IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

JUSTIN VERRIER and MEGHANN VERRIER as next best friend of A.V., et al., *Plaintiffs*, v. GWINNETT COUNTY PUBLIC SCHOOLS, *et al.*, *Defendants*.	Civil Action File No. 21-A-06818-1

BRIEF OF *AMICI CURIAE* GEORGIA CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS AND AMERICAN ACADEMY OF PEDIATRICS IN OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTEREST OF *AMICI CURIAE*[1]

The Georgia Chapter of the American Academy of Pediatrics ("GCAAP"), founded in 1954, is a non-profit professional association comprised of more than 1600 members including primary care pediatricians, medical and surgical subspecialists, pediatric residents, and medical students. Chapter members work in private office practices, Georgia's hospitals, community clinics, public health, and other settings. GCAAP promotes the optimal health, safety, well-being, and development of children and adolescents of Georgia, in partnership with their families and communities, and supports the pediatricians who care for them.

[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.

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

Over the past 18 months, *Amici* have worked ceaselessly to evaluate the dangers of and potential public health measures for reducing the deadly spread of COVID-19. The AAP has conducted a comprehensive review of the medical literature to determine what public health measures can effectively reduce the risk that COVID-19 poses to America's children. This comprehensive review and the experiences of the front-line pediatric practitioners who make up the GCAAP and AAP's membership prove two relevant facts beyond any doubt: COVID-19 poses grave risks to children, risks that are escalating rapidly with the rise of the Delta variant; and universal mask policies in schools significantly reduce the spread of COVID-19 and protect all children, particularly the medically vulnerable.

Recognizing these facts, the Gwinnett County School District issued a universal mask policy so that they could safely conduct in-person classes despite the Delta variant of COVID-19. Plaintiffs' request to enjoin that policy is based on three misguided premises: that COVID-19 is not a serious risk to children; that masks are not only ineffective but may *increase* the risk of

contracting COVID-19; and that masks are harmful to children either physically, mentally, or developmentally. Each of these premises is demonstrably wrong. This brief provides an overview of the scientific literature rebutting those claims and explains why universal mask policies are so crucial in fighting COVID-19.

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: the balance of the equities and the public interest weigh against an injunction. Universal mask policies substantially reduce the risk of death and serious illness among Georgia's school-age population and their families, without any meaningful harm to mask-wearers. Blocking Gwinnett County's policy would put parents to an untenable choice: either send children to schools where they have a high risk of contracting COVID-19, or keep them home from school with the attendant harm to their social, emotional, and educational development. The Court should decline to prevent Gwinnett County from protecting its students and community.

ARGUMENT

I. COVID-19 Is a Serious Childhood Illness

Plaintiffs downplay the seriousness of pediatric COVID-19. *See* Am. Compl. ¶¶ 33-36; Pls.' Mot. at 25-26. Unfortunately, Plaintiffs' depiction is inaccurate: the risk to children who contract COVID-19 is serious and increasing with the rise of the Delta variant.

The AAP and the Children's Hospital Association have collaborated throughout the pandemic to collect and share all publicly available data from states on COVID-19 cases among

children.[2] As of September 16, 2021, 5,518,815 total child COVID-19 cases have been reported in the United States, representing more than 15% of the total U.S. cases.[3] The prevalence of pediatric COVID-19 has skyrocketed since the school year began, with 20% of all child cases since the beginning of the pandemic diagnosed between August 13 and September 16.[4] This surge appears to be due to two principal factors: the resumption of in-person schooling (and particularly schooling in places without masks), and the emergence of the Delta variant, which is more than twice as contagious as previous variants.[5]

As the rate of COVID-19 has soared, so has the number of serious cases; just among the 24 states and 1 city that report child hospitalizations, more than 3,200 children were hospitalized due to COVID-19 between August 13 and September 16, more than 5% of the total child hospitalizations to date.[6] Since the beginning of August, more children have died each week than in all but one previous week of the pandemic.[7] Georgia has reported at least 172,933 COVID-19

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[2] *See Children and COVID-19: State-Level Data Report*, AAP, https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/ (data available as of 9/16/21).

[3] *Id.*

[4] *Children and COVID-19: State Data Report* at Fig. 6, Children's Hosp. Ass'n & Am. Acad. of Pediatrics (Sept. 16, 2021), https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20-%20Children%20and%20COVID-19%20State%20Data%20Report%209.16%20FINAL.pdf.

[5] *See Delta Variant: What We Know About the Science*, CDC (Aug. 26, 2021), https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html.

[6] *See Children and COVID-19: State Data Report*, *supra* n. 4, at Appx. Tab. 2B.

[7] *Id.* at Appx. Tab. 2C. The week ending December 3, 2020 is the only previous week in which as many child deaths were reported as even the *lowest* week since the beginning of August. *Id.* Notably, this was the week after Thanksgiving. This drives home the importance of promptly enjoining the Executive Order, to reduce the rate of COVID-19 in advance of the surge that will likely accompany the upcoming holidays.

cases among children, including at least 1,853 child hospitalizations.[8] In other words, for every 1,000 children in Georgia who contract COVID-19, 10 have been so seriously affected as to require hospitalization.

The Plaintiffs quote the CDC as saying "[t]he risk of complications for healthy children is higher for flu compared to COVID-19." Pls.' Mot. at 26 (purporting to quote *Similarities and Differences Between Flu and COVID-19*, CDC, https://www.cdc.gov/flu/symptoms/flu-vs-covid19.htm). Plaintiffs do not mention that this statement is critically out-of-date: the CDC removed it from their website on June 7, 2021, in light of the severity of the Delta variant.[9] While Plaintiffs' assertion might have been arguable with the variant of COVID-19 circulating in the prior school year, it is tragically incorrect today.

As the hospitalization rate and CDC's changed position reflects, COVID-19 can cause severe symptoms and potentially fatal outcomes even in children. Among other things, COVID-19 infections can produce multisystem inflammatory syndrome in children (MIS-C).[10] MIS-C involves clinically severe levels of fever, inflammation, and dysfunction or shock in multiple organ systems (including cardiac, renal, respiratory, hematologic, gastrointestinal, dermatologic, and/or neurological). Among other severe symptoms, it can cause coronary artery enlargement;

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[8] *Id.* at Appx. Tabs. 3A, 5A.

[9] *Compare* https://web.archive.org/web/20210606175956/https://www.cdc.gov/flu/symptoms/flu-vs-covid19.htm (June 6, 2021 version including the quoted sentence) *with* https://web.archive.org/web/20210607174519/https://www.cdc.gov/flu/symptoms/flu-vs-covid19.htm (June 7, 2021 version omitting the quoted sentence).

[10] *See Multisystem Inflammatory Syndrome in Children (MIS-C) Associated with Coronavirus Disease 19 (COVID-19)*, CDC, https://emergency.cdc.gov/han/2020/han00432.asp; *Multisystem Inflammatory Syndrome in Children (MIS-C) Interim Guidance*, AAP; https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/multisystem-inflammatory-syndrome-in-children-mis-c-interim-guidance/.

aneurysm; meningitis; colitis; hepatitis; symptoms akin to toxic shock syndrome; thrombosis; acute kidney injury; stroke; encephalitis; congestive heart failure; and pulmonary embolism.

COVID-19 infection can also lead to many secondary conditions, ranging from subacute to severe. Several studies have shown that long-term symptoms can occur in children and adolescents.[11] Indeed, even cases with mild initial symptomatology can produce significant long-term effects. These include persistent respiratory symptoms ranging from chest pain, cough, and exercise-induced dyspnea to pulmonary emboli; myocarditis (i.e., inflammation of the heart muscle), shortness of breath, arrhythmia, and/or fatigue, and potentially leading to heart failure, myocardial infarction, stroke, or sudden cardiac arrest; persistent loss of the sense of smell (anosmia) or taste (ageusia), which can affect the nutritional status and quality of life of children and adolescents and be particularly disruptive to the feeding behavior of very young children; neurodevelopmental sequelae, both including the consequences of significant acute injuries such as stroke or encephalitis and subtle but persistent sequelae in cognitive, language, academic, motor, mood, and behavioral domains; cognitive fogginess or fatigue; physical fatigue; and mental or behavioral health impacts such as stress and adjustment disorders.

Moreover, the uncontrolled spread of COVID-19 poses a massive risk to children and adults who have other medical needs. Hospital ICU capacity is strained beyond capacity in much

[11] *See, e.g.*, Danilo Buonsenso, et al., *Preliminary evidence on long COVID in children*, Acta Paediatrica (Apr. 9, 2021), https://doi.org/10.1111/apa.15870 (studying 129 children in Italy and reporting that 42.6% experienced at least one symptom more than 60 days after infection); Helen Thomson, *Children with long covid*, 249 New Scientist 10 (2021), https://www.sciencedirect.com/science/article/abs/pii/S0262407921003031?via%3Dihub (U.K. Office of National Statistics estimate that 12.9% of children 2-11 years of age and 14.5% of children 12-16 years of age experienced symptoms 5 weeks after infection).

of the country, as it was earlier in the pandemic.[12] As of September 23, 2021, 94% of all ICU beds in Georgia were in use—higher than at any point of the pandemic prior to September.[13] Due to the strain on medical resources, this will result in excess morbidity and mortality even for children and adults who do not contract COVID-19; as research has shown, "[p]andemic COVID-19 surges [a]re associated with higher rates of in-hospital mortality among patients without COVID-19, suggesting disruptions in care patterns for patients with many common acute and chronic illnesses."[14] In layperson's terms, more children and adults will become sick and possibly die, both due to COVID-19 and due to the delay of treatment for other urgent conditions.

II. Overview of the AAP's Research into School Safety During the Pandemic

One of the AAP's chief functions is to provide evidence-based guidance to America's pediatric professionals and public health officials, thereby helping its members and policymakers improve the health of all children. To do so, the AAP issues Policy Statements that report the most up-to-date, evidence-based expert consensus on key issues of pediatric practice and public health.

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[12] *See, e.g.*, Matt Kroschel, *More ICU Patients than Beds in Alabama as COVID-19 Surges*, WAAY31 (Aug. 18, 2021), https://www.waaytv.com/content/news/Alabama-ICU-beds-are-in-short-supply-as-health-care-workers-get-creative-to-keep-up-with-the-current-Covid-19-surge--575116391.html; Judy Woodruff & William Brangham, *Texas doctor urges vaccines amid 'dire shortage' of health workers, ICU beds*, PBS News Hour (Aug. 19, 2021), https://www.pbs.org/newshour/show/texas-doctor-urges-vaccines-amid-dire-shortage-of-health-workers-icu-beds; Christina Vazquez, *"Perfect storm": Plethora of COVID cases tests hospitals facing critical shortage of ICU staff*, Local10.com (Aug. 5, 2021), https://www.local10.com/news/local/2021/08/06/hospitals-in-south-florida-face-critical-shortage-of-icu-staff-amid-plethora-of-covid-cases/.

[13] *See Georgia Hospital Bed/Ventilator Capacity*, Georgia Geospatial Information Office, https://covid-hub.gio.georgia.gov/apps/georgia-hospital-bed-ventilator-capacity/explore (last accessed Sept. 23, 2021).

[14] *See, e.g.*, Amber K. Sabbatini, et al., *Excess Mortality Among Patients Hospitalized During the COVID-19 Pandemic*, J. Hospital Med. (2021), https://www.journalofhospitalmedicine.com/jhospmed/article/242997/hospital-medicine/excess-mortality-among-patients-hospitalized-during-covid.

These Policy Statements are written by recognized pediatrician experts who undertake a comprehensive review of the medical literature and available data on the topic at hand. They are then peer-reviewed by additional experts across the AAP and approved by the AAP's executive staff and board of directors.

Since the spring of 2020, as the COVID-19 pandemic began to sweep across the country, the AAP's top focus has been supporting practicing pediatricians and public health policymakers in treating COVID-19 and reducing its spread, particularly among children. The AAP has issued Interim Guidance Statements on several topics related to COVID-19, including guidance on when and how pediatricians should test patients for COVID-19;[15] on providing clinical care to patients with COVID-19;[16] on treating post-COVID conditions;[17] on how to safely provide routine medical care such as check-ups, screenings, laboratory exams, treatment, and immunizations during the COVID-19 pandemic;[18] on caring for youth with special health needs during the COVID-19 pandemic;[19] on supporting the emotional and behavioral health needs of children, adolescents, and

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

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

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

[18] *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-infections/clinical-guidance/guidance-on-providing-pediatric-well-care-during-covid-19/.

[19] *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-coronavirus-covid-19-infections/clinical-guidance/caring-for-children-and-youth-with-special-health-care-needs-during-the-covid-19-pandemic/.

families during the COVID-19 pandemic;[20] and—most relevant to this case—on the use of face masks as an infection control measure[21] and on operating safe schools during the COVID-19 pandemic that foster the overall health of children, adolescents, educators, staff, and communities.[22] The AAP has repeatedly reviewed and updated these Interim Guidance Statements to ensure that they reflect the best medical understanding and current scientific evidence of COVID-19, including its transmission and health effects.

III. The Public Health Benefits of Universal Mask Policies in Schools as an Infection Control Measure

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

[20] *Interim Guidance on Supporting the Emotional and Behavioral Health Needs of Children, Adolescents, and Families During the COVID-19 Pandemic*, AAP (last updated July 28, 2021), 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/.

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

[22] *COVID-19 Guidance for Safe Schools*, AAP (last updated July 18, 2021), 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/.

and school-based professionals who are often the front-line identifiers of special needs.[23] As a result, the AAP decided to develop Interim Guidance for pediatricians and school boards on considerations regarding safe and healthy schooling and recommendations for measures that can decrease the risk and facilitate in-person learning.

Based on the AAP's expert review of this scientific literature and the guidance outlined by the World Health Organization ("WHO"), United Nations Children's Fund ("UNICEF"), and Centers for Disease Control and Prevention ("CDC"), along with AAP's members' collective expertise as pediatricians and researchers, the AAP concluded that "[e]verything possible must be done to keep students in schools in-person." *COVID-19 Guidance for Safe Schools*, *supra* n. 22. This is because "[s]chools and school-supported programs are fundamental to child and adolescent development and well-being and provide our children and adolescents with academic instruction; social and emotional skills, safety, reliable nutrition, physical/occupational/speech therapy, mental health services, health services, and opportunities for physical activity, among other benefits." *Id.* By contrast, "[r]emote learning highlighted inequities in education, was detrimental to the educational attainment of students of all ages, and exacerbated the mental health crisis among children and adolescents." *Id.*

Because of the importance of in-person learning, the AAP researched and drafted its Interim Guidances on Face Masks[24] and Safe Schools[25] to facilitate in-person education and protect children during the pandemic. The initial AAP Interim Guidances, developed in the spring of 2020,

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

[24] *Face Masks*, *supra* n. 21.

[25] *COVID-19 Guidance for Safe Schools*, *supra* n. 22.

were drafted and reviewed by a number of pediatricians with expertise in a wide variety of disciplines. The drafters reviewed dozens of articles and available data to determine whether and how children could safely attend school during the pandemic. These statements were first issued in the spring of 2020 and have been continually reviewed and updated since that time. By this point, the AAP's experts have reviewed hundreds of articles related to the efficacy and safety of masks, as well as their effects (or lack thereof) on the cognitive, social, and psychological development of children. The following discussion is based principally on the current (summer 2021) iterations of these interim guidance documents.

Based on this review of the medical literature, the AAP has determined that "at this point in the pandemic, given what we know now about low rates of in-school transmission *when proper prevention measures are used*, together with the availability of effective vaccines for those age 12 years and up, that the benefits of in-person school outweigh the risks in almost all circumstances." *COVID-19 Guidance for Safe Schools*, *supra* n. 22 (emphasis added). Among the recommended prevention measures (such as immunization of all eligible individuals and adequate and timely COVID-19 testing), one of the most important is that "**[a]ll students older than 2 years and all school staff should wear face masks at school (unless medical or developmental conditions prohibit use)**." *Id.* (emphasis in original).

Although AAP has modified other recommendations when indicated by new research or the changing nature of the pandemic, the AAP's strong recommendation of universal masking for students, teachers, and support staff in school has remained consistent from the beginning — because masks are a safe, effective, and critical infection control measure. This conclusion has been consistently reinforced by all relevant data and credible research regarding the transmission

and health risks of COVID-19 and the effect of wearing masks on children's education, health, and development.

After significant analysis, including analysis of the emerging Delta variant, the AAP reaffirmed its recommendation of universal masking in school settings on July 19, 2021. Eight days later, on July 27, 2021, the CDC followed suit, recommending "universal indoor masking for all teachers, staff, students, and visitors to schools, regardless of vaccination status."[26]

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

a. a significant portion of the student population is not eligible for vaccination;

b. the need to protect unvaccinated students from COVID-19 and to reduce transmission;

c. the lack of systems to monitor vaccine status among students, teachers and staff;

d. the potential difficulty in monitoring or enforcing mask policies for those who are not vaccinated;

e. in the absence of schools being able to conduct this monitoring, universal masking is the best and most effective strategy to create consistent messages, expectations, enforcement, and compliance without the added burden of needing to monitor vaccination status;

f. the possibility of low vaccination uptake within the surrounding school community; and

g. the continued concerns for variants that are more easily spread among children, adolescents, and adults.

COVID-19 Guidance for Safe Schools, supra n. 22.

Most importantly, the research literature has confirmed that masks are both effective and safe. As the CDC has explained, masks "reduce the emission of virus-laden droplets . . . , which

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

is especially relevant for asymptomatic or presymptomatic infected wearers who feel well and may be unaware of their infectiousness to others, and who are estimated to account for more than 50% of transmissions."[27] Cloth masks "not only effectively block most large droplets (i.e., 20-30 microns and larger) but they can also block the exhalation of fine droplets."[28] As a result, "[m]ulti-layer cloth masks can both block up to 50-70% of these fine droplets and particles," with "[u]pwards of 80% blockage" recorded in some studies.[29] To a slightly lesser extent, masks also "help reduce inhalation of these droplets by the wearer"; multi-layer cloth masks can filter out "nearly 50% of fine particles less than 1 micron."[30]

Numerous studies have shown that increasing the rate of mask-wearing, including through universal mask policies in particular, significantly reduces the spread of COVID-19.[31] In

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

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *See, e.g.*, Jeremy Howard, et al., *An Evidence Review of Face Masks Against COVID-19*, 118 Proc. of the Nat'l Acad. of Servs. e2014564118 (2021), https://www.pnas.org/content/118/4/e2014564118; T. Brooks & Jay C. Butler, *Effectiveness of Mask Wearing to Control Community Spread of SARS-CoV-2*, 325 J. of 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-Person Transmission of SARS-CoV-2 and COVID-19: A Systematic Review and Meta-Analysis*, 395 Lancet 1973 (2020), https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31142-9/fulltext; Christopher T. Leffler, et al., *Association of Country-wide Coronavirus Mortality with Demographics, Testing, Lockdowns, and Public Wearing of Masks*, 103 Am. J. Tropical Med. Hygiene 2400 (2020), https://pubmed.ncbi.nlm.nih.gov/33124541/; Miriam E. Van Dyke, et al., *Trends in County-Level COVID-19 Incidence in Counties With and Without a Mask Mandate—*

particular, studies have shown that masking and similar mitigation measures can limit transmission in schools.[32] Just this past Friday, the CDC released three new studies conducted during this school year, all of which found that "school districts without a universal masking policy in place were more likely to have COVID-19 outbreaks."[33] Notably, studies suggest that there is no substitute

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Kansas, June 1-August 23, 2020. 69 Morbidity & Mortality Weekly Rep. 1777 (2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6947e2.htm; Wei Lyu & George L. Wehby, *Community Use of Face Masks and COVID-19: Evidence from a Natural Experiment of State Mandates in the US*, 39 Health Aff. 1419 (2020), https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00818.

[32] *See, e.g.*, Patrick Dawson, et al., *Pilot Investigation of SARS-CoV-2 Secondary Transmission in Kindergarten Through Grade 12 Schools Implementing Mitigation Strategies—St. Louis County and City of Springield, Missouri, December 2020*, 70 Morbidity & Mortality Weekly Rep. 449 (2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7012e4.htm?s_cid=mm7012e4_w; Darria L. Gillespie, et al., *The Experience of 2 Independent Schools With In-Person Learning During the COVID-19 Pandemic*, 91 J. Sch. Health 347 (2021), https://onlinelibrary.wiley.com/doi/10.1111/josh.13008; Rebecca B. Hershow, et al., *Low SARS-CoV-2 Transmission in Elementary Schools - Salt Lake County, Utah, December 3, 2020-January 31, 2021*, 70 Morbidity & Mortality Weekly Rep. 442 (2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7012e3.htm; Amy Falk, et al., *COVID-19 Cases and Transmission in 17 K-12 Schools - Wood County, Wisconsin, August 31-November 29, 2020*, 70 Morbidity & Mortality Weekly Rep. 136 (2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7004e3.htm; Fiona Russell et al., *COVID-19 in Victorian Schools: An Analysis of Child-Care and School Outbreak Data and Evidence-Based Recommendations for Opening Schools and Keeping Them Open*, Murdoch Children's Rsch. Inst. & The Univ. of Melb. (Nov. 92020), *available at* https://www.mcri.edu.au/sites/default/files/media/documents/covid-19_in_victorian_schools_report.pdf; *see generally Science Brief: Transmission of SARS-CoV-2 in K-12 Schools and Early Care and Education Programs—Updated*, CDC (July 9, 2021), https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html.

[33] *Studies Show More COVID-19 Cases in Areas Without School Masking Policies*, CDC (Sept. 24, 2021), https://www.cdc.gov/media/releases/2021/p0924-school-masking.html; *see* Megan Jehn, et al., *Association Between K–12 School Mask Policies and School-Associated COVID-19 Outbreaks—Maricopa and Pima Counties, Arizona, July–August 2021*, 70 Morbidity & Mortality Weekly Rep. (Early Release) (Sept. 24, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7039e1-H.pdf; Samantha E. Budzyn, et al., *Pediatric COVID-19 Cases in Counties With and Without School Mask Requirements—United States, July 1–September 4, 2021*, 70 Morbidity & Mortality Weekly Rep. (Early Release) (Sept.

for universal masking requirements: while studies have found *universal masking requirements* effective at reducing transmission, as discussed above, they have not found the same effect for mask *recommendations*.[34] As the ABC Science Collaborative, a 13-state initiative coordinated by the Duke Clinical Research Institute at the Duke University School of Medicine, summed it up, "[p]roper masking is the most effective mitigation strategy to prevent COVID-19 transmission in schools when vaccination is unavailable or there are insufficient levels of vaccination among students and staff."[35]

Indeed, masking is so plainly effective that courts have found that it may be *required* in schools under the federal Americans with Disabilities Act and Rehabilitation Act. *See, e.g.*, *S.B. v. Lee*, No. --- F. Supp. 3d ----, 2021 WL 4346232 , (E.D. Tenn. Sept. 24, 2021). Courts have recognized that indoor mask-wearing is "*the* most important of the CDC's guidelines," and "the primary way to mitigate the spread of COVID-19." *Id.* at *15 (internal quotation omitted). Even before the latest CDC studies, "the evidence show[ed] that the absence of a mask mandate is fueling infections . . . with frightening celerity." *Id.* at *16. There is "only one conclusion: . . .

24, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7039e3-H.pdf; Sharyn E. Parks, et al., *COVID-19–Related School Closures and Learning Modality Changes—United States, August 1–September 17, 2021*, 70 Morbidity & Mortality Weekly Rep. (Early Release) (Sept. 24, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7039e2-H.pdf.

[34] *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 Wearers*, Annals of Internal Med. (2020), https://www.acpjournals.org/doi/pdf/10.7326/M20-6817.

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

among the unvaccinated, [the Delta variant] is untamable without community-wide masking inside schools." *Id.* at *17.

Plaintiffs cannot support their claims to the contrary. The most they offer is one letter to the editor noting a low rate of COVID-19 among schoolchildren in Sweden (where mask-wearing in schools was not the norm) prior to the emergence of the Delta variant.[36] Whatever the probity of this non-peer-reviewed letter as to the role of masks during the prior phases of the pandemic, it says nothing about the efficacy of masks or their importance in light of the highly transmissible Delta variant.[37]

IV. Masks Do Not Harm Children

Plaintiffs' main argument is that "it is actually dangerous for children to wear masks for hours at a time, both mentally and physically." Pls.' Mot. at 4. The AAP's comprehensive review of the medical research has shown that this is false: masking does not harm children. Plaintiffs assert that masks impair respiratory function, increase viral load, impede social or speech development, and cause anxiety. None of these arguments have a scientific basis.

Respiratory function: Contrary to Plaintiffs' claims, masking has no significant effect on respiratory function in the vast majority of cases. Cloth and surgical masks are gas-permeable,

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[36] *See* Pls.' Mot. at 26-27 (citing Jonas F. Ludvigsson, et al., *Open Schools, Covid-19, and Child and Teacher Morbidity in Sweden*, 384 New Eng. J. Med. 669 (2021), https://www.nejm.org/doi/10.1056/NEJMc2026670.

[37] In their Amended Complaint, Plaintiffs also cite a CDC study that found a "21% lower incidence in schools that required mask use." Am. Compl. ¶ 21 (quoting Jenna Gettings, et al., *Mask Use and Ventilation Improvements to Reduce COVID-19 Incidence in Elementary Schools—Georgia, November 16–December 11, 2020*, 70 Morbidity & Mortality Weekly Rep. 779 (2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7021e1.htm. The authors concluded that "[u]ntil vaccines are available for children aged <12 years, universal and correct mask use is a critical prevention strategy." Perhaps recognizing that this study contradicts their claim rather than supporting it, Plaintiffs omitted it from their preliminary injunction motion.

which means that carbon dioxide can pass out of the mask and oxygen pass in, without obstruction. Masks do not present a risk of hypercapnia (excess $CO_{2)}$ or hypoxemia (inadequate oxygen saturation), even among people with lung disease, as proven by studies using pulse oximetry to test changes in end-tidal CO_2 and oxygen saturation.[38] Even among infants and young children, the use of facial masks is not associated in significant changes in respiratory function.[39]

Plaintiffs' claim is also belied by the decades-long history of mask usage in surgical settings, for immunocompromised individuals (including children) such as chemotherapy patients, and in countries where masks have long been used to prevent spread of illness. For example, surgeons and other medical professionals may wear surgical masks for 6 to 8 hours at a time while performing involved surgery. If masks posed a risk of hypercapnia, hypoxemia, or any other harm, it would have been discovered long ago due to surgeons and attendants fainting or hospitals in other countries receiving adult or pediatric patients who were harmed by mask wearing. The complete lack of such reports is strong evidence, if more were needed, that Plaintiffs' concern is entirely unfounded.

Plaintiffs' sources do not provide reason to doubt these long-settled facts. Their first source is not "a BMJ (British Medical Journal) article," as Plaintiffs claim, Pls.' Mot. at 23; it is

[38] *See, e.g.*, Rajesh Samannan, et al., *Effect of Face Masks on Gas Exchange in Healthy Persons and Patients with Chronic Obstructive Pulmonary Disease*, 18 Annals of Am. Thoracic Soc'y 539 (2021), https://www.atsjournals.org/doi/full/10.1513/AnnalsATS.202007-812RL; Steven L. Shein, et al., *The effects of wearing facemasks on oxygenation and ventilation at rest and during physical activity*, PLoS One (2021), https://pubmed.ncbi.nlm.nih.gov/33626065/ ("The risk of pathologic gas exchange impairment with cloth masks and surgical masks is near-zero in the general adult population.").

[39] *See, e.g.*, Ricardo Lubrano, et al., *Assessment of Respiratory Function in Infants and Young Children Wearing Face Masks During the COVID-19 Pandemic*, JAMA Netw. Open (2021), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2776928.

an Internet commenter's *response* to a BMJ article.[40] The actual article advocated *for* masks, not against them.[41] Plaintiffs' other source, *see* Pls.' Mot. at 27-31, is a meta-analysis explicitly designed to collect all papers that found "negative effects of masks."[42] It primarily reviewed studies of N95 or surgical masks,[43] which are not required by Gwinnett County's policy, or studies associated with mask-wearing during sports activity, which Gwinnett County exempts from the mask requirement.[44] The *only* source it found that claimed to find that cloth masks impaired oxygen saturation was an unpublished, non-peer-reviewed paper based solely on a study of 12 college students.[45] This evidence does not come close to supporting Plaintiffs' claim.

To be sure, there are rare cases in which preexisting medical conditions pose genuine obstacles to wearing a mask. But Gwinnett County's policy specifically provides

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[40] *See Face masks for the public during the covid-19 crisis—All rapid responses*, Brit. Med. J., https://www.bmj.com/content/369/bmj.m1435/rapid-responses (Apr. 20, 2020 comment of Antonio I. Lazzarino); *see also id.* ("Rapid responses . . . are not journal articles.").

[41] *See* Trisha Greenhalgh, et al., *Face Masks for the Public During the Covid-19 Crisis*, 369 Brit. Md. J. m1435 (2020), https://www.bmj.com/content/369/bmj.m1435.

[42] Kai Kisielinski, et al., *Is a Mask That Covers the Mouth and Nose Free from Undesirable Side Effects in Everyday Use and Free of Potential Hazards?*, 18 Int'l J. Envt'l Rsch. Pub. Health 4344 (2021), https://www.mdpi.com/1660-4601/18/8/4344/htm#B36-ijerph-18-04344.

[43] The other source Plaintiffs cite for this claim similarly dealt with N95 respirators used in a medical setting. *See* Pls.' Mot. at 24 (citing Elisheva Rosner, *Adverse Effects of Prolonged Mask Use among Healthcare Professionals During COVID-19*, 6 *J. Infectious Diseases & Epidemiology* 130 (2020), https://clinmedjournals.org/articles/jide/journal-of-infectious-diseases-and-epidemiology-jide-6-130.php?jid=jide).

[44] *See Back-to-School Mask Update*, Gwinnett County Pub. Schs. (Aug. 19, 2021), https://www.gcpsk12.org/cms/lib/GA02204486/Centricity/domain/11654/health/GCPS_Mask_Update_CURRENT_8-19-21.eq.pdf.

[45] *See* Cong Liu, et al., *Effects of Wearing Masks on Human Health and Comfort During the COVID-19 Pandemic*, IOP Conference Series: Earth & Env't Sci. (2020), https://iopscience.iop.org/article/10.1088/1755-1315/531/1/012034/pdf.

accommodations for "students with disabilities [who] are unable to wear a mask for extended periods" or students "who have medical conditions that make wearing a mask difficult and who provide medical documentation from a doctor."[46] Plaintiffs also imply that students will be wearing masks for eight hours straight, which is simply not what Gwinnett County's policy requires. In addition to numerous exceptions for meals, outdoor activities, physical activity, and playing instruments, the policy explicitly provides for "mini break[s]" in which a student can "remove their mask and put it back on after a few minutes."[47] These sorts of targeted, narrow exceptions accommodate comfort needs and practicalities without destroying the infection control benefits of a universal mask policy—yet Plaintiffs completely ignore them.

Bacterial Buildup: There is no evidence that cloth masks increase the risk of bacterial or viral contamination. Here again, the only evidence Plaintiffs provide comes entirely from studies of N95 respirators and surgical masks used while providing health care.[48] The need to replace a mask frequently *while administering health care to ill or injured individuals* is unsurprising and irrelevant to the putative risks of wearing a cloth mask in socially distanced classrooms. Even in the meta-analysis searching for "negative effects of masks" found no sources suggesting a risk of contaminants in any remotely comparable settings.

[46] Back-to-School Mask Update, *supra* n. 44; *see also* Face Masks, *supra* n. 21 (recommending that masking policies make exceptions where "medical or developmental conditions prohibit use").

[47] Back-to-School Mask Update, *supra* n. 44.

[48] *See* Pls.' Mot. at 24, 27-31 (citing Rosner, *supra* n. 43, and Kisielinski, *supra* n. 42).

Of course, the AAP and the CDC recommends that masks be kept clean and washed daily, and replaced when they become visibly soiled or wet.[49] With proper guidance from parents and teachers, most children are able to keep their masks clean. If maintained properly, cloth masks pose no added risk for breathing in pathogens, nor is there any evidence that masks trap any type of pathogen, whether bacterial or viral.

Cognitive, social, and speech development: Plaintiffs assert without citation that "students' academic performance suffers" due to masks and "[s]ome students have difficulty learning ordinary social skills when they and other students are masked." Pls.' Mot. at 26. This fear is unfounded. There is "no evidence that use of face masks prevents or delays speech or language development."[50] Not being able to see part of a person's face is not an impediment to social and speech development—as the experience of children who are blind from birth confirms. "[V]isually impaired children develop speech and language skills at the same rate as their peers."[51] Indeed, being unable to see speakers' mouths for a portion of the day may help children use other clues to understand and learn language and non-verbal communication, such as gestures, changes in tone of voice, and the like.[52]

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[49] *Guidance Related to Childcare During COVID-19*, AAP, https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/guidance-related-to-childcare-during-covid-19/; *see also Your Guide to Masks*, CDC (Aug. 13, 2021), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html ("Reusable masks should be washed whenever it gets dirty or at least daily. If you have a disposable face mask, throw it away after wearing it once.").

[50] *Do Masks Delay Speech and Language Development?*, AAP, https://healthychildren.org/English/health-issues/conditions/COVID-19/Pages/Do-face-masks-interfere-with-language-development.aspx.

[51] *Id.*

[52] *Id.*; *see also* Ashley L. Ruba & Seth D. Pollak, *Children's emotion inferences from masked faces: Implications for social interactions during COVID-19*, PLoS One (2020),

Crucially, the AAP does not recommend (and Defendants do not require) that children wear masks 24 hours a day, or that their parents do so. In the home, children's experiences will presumably be largely or entirely maskless, providing ample opportunity for interacting with people without masks. Plaintiffs provide neither evidence nor theory for suggesting otherwise.

Some children with preexisting developmental disabilities may have difficulty wearing masks. In many cases, this can be overcome with coaching,[53] although in some cases there could be particular aspects of a child's developmental needs that counsel against using masks in certain situations. Here again, Defendants' policy allows for accommodations, just as the AAP's guidance recommends.[54]

Anxiety: Plaintiffs assert that "[s]ome students experience anxiety when wearing a mask." Pls.' Mot. at 26. Here again, Plaintiffs cite no medical evidence, and no supportive studies exist. Mask-wearing is not linked to emotional or psychological harm, particularly when caregivers promote positive associations around mask-wearing.[55] While children can develop

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https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0243708 (finding that "while there may be some challenges for children incurred by others wearing masks, in combination with other contextual cues, masks are unlikely to dramatically impair children's social interactions in their everyday lives").

[53] *See, e.g.*, Maithri Sivaraman, et al., *Telehealth mask wearing training for children with autism during the COVID-19 pandemic*, 54 J. Applied Behavioral Analysis 70 (2021), https://pubmed.ncbi.nlm.nih.gov/33241588/; Madelynn A. Lillie, et al., *Increasing passive compliance to wearing a facemask in children with autism spectrum disorder*, 54 J. Applied Behavioral Analysis 582 (2021), https://europepmc.org/articles/pmc8250735/bin/jaba-54-600-s001.docx; Mary Halbur, et al., *Tolerance of face coverings for children with autism spectrum disorder*, 54 J. Applied Behavioral Analysis 600 (2021), https://pubmed.ncbi.nlm.nih.gov/33772777/.

[54] *See* Back-to-School Update, *supra* n. 44; Face Masks, *supra* n. 21.

[55] *Interim Guidance on Supporting the Emotional and Behavioral Health Needs of Children, Adolescents, and Families During the COVID-19 Pandemic*, supra n. 20; *Face Masks*, *supra* n. 21 (providing recommendations for "help[ing] my child get used to wearing a mask");

secondary anxieties about wearing a mask, this is no different from the possibility of developing secondary anxieties about eating, attending school, or any other activity. The risk of developing secondary anxiety or disordered behavior related to masking may be especially high when parents or community members perpetuate false claims that masks are harmful. But there is nothing intrinsic about mask-wearing that makes it particularly harmful, whether physically, socially, or emotionally.

In sum, while the fears Plaintiffs express for their children are understandable, they have no basis in scientific research or medical experience. Even if they had provided some shred of credible evidence for their concerns, it would not come close to establishing a likelihood of irreparable harm—much less a harm so significant that it overcomes the risks to other children and the community from the increased spread of COVID-19 if Gwinnett County's mask policy is enjoined. The balance of equities thus weighs heavily against Plaintiffs' requested injunction.

CONCLUSION

For these reasons and those stated in Defendants' brief, the Court should deny Plaintiffs' request for an injunction.

Supporting your child's mental health during COVID-19 school returns, UNICEF (Aug. 28, 2020), https://www.unicef.org/coronavirus/supporting-yourchilds-mental-health-during-covid-19-school-return ("Approach this conversation with empathy, saying that you know she is feeling anxious about coronavirus, but that it's healthy to talk about our worries and emotions. Children may also get upset or frustrated if they are finding it hard to wear masks, especially when running or playing. You can reassure your children that lots of adults are working hard to help keep your family safe, but emphasize that it's important we all follow the recommended measures to take care of more vulnerable members of our community.").

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CERTIFICATE OF SERVICE

I certify that on September 27, 2021, the above brief was filed using the court's CM/ECF system and emailed to counsel for the parties at the following email addresses:

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