IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

S.B. by and through his parents, M.B. and I.H., *et al.*, *Plaintiffs*, v. GOVERNOR BILL LEE, in his official capacity as GOVERNOR OF TENNESSEE, *et al.*, *Defendants*.	Case No. 3:21-cv-00317-JRG-DCP

CORRECTED **BRIEF OF *AMICI CURIAE* TENNESSEE CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS AND AMERICAN ACADEMY OF PEDIATRICS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

INTEREST OF *AMICI CURIAE*[1]

The Tennessee Chapter of the American Academy of Pediatrics ("TNAAP") is a non-profit educational organization and professional society comprising more than 1,000 members including pediatricians, residents, and medical students from Tennessee's hospitals, community clinics, and school-based health centers. TNAAP promotes the optimal health and development of children and adolescents of Tennessee, 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 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

[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 public interest points: the balance of the equities and the public interest weigh in favor of an injunction requiring universal school masking. Without it, as Plaintiffs explain, they and their peers will either "continue to be exposed to an increased risk of infection, hospitalization, or death because of COVID-19" or will be "denied the benefit of an in-person education." Pls.' Mot. at 12.

The science on school masking is settled: universal mask policies are the most effective way to reduce the spread of COVID in school populations where many children—including all children under the age of 12—are unvaccinated. 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. COVID-19 poses grave risks to children, even more so to children with special health needs, and these risks are spreading rapidly with the rise of the Delta variant and the start of the school year. At the same time, the AAP strongly recommends that everything possible must be done to keep students in school in-person, something that can be done safely only if all reasonable precautions are taken. 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 American's children. That review and the experiences of the front-line pediatric practitioners who make up the TNAAP and AAP's membership prove beyond any doubt that universal mask policies in schools significantly reduce the spread of COVID-19 and protect all children, particularly the medically vulnerable. This brief provides an overview of that literature and explains why universal mask policies are so crucial in fighting COVID-19.

ARGUMENT

I. Overview of the AAP's Research Efforts into the Efficacy of Masks

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. 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;[2] on providing clinical care to patients with COVID-19;[3] on treating post-COVID conditions;[4] on how to safely provide routine medical care such as check-ups, screenings, laboratory exams, treatment, and immunizations during the COVID-19 pandemic;[5] on caring for youth with special health needs during the COVID-19 pandemic;[6] on supporting the emotional and behavioral health needs of children,

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[2] *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/.

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

[4] *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/.

[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-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-coronavirus-covid-

adolescents, and families during the COVID-19 pandemic;[7] and—most relevant to this case—on the use of face masks as an infection control measure[8] and on operating safe schools during the COVID-19 pandemic that foster the overall health of children, adolescents, educators, staff, and communities.[9] 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.

II. 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 TNAAP 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,

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

[7] *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/.

[8] *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/.

[9] *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.[10] Additionally, virtual learning is often more difficult to access for some children with special health care needs.[11] 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 the 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 our 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. 9. 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.*)

The initial AAP Interim Guidance, developed in the spring of 2020, was drafted and reviewed by a number of pediatricians with expertise in a wide variety of disciplines. The

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

[11] *Caring for Children and Youth with Special Health Needs*, *supra* n. 6.

drafters reviewed dozens of articles and available data to determine whether and how children could safely attend school during the pandemic.

The result was the AAP Interim Guidances on Face Masks,[12] Safe Schools,[13] and Children with Special Health Needs.[14] 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 our 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. 9 (emphasis added). Among the prevention measures we recommend (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 added).

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,

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[12] *Face Masks*, *supra* n. 8.

[13] *COVID-19 Guidance for Safe Schools*, *supra* n. 9.

[14] *Caring for Children and Youth with Special Health Needs*, *supra* n. 6.

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."[15]

With respect to children with special health needs, the recommendations with respect to masks are the same.[16] Schools should "maintain universal masking" and educate teachers and staff in proper mask use.[17] Universal masking reduces community transmission, thus reducing the likelihood that an infected person will come in contact with a child with special health needs, and reduces the likelihood of transmission to the child if an infected person does come into contact with an especially vulnerable child.[18] These steps should be universal and are separate and apart from any Individual Education Plans that may be necessary for individual children.[19] In other words, masking should apply to everyone at the school, not solely to a particular vulnerable child. (Of course, schools should *also* continue to work with parents as necessary to update Individual Education Plans.)

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[15] *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.

[16] *Caring for Children and Youth with Special Health Needs*, *supra* n. 6.

[17] *Id*.

[18] *Id*.

[19] *Id*.

There are several reasons for our (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; 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;

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

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

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

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 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." 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." 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. 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."[20]

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.[21] In particular, studies have shown that masking and similar mitigation measures can limit transmission in schools.[22] As the ABC Science Collaborative, a 13-state initiative coordinated by

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[20] *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).

[21] *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—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.

[22] *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-*

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."[23]

At least one member of the Knox County School Board has suggested that masks are harmful to children "physically, socially, and emotionally." *See* Am. Compl. ¶ 52. This claim has no medical basis, as shown by the AAP's comprehensive review of the medical research. Our review shows that masking has no significant effect on respiratory function,[24] does not pose an

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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.

[23] 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.

[24] *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."); 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.

impediment to social and speech development,[25] and is not linked to emotional or psychological harm,[26] particularly when caregivers promote positive associations around mask-wearing.[27] While children can develop 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. There is nothing intrinsic about mask-wearing that makes it particularly harmful, and the risks of any secondary anxiety are significantly lower in the absence of negative reinforcement from parents and community members.

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[25] *See, e.g.*, *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 ("[T]here is no evidence that use of face masks speech and language development or social communication."); Ashley L. Ruba & Seth D. Pollak, *Children's emotion inferences from masked faces: Implications for social interactions during COVID-19*, PLoS One (2020), 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").

[26] *See*, *e.g.*, *Prevalence and Risk Factors Associated With Self-reported Psychological Distress Among Children and Adolescents During the COVID-19 Pandemic in China*, 4(1) JAMA Netw. Open e2035487 (2021), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2775633 (finding that students who wore a face mask frequently were at a *lower risk* for psychological distress than students who never wore a face mask).

[27] *Interim Guidance on Supporting the Emotional and Behavioral Health Needs of Children, Adolescents, and Families During the COVID-19 Pandemic,* supra n. 7; *Face Masks*, *supra* n. 8 (providing recommendations for "help[ing] my child get used to wearing a mask"); *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.").

In short, the science squarely backs up Governor Lee's advice that "If you want to protect your kid from the [COVID-19] virus or from quarantine, the best way to do that is to have your kid in school with a mask."[28]

III. Enjoining the Executive Order and Requiring Universal Masking Is in the Public Interest

As Plaintiffs explain, Knox County Public Schools have seen a rapid and dramatic spread of COVID-19 cases among both students and staff since the start of the school year. Pls.' Mot. at 6. The County's experience is consistent with what the AAP and TNAAP are observing around the country and state. As of September 9, 2021, 5,292,4837 total child COVID-19 cases have been reported in the United States, representing 15.5% of the total U.S. cases.[29] The prevalence of pediatric COVID-19 has skyrocketed since the school year began, with nearly 10% of all child cases since the beginning of the pandemic diagnosed between August 26 and September 9.[30] And the rate of serious cases has soared; just among the 24 states and 1 city that report child hospitalizations, 849,324 children have been hospitalized due to COVID-19, including nearly 65,000 in the three weeks from August 19 to September 9.[31] More children died in each of the

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[28] Kimberlee Kruesi, *Health Chief: Children Now 36% of Tennessee's Virus Cases*, AP (Aug. 25, 2021), https://apnews.com/article/health-coronavirus-pandemic-tennessee-32b7ff0dc540a2b11cc8c736c67020fe.

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

[30] *Id*.

[31] *See Children and COVID-19: State Data Report* at Appx. Tab. 2B, Children's Hosp. Ass'n & Am. Acad. of Pediatrics (Sept. 9, 2021), https://downloads.aap.org/AAP/PDF/AAP%20and%20CHA%20-%20Children%20and%20COVID-19%20State%20Data%20Report%209.9%20FINAL.pdf.

last three weeks than in any previous week of the pandemic.[32] Tennessee has been especially hard hit. With over 244,366 cumulative child cases of COVID-19, Tennessee has the *highest rate* of cumulative cases per 100,000 children of any state in the nation (13,863.5 per 100,000 children).[33] Over 700 Tennessee children have been hospitalized from COVID-19, and 16 have died. [34]

It should come as no surprise that, as Plaintiffs note, "*one out of every five* students" in Knox County "were not even attending school" as of September 1, 2021. *See* Pls.' Mot. at 6. As the AAP has emphasized in its Interim Guidance, the interests of children are best served by doing everything possible so that children can safely attend in-person school. *See COVID-19 Guidance for Safe Schools*, *supra* n. 9. Given that requiring masks reduces the spread of COVID-19, it is clear that enjoining the challenged Executive Order and requiring universal masking would be in the public interest. The challenged Order allows any student to opt out of a school's mask requirements. Students do not need to provide any reason whatsoever for doing so; they merely need a written note from their parent or guardian. *See* Tenn. Exec. Order No. 84 (Aug. 16, 2021). While studies have found *universal masking requirements* effective at reducing transmission, they have not found the same effect for mask *recommendations*.[35]

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[32] *Id.* at Tab. 2C.

[33] *Id.* at Tab. 3B.

[34] *Id.* at Tabs. 5B, 6B.

[35] *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.

CONCLUSION

For these reasons and those stated in Plaintiffs' briefs, the public interest would be served by enjoining the challenged Executive Order and requiring universal masking in schools.

Dated: September 14, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 14, 2021, the above brief was filed using the court's CM/ECF system, which will notify all registered counsel.

Dated: September 14, 2021

Respectfully submitted,

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