 staff;
- 14 d. the potential difficulty in monitoring or enforcing mask policies for those
15 who are not vaccinated;
- 16 e. in the absence of schools being able to conduct this monitoring, universal
17 masking is the best and most effective strategy to create consistent
18 messages, expectations, enforcement, and compliance without the added
19 burden of needing to monitor vaccination status;
- 20 f. the possibility of low vaccination uptake within the surrounding school
21 community; and
- 22 g. the continued concerns for variants that are more easily spread among
23 children, adolescents, and adults.

24
25 ¹³ *Interim Public Health Recommendations for Fully Vaccinated People—Summary of*
26 *Recent Changes*, CDC (July 28, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>.

1 *COVID-19 Guidance for Safe Schools, supra* n. 9.

2 Most importantly, the research literature has confirmed that masks are both
3 effective and safe. As the CDC has explained, masks “reduce the emission of virus-laden
4 droplets . . . , which is especially relevant for asymptomatic or presymptomatic infected
5 wearers who feel well and may be unaware of their infectiousness to others, and who are
6 estimated to account for more than 50% of transmissions.”¹⁴ Cloth masks “not only
7 effectively block most large droplets (i.e., 20-30 microns and larger) but they can also
8 block the exhalation of fine droplets.”¹⁵ As a result, “[m]ulti-layer cloth masks can both
9 block up to 50-70% of these fine droplets and particles,” with “[u]pwards of 80%
10 blockage” recorded in some studies.¹⁶ To a slightly lesser extent, masks also “help
11 reduce inhalation of these droplets by the wearer”; multi-layer cloth masks can filter out
12 “nearly 50% of fine particles less than 1 micron.”¹⁷

13 Numerous studies have shown that increasing the rate of mask-wearing, including
14 through universal mask policies in particular, significantly reduces the spread of
15 COVID-19.¹⁸ In particular, studies have shown that masking and similar mitigation

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17 ¹⁴ *Science Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2*,
18 CDC (May 7, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html> (citations omitted).

19 ¹⁵ *Id.*

20 ¹⁶ *Id.*

21 ¹⁷ *Id.*

22 ¹⁸ *See, e.g.*, Jeremy Howard, et al., *An Evidence Review of Face Masks Against COVID-*
23 *19*, 118 Proc. of the Nat’l Acad. of Servs. e2014564118 (2021),
24 <https://www.pnas.org/content/118/4/e2014564118>; T. Brooks & Jay C. Butler,
25 *Effectiveness of Mask Wearing to Control Community Spread of SARS-CoV-2*, 325 J. of
26 Am. Med. Ass’n 998 (2021),
<https://jamanetwork.com/journals/jama/fullarticle/2776536>; Heesoo Joo, et al., *Decline*
in COVID-19 Hospitalization Growth Rates Associated with Statewide Mask
Mandates—10 States, March–October 2020. 70 Morbidity & Mortality Weekly Rep.
212 (2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7006e2.htm>; Derek K. Chu,
et al., *Physical Distancing, Face Masks, and Eye Protection to Prevent Person-to-*

1 measures can limit transmission in schools.¹⁹ Notably, studies suggest that there is no
2 substitute for universal masking requirements: while studies have found *universal*
3 *masking requirements* effective at reducing transmission, as discussed above, they have
4 not found the same effect for mask *recommendations*.²⁰ As the ABC Science

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6 *Person Transmission of SARS-CoV-2 and COVID-19: A Systematic Review and Meta-*
7 *Analysis*, 395 *Lancet* 1973 (2020),
8 [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)31142-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31142-9/fulltext);
9 Christopher T. Leffler, et al., *Association of Country-wide Coronavirus Mortality with*
10 *Demographics, Testing, Lockdowns, and Public Wearing of Masks*, 103 *Am. J. Tropical*
11 *Med. Hygiene* 2400 (2020), <https://pubmed.ncbi.nlm.nih.gov/33124541/>; Miriam E. Van
12 Dyke, et al., *Trends in County-Level COVID-19 Incidence in Counties With and Without*
13 *a Mask Mandate—Kansas, June 1-August 23, 2020*. 69 *Morbidity & Mortality Weekly*
14 *Rep.* 1777 (2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6947e2.htm>; Wei Lyu
15 & George L. Wehby, *Community Use of Face Masks and COVID-19: Evidence from a*
16 *Natural Experiment of State Mandates in the US*, 39 *Health Aff.* 1419 (2020),
17 <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00818>.

18 ¹⁹ See, e.g., Patrick Dawson, et al., *Pilot Investigation of SARS-CoV-2 Secondary*
19 *Transmission in Kindergarten Through Grade 12 Schools Implementing Mitigation*
20 *Strategies—St. Louis County and City of Springfield, Missouri, December 2020*, 70
21 *Morbidity & Mortality Weekly Rep.* 449 (2021),
22 https://www.cdc.gov/mmwr/volumes/70/wr/mm7012e4.htm?s_cid=mm7012e4_w;
23 Darria L. Gillespie, et al., *The Experience of 2 Independent Schools With In-Person*
24 *Learning During the COVID-19 Pandemic*, 91 *J. Sch. Health* 347 (2021),
25 <https://onlinelibrary.wiley.com/doi/10.1111/josh.13008>; Rebecca B. Hershov, et al.,
26 *Low SARS-CoV-2 Transmission in Elementary Schools - Salt Lake County, Utah,*
27 *December 3, 2020-January 31, 2021*, 70 *Morbidity & Mortality Weekly Rep.* 442
28 (2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7012e3.htm>; Amy Falk, et al.,
29 *COVID-19 Cases and Transmission in 17 K-12 Schools - Wood County, Wisconsin,*
30 *August 31-November 29, 2020*, 70 *Morbidity & Mortality Weekly Rep.* 136 (2021),
31 <https://www.cdc.gov/mmwr/volumes/70/wr/mm7004e3.htm>; Fiona Russell et al.,
32 *COVID-19 in Victorian Schools: An Analysis of Child-Care and School Outbreak Data*
33 *and Evidence-Based Recommendations for Opening Schools and Keeping Them Open*,
34 *Murdoch Children’s Rsch. Inst. & The Univ. of Melb.* (Nov. 92020), available at
35 [https://www.mcri.edu.au/sites/default/files/media/documents/covid-](https://www.mcri.edu.au/sites/default/files/media/documents/covid-19%20in%20victorian%20schools%20report.pdf)
36 [19 in victorian schools report.pdf](https://www.mcri.edu.au/sites/default/files/media/documents/covid-19%20in%20victorian%20schools%20report.pdf).

²⁰ See Henning Bundgaard, et al., *Effectiveness of Adding a Mask Recommendation to*
Other Public Health Measures to Prevent SARS-CoV-2 Infection in Danish Mask

1 Collaborative, a 13-state initiative coordinated by the Duke Clinical Research Institute at
2 the Duke University School of Medicine, summed it up, “[p]roper masking is the most
3 effective mitigation strategy to prevent COVID-19 transmission in schools when
4 vaccination is unavailable or there are insufficient levels of vaccination among students
5 and staff.”²¹

6 **III. Prohibiting Schools from Requiring Masking Does Not Further Any**
7 **Legitimate State Purpose and Is Not in the Public Interest**

8 As Plaintiffs explain, COVID-19 poses a profound and escalating threat to both
9 children and adults. *See* Pls.’ Mot. at 18-20. As of September 2, 2021, 5,049,465 total
10 child COVID-19 cases have been reported in the United States, representing over 15% of
11 the total U.S. cases.²² The prevalence of pediatric COVID-19 has skyrocketed since the
12 school year began, with nearly 10% of all child cases since the beginning of the
13 pandemic diagnosed between August 19 and September 2.²³ And the rate of serious
14 cases has soared; just among the 24 states and 1 city that report child hospitalizations,
15 833,528 children have been hospitalized due to COVID-19, including nearly 50,000 in
16 the two weeks from August 19 to September 2.²⁴ More children died in each of the last

17 _____
18 *Wearers*, *Annals of Internal Med.* (2020),
<https://www.acpjournals.org/doi/pdf/10.7326/M20-6817>.

19 ²¹ ABC Science Collaborative, *The ABCs of North Carolina’s Plan*,
20 <https://abcsciencecollaborative.org/the-abc-of-north-carolinas-plan-a/> (last visited Sept.
21 1, 2021); *see also* ABC Science Collaborative, *Final Report for NC School Districts and*
22 *Charters in Plan A*, at 3 (June 30, 2021), *available at*
[https://abcsciencecollaborative.org/wp-content/uploads/2021/06/ABCs-Final-Report-](https://abcsciencecollaborative.org/wp-content/uploads/2021/06/ABCs-Final-Report-June-2021.06-esig-DB-KZ-6-29-21.pdf)
[June-2021.06-esig-DB-KZ-6-29-21.pdf](https://abcsciencecollaborative.org/wp-content/uploads/2021/06/ABCs-Final-Report-June-2021.06-esig-DB-KZ-6-29-21.pdf).

23 ²² AAP, *Children and COVID-19: State-Level Data Report*, Summary of Findings (data
24 available as of 9/2/21), *available at* [https://www.aap.org/en/pages/2019-novel-](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/)
[coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/).

25 ²³ *Id.*

26 ²⁴ *See Children and COVID-19: State Data Report* at Appx. Tab. 2B, *Children’s Hosp.*
Ass’n & Am. Acad. of Pediatrics (Sept. 2, 2021),
[https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20-](https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20)

1 two weeks than in any previous week of the pandemic.²⁵ As Plaintiffs’ experts note,
2 Arizona has been especially hard hit.²⁶ Currently, Arizona ranks 6th in the nation in
3 cumulative child COVID-19 cases (with over 182,351 cases) and has the 7th highest
4 number of cumulative cases per 100,000 children.²⁷ Over 2,633 Arizona children have
5 been hospitalized from COVID-19, and 36 have died.²⁸

6 Given the devastating threat posed by the pandemic and the overwhelming
7 scientific consensus that universal mask policies are a safe and effective way to reduce
8 its spread, there is no compelling or even rational and legitimate state purpose²⁹ in
9 prohibiting schools from adopting universal mask policies, nor in prohibiting public
10 schools from requiring masks while allowing private schools to do so. Whatever the
11 interest a state has in “protecting parental autonomy and parents’ rights to make
12 decisions concerning the education of their children,” Def.’s Resp. at 12, parental rights
13 do not “include the liberty to expose the community or the child to communicable
14 disease or the latter to ill health or death.” *Prince v. Massachusetts*, 321 U.S. 158, 166-
15 67 (1944). “Parents may be free to become martyrs themselves. But it does not follow
16 they are free, in identical circumstances, to make martyrs of their children before they
17 have reached the age of full and legal discretion when they can make that choice for
18 themselves.” *Id.* at 170.

21 [%20Children%20and%20COVID-19%20State%20Data%20Report%209.2%20FINAL.pdf](#)
22

23 ²⁵ *Id.* at Appx. Tab. 2C.

24 ²⁶ *See id.* at Appx. Tabs. 3A, 5A, 6A; *see also* Pls.’ Mot. at 20.

25 ²⁷ *Children and COVID-19: State Data Report*, *supra* n. 21 at Appx. Tabs. 3A.

26 ²⁸ *Id.* at Appx. Tabs. 5A, 6A.

²⁹ As Plaintiffs explain, the strict scrutiny test applies to their Equal Protection claim. *See* Pls.’ Mot. at 15-18. However, the choice of test is not dispositive here, as the State’s asserted rationale is insufficient under any standard.

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/s/Brenda S. White

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