

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SK, b/n/f GINA KILDAHL, on behalf of
themselves and those similarly situated,

Plaintiff,

v.

SCHOOL DISTRICT OF FALL CREEK,
SCHOOL DISTRICT OF FALL CREEK
BOARD OF EDUCATION, JOE
SANFELIPPO, BROCK WRIGHT, ERIC
RYAN, ANNMARIE ANDERSON, JILL
GESKE, COURTNEY KNEIFL, and Does
1-10,

Defendants.

Case No. 3:21-cv-00637-wmc

**BRIEF OF AMICI CURIAE WISCONSIN CHAPTER OF THE AMERICAN ACADEMY
OF PEDIATRICS AND AMERICAN ACADEMY OF PEDIATRICS IN SUPPORT OF
PLAINTIFF'S AMENDED MOTION FOR A PRELIMINARY INJUNCTION**

INTRODUCTION

Since the onset of the COVID-19 pandemic, the Wisconsin Chapter of the American Academy of Pediatrics (WI-AAP) and the American Academy of Pediatrics (AAP), organizations representing pediatric medical professionals in Wisconsin and nationwide, have worked to evaluate the dangers of COVID-19 and to assess potential public health measures for reducing its deadly spread. The AAP has conducted a comprehensive review of the medical literature regarding COVID-19 among pediatric populations to determine what public health measures can effectively reduce the risks that COVID-19 poses to America's children. This

comprehensive review, and the experiences of the front-line pediatric practitioners who make up the AAP's membership, establish three relevant facts:

- (1) COVID-19 poses grave risks to children;
- (2) Universal masking policies in schools can significantly reduce the spread of COVID-19 and better protect all children; and
- (3) There is no credible evidence that masks harm children.

The science is clear: Mask requirements *significantly mitigate* the spread of the virus in schools. This brief provides an overview of the AAP's comprehensive review of the literature and explains why universal mask policies are so crucial in the ongoing fight against COVID-19.

The emergence of the highly-transmissible Omicron variant demonstrates that the risks faced by schoolchildren from COVID-19 are far from over. Omicron arrived in the United States at the beginning of December, with the first confirmed case in Wisconsin arising only three days later.¹ Since then, over 2.5 million children in the United States were newly diagnosed with COVID-19.² Indeed, just those six weeks account for over 18% of all COVID-19 hospitalizations and almost 15% of all COVID-19 deaths among children since the beginning of the pandemic.³ And the trendlines are getting worse. In just one week, between and January 6 and January 13, the last date of reporting, there were over 980,000 new pediatric cases.⁴

Because children impacted by the new variant will run a markedly greater risk of transmitting the virus to their classmates, teachers, and families, universal masking policies in

¹ New York Times, *The first Omicron case has been detected in the U.S.*, Dec. 1, 2021, <https://perma.cc/4WZM-P4E9>; Wisconsin Department of Health Services, *First Case of Omicron Variant Identified in Wisconsin*, Dec. 4, 2021, <https://perma.cc/49CG-ASDZ>.

² Children's Hosp. Ass'n & American Acad. of Pediatrics, *Children and COVID-19: State Data Report* at Appx. Tab 2A (Jan. 18, 2022), <https://perma.cc/J5RE-JQDN>.

³ *Id.* at Tab. 2B, 2C.

⁴ *Id.* at Tab 2A.

schools remain important to the public interest.

The public interest is paramount in evaluating whether to grant 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, the public interest is firmly in favor of granting the preliminary injunction to ensure the School District of Fall Creek implements a universal school masking policy for the duration of the litigation. Universal school masking policies substantially reduce the risk of death and serious illness among school-age populations and their families, without any evidence of meaningful harm to mask-wearers. Schools that lack such policies experience significantly higher rates of COVID-19 transmission, and effectively deny a safe education to all children, but particularly the medically vulnerable.

For the above reasons and those discussed below, Amici urge the Court to grant the Plaintiff’s amended motion for a preliminary injunction.

ARGUMENT

I. COVID-19 IS A SERIOUS PEDIATRIC ILLNESS

Throughout the pandemic, the AAP and the Children’s Hospital Association have collaborated to collect and share all publicly available data on COVID-19 cases among children.

Children are not impervious to COVID-19. Since the onset of the pandemic, over 9.4 million child COVID-19 cases have been reported in the United States, representing 17.8% of all U.S. COVID-19 cases.⁵ Wisconsin alone has reported 264,730 child cases of COVID-19, accounting for 21.1% of its total COVID-19 cases to date.⁶

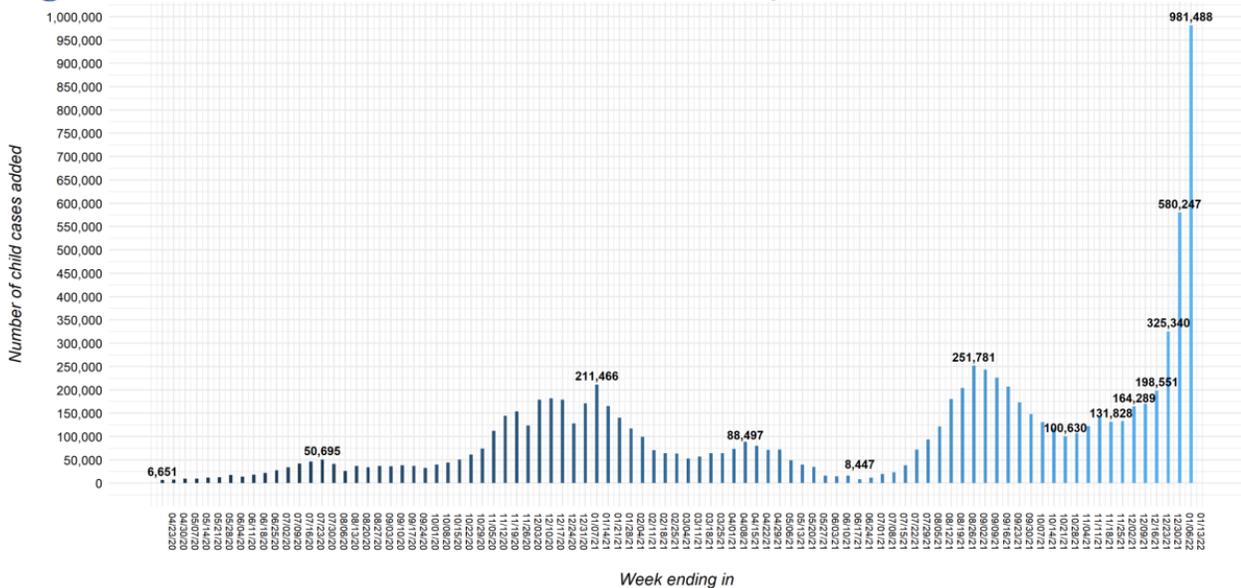
⁵ AAP, *Children and COVID-19: State-Level Data Report*, <https://perma.cc/DJ3E-Y4WC> (data available as of Jan. 13, 2022).

⁶ *Children and COVID-19: State Data Report*, *supra* note 2, at Tab 3B.

The prevalence of pediatric COVID-19 has skyrocketed since the current school year began. Since August 12, 2021, over 5.1 million child cases have been reported in the United States, accounting for more than 53% of all pediatric COVID cases in the U.S. since the beginning of the pandemic.⁷ This surge appears to be due to two principal factors: the resumption of in-person schooling and the emergence of the Delta and Omicron variants, which are more than twice as contagious as previous variants.⁸

Omicron is proving to be especially infectious among the pediatric population. As the table below illustrates, in the last week alone, more than 981,488 child COVID-19 cases have been reported, dwarfing previous weekly averages of COVID-19 infections among children.⁹

Fig 6. United States: Number of Child COVID-19 Cases Added in Past Week*



These numbers are particularly concerning given the low vaccination rates for school-aged children. In Wisconsin, only 21.7% of children aged 5–11 are fully vaccinated, and only 28.4% have received one dose of the vaccine.¹⁰ Even for those who are fully vaccinated, there is a risk of breakthrough infections that can lead to illness and spread the virus to their unvaccinated peers.¹¹ And although some children—such as S.K.—have already contracted COVID-19, prior infection may not prevent them from falling ill again with Omicron.¹²

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, 14,953 children were hospitalized due to COVID-19 since August 12, accounting for more than 45% of the total child hospitalizations since the onset of the pandemic.¹³ Child mortality due to COVID-19 has also spiked: more than 50% of all COVID-19 related pediatric deaths occurred since August 12—the approximate beginning of this school year.¹⁴ Since the arrival of the Omicron variant, pediatric hospitalizations have accelerated across the 24 states and 1 city that report: Just in the week between January 6 and January 13, 1,962 children have been hospitalized.

As the mortality and hospitalization rates reflect, COVID-19 can cause severe symptoms and potentially fatal outcomes in children. Among other things, COVID-19 infections can

¹⁰ Mayo Clinic, *U.S. COVID-19 vaccine tracker*, Dec. 21, 2022, <https://perma.cc/CH87-UN6B>.

¹¹ See CDC, *The Possibility of COVID-19 after Vaccination: Breakthrough Infections*, Dec. 17, 2021), <https://perma.cc/DS5S-AS8R>.

¹² See Emily Head et al., *Omicron largely evades immunity from past infection or two vaccine doses*, Imperial College London News, Dec. 17, 2021, <https://perma.cc/E7QT-XKCC> (estimating that “the protection against reinfection by Omicron afforded by past infection may be as low as 19%).

¹³ CHA & AAP, *Children and COVID-19: State Data Report*, *supra* note 2, at Appx. Tab. 2B.

¹⁴ *Id.* at Appx. Tab. 2C.

produce multisystem inflammatory syndrome (MIS-C), which involves clinically severe levels of fever, inflammation, and dysfunction or shock in multiple organ systems.¹⁵

Several studies have shown that, even when the initial symptoms are mild, COVID-19 can also lead to long-term symptoms in children and adolescents.¹⁶ Potential long-term symptoms go beyond persistent loss of taste and smell, and can include respiratory or cardiac issues such as chest pain, cough, shortness of breath, inflammation of the heart, and arrhythmia—which can lead to heart failure, cardiac arrest, or stroke¹⁷ Long-term symptoms can also include neurodevelopmental impairment, including subtle but persistent injury in cognitive, language, academic, motor, mood, and behavioral domains; cognitive foginess or fatigue; physical fatigue; and mental or behavioral health issues such as stress and adjustment disorders.¹⁸

II. THE AAP'S INTERIM GUIDANCE FOR SCHOOLS

A. Overview of 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

¹⁵ See CDC, *Multisystem Inflammatory Syndrome in Children (MIS-C) Associated with Coronavirus Disease 19 (COVID-19)*, May 14, 2020, <https://perma.cc/7J5A-YQGE>; AAP, *MIS-C Interim Guidance*, <https://perma.cc/VND7-CU4E> (updated Nov. 15, 2021).

¹⁶ See, e.g., Danilo Buonsenso, et al., *Preliminary evidence on long COVID in children*, *Acta Paediatrica*, Apr. 9, 2021, <https://perma.cc/X4KQ-RPZV> (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://perma.cc/9J5C-4GLG> (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).

¹⁷ AAP, *Post-COVID-19 Conditions in Children and Adolescents*, <https://www.aap.org/link/a6cc166361f44ba08c7e6fdf2c20558b.aspx> (updated Dec. 17, 2021).

¹⁸ *Id.*

health. These Policy Statements are written by recognized pediatrician experts who conduct a comprehensive review of the medical literature and available data. They are then peer-reviewed by 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 the use of face masks as an infection control measure;¹⁹ on operating safe schools during the COVID-19 pandemic that foster the overall health of children, adolescents, educators, staff, and communities;²⁰ and on caring for youth with special health needs during the COVID-19 pandemic.²¹ The AAP guidance also includes information on when and how pediatricians should test patients for COVID-19;²² on providing clinical care to patients with COVID-19;²³ on treating post-COVID conditions;²⁴ on how to safely provide routine medical care such as check-ups, screenings, laboratory exams, treatment, and immunizations during the COVID-19 pandemic;²⁵ and on supporting the emotional and behavioral health needs of children,

¹⁹ AAP, *Face Masks*, <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/cloth-face-coverings/> (updated Jan. 6, 2022).

²⁰ AAP, *COVID-19 Guidance for Safe Schools and Promotion of In-Person Learning*, <https://www.aap.org/link/39a4a609623f44769407e23a80bf14a6.aspx> (updated Nov. 2, 2021).

²¹ AAP, *Caring for Children and Youth with Special Health Care Needs During the COVID-19 Pandemic*, <https://www.aap.org/link/b2e0df9192854b7da749d46b9bbc1dfe.aspx> (updated Dec. 1, 2021).

²² AAP, *COVID-19 Testing Guidance*, <https://www.aap.org/link/33d8ca6e4cf8410b9668ac4ee848f2b5.aspx> (updated Nov. 17, 2021).

²³ AAP, *COVID-19 Interim Guidance*, <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/> (updated Jan 6, 2022).

²⁴ AAP, *Post-COVID-19 Conditions in Children and Adolescents*, *supra* note 17.

²⁵ AAP, *Guidance on Providing Pediatric Well-Care During COVID-19*, <https://www.aap.org/link/db4c405dbff949248f11fcb912baf3e8.aspx> (updated Jan. 6, 2022).

adolescents, and families during the COVID-19 pandemic.²⁶ The AAP has repeatedly reviewed and updated these Interim Guidance Statements to ensure that they reflect the best medical understanding and current scientific evidence regarding COVID-19.

B. The Development of the AAP’s Interim Guidance for Schools

Beginning early in the pandemic, members of the AAP began receiving questions from families and school boards about whether to return to in-person schooling, and how in-person education could be conducted safely during the pandemic.

As pediatrician organizations, the AAP and WI-AAP recognize the unique value of in-person education and are seriously concerned about the impact on children of being away from in-person learning. Extensive literature has shown that the loss of in-person education can negatively affect children’s cognitive, educational, and social development, as well as children’s short and long-term mood, behavior, and mental health.²⁷ Children with special needs suffer the additional loss of access to educational support structures, school-based therapies, school meals, and school-based professionals who are often the front-line identifiers of special needs.²⁸ The studies are clear: remote education is not an equal substitute for in-person education on a long-term basis. For these reasons, the AAP concludes that “[e]verything possible must be done to keep students in schools in-person.”²⁹

At the same time, however, the AAP and WI-AAP are acutely aware that the COVID-19 pandemic poses serious risks to children in school. To balance these considerations, the AAP

²⁶ AAP, *Interim Guidance on Supporting the Emotional and Behavioral Health Needs of Children, Adolescents, and Families During the COVID-19 Pandemic*, <https://www.aap.org/link/847f4d6e0a9346b5a705e18493d41bd1.aspx> (updated Dec. 9, 2021).

²⁷ See AAP, *COVID-19 Guidance for Safe Schools*, *supra* note 20.

²⁸ *Id.*

²⁹ *Id.*

developed Interim Guidance for pediatricians and school boards on safe and healthy schooling and recommendations for measures to decrease the risks of in-person learning.

Based on the AAP’s expert review of the scientific, along with our members’ collective expertise as pediatricians and researchers, the AAP “strongly advocate[s] that all policy considerations for school plans start with the goal of in-person learning.”³⁰ 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.”³¹ By contrast, “[r]emote learning—which exacerbated existing educational inequities—was detrimental to the educational attainment of students of all ages and worsened the growing mental health crisis among children and adolescents.”³²

AAP has issued Interim Guidances on Face Masks,³³ Safe Schools,³⁴ and Children with Special Health Needs.³⁵ Initially issued in the spring of 2020, these documents 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. Although the AAP has modified some of its other recommendations as further information is learned about COVID-19, its strong recommendation of universal masking for students, teachers, and support

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ AAP, *Face Masks*, *supra* note 19.

³⁴ AAP, *COVID-19 Guidance for Safe Schools*, *supra* note 20.

³⁵ AAP, *Caring for Children and Youth with Special Health Care Needs*, *supra* note 21.

staff in school has remained consistent from the beginning—because masks are a safe, effective, and critical infection-control measure.

II. THE AAP RECOMMENDS UNIVERSAL MASKING FOR STUDENTS AND SCHOOL STAFF

Based on our review of the medical literature, the AAP determined that “[a]t 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 eligible, . . . the benefits of in-person school outweigh the risks in almost all circumstances.”³⁶ 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).”³⁷

After significant analysis, 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”—a recommendation that it has reiterated as recently as last week.³⁸ Now again, after reviewing all scientific evidence to date on the transmission and prevention of COVID-19 during the current school year, AAP also reaffirms its recommendation of universal masking.³⁹

³⁶ AAP, *COVID-19 Guidance for Safe Schools*, *supra* note 20 (emphasis added).

³⁷ *Id.*

³⁸ CDC, *Interim Public Health Recommendations for Fully Vaccinated People—Summary of Recent Changes*, <https://perma.cc/JR8W-6965> (updated Oct. 15, 2021); CDC, *Guidance for COVID-19 Prevention in K-12 Schools*, <https://perma.cc/Y5ZN-HF69> (updated Jan. 13, 2021).

³⁹ *COVID-19 Guidance for Safe Schools*, *supra* note 20.

A. Masking Policies Prevent the Spread of COVID-19 in Schools

While there are several reasons for our recommendation of universal masking in schools, the most important is that the research has emphasized that masks are both effective and safe.⁴⁰

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 (estimated to account for more than 50% of SARS-CoV-2 transmissions).”⁴¹ 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 and particles (also often referred to as aerosols) smaller than 10 microns.”⁴² 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.⁴³ To a 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.”⁴⁴

This difference between masks’ ability to block *exhalation* and *inhalation* of viral particles explains why it is so important for mask policies to be universal, as opposed to merely allowing those who want to wear masks to do so. Masks’ primary benefit is as “source control,” a method of preventing infected carriers from spreading viral particles as widely and thus limiting the spread of airborne infectious diseases such as COVID-19. As the CDC has explained, “masks are not designed to reduce the particles that the wearer will inhale The

⁴⁰ *Id.* (identifying eight bases for AAP’s mask recommendation).

⁴¹ CDC, *Science Brief: Community Use of Masks to Control the Spread of SARS-CoV-2*, <https://perma.cc/LER6-RXKU> (updated Dec. 6, 2021) (citations omitted).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

purpose of wearing masks is to help reduce the spread of COVID-19 by reducing the spread of the virus through respiratory droplets from asymptomatic individuals.”⁴⁵ Because wearing a mask can provide only limited protection against contracting COVID-19 if the wearer is in the proximity of one or more unmasked carriers, universal masking policies are needed as source control for COVID-19 carriers (who may be asymptomatic and not know they are shedding viral particles), thereby protecting vulnerable individuals around them. This, in turn, protects children who otherwise would be incapable of attending school in-person from having to choose between a heightened risk of contracting COVID-19 or being forced into an inferior remote setting.

Many studies undertaken earlier in the pandemic have shown that increasing the rate of mask-wearing, including through universal mask policies, significantly reduces the spread of COVID-19.⁴⁶ In particular, studies have shown that masking and similar mitigation measures limit transmission in schools.⁴⁷ 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

⁴⁵ Jaclyn Krah Cichowicz, et al., *Respiratory Protection vs. Source Control—What’s the Difference?*, CDC NIOSH Science Blog, Sept. 8, 2020, <https://perma.cc/4PR6-SUR9>.

⁴⁶ See, e.g. John 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, Feb. 10 2021, <https://perma.cc/JUD8-X2SK>; Miriam E. Van Dyke, et al., *Trends in County-Level COVID-19 Incidence in Counties With and Without a Mask Mandate—Kansas, June 1-Aug. 23, 2020*. 69 Morbidity & Mortality Weekly Rep. 1777 (2020), <https://perma.cc/9UT3-3V3B>.

⁴⁷ See, e.g., 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 (Mar. 25, 2021), <https://perma.cc/3VDT-C2BZ>; Fiona Russell et al., *COVID-19 in Victorian Schools: An Analysis of COVID-19 in ECEC and Schools Evidence-Based Recommendations for Opening ECEC and Schools & Keeping Them Open*, Murdoch Children’s Rsch. Inst. & the Univ. of Melbourne, Nov. 9, 2020, <https://perma.cc/J899-2668>; 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://perma.cc/TWE3-W48A>.

transmission in schools when vaccination is unavailable or there are insufficient levels of vaccination among students and staff.”⁴⁸

While the published literature confirming the efficacy of masks largely involves studies conducted with the Delta variant or earlier strains of the virus, based on the evidence we have so far, we agree with the World Health Organization’s assessment that “all preventative measures that work against the Delta variant continue to be effective against Omicron – and this includes mask wearing.”⁴⁹ Indeed, because early estimates suggest Omicron is roughly three times more transmissible than Delta,⁵⁰ the use of masks and other aspects of a layered protection strategy to disrupt transmission is more important than ever. While respirators such as N95s and KN95s are more effective than cloth masks, even well-fitted cloth masks provide some protection.⁵¹

B. B. Courts Across the Country Have Recognized the Effectiveness of Masking Policies Are Effective

Many federal courts have acknowledged that “masks remain a critical safeguard for children against COVID-19 exposure.” *G.S. v. Lee*, No. 21-CV-02552-SHL-ATC, 2021 WL 4057812 (W.D. Tenn. Sept. 3, 2021). Indeed, 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.” *S.B. v. Lee*, 2021 WL 4346232 at *15 (internal quotation omitted). In contrast, courts have explained that when school districts leave mask use to individual choice, “the

⁴⁸ ABC Science Collaborative, *The ABCs of North Carolina’s Plan*, <https://perma.cc/N78V-VVJM> (last visited Sept. 1, 2021) (emphasis added).

⁴⁹ World Health Organization, *The Omicron variant: sorting myth from fact*, Jan. 1, 2022, <https://perma.cc/2588-4YHM>.

⁵⁰ See Kimihito Ito, et al., *Relative Instantaneous Reproduction Number of Omicron SARS-CoV-2 Variant with Respect to Delta Variant in Denmark*, *J. Med. Virol.* (Dec. 30, 2021) <https://perma.cc/7ST2-3NBB>.

⁵¹ See generally CDC, *Types of Masks and Respirators* (updated Jan. 14, 2022), <https://perma.cc/A2PK-4N4Q>; Science Brief: *Community Use of Masks*, *supra* note 41.

evidence shows that the absence of a mask mandate is fueling infections . . . with frightening celerity.” *Id.* at *16.

Courts have thus ordered the implementation of mask mandates in response to “the reality that . . . [the Delta variant] is untamable without community-wide masking inside schools.” *S.B. v. Lee*, 2021 WL 4346232 at *17 (granting a preliminary injunction ordering defendants to enforce a mask mandate “as a reasonable accommodation under the ADA” and enjoining enforcement of a vote against mask mandates). See also *G.S. v. Lee*, 2021 WL 4057812 at *8–9 (issuing a temporary restraining order requiring that defendants enforce health orders and enjoining broad opt-outs to mask mandates); *R.K. v. Lee*, No. 3:21-CV-00725, 2021 WL 4942871, at *18 (M.D. Tenn. Oct. 22, 2021 (granting a preliminary injunction preventing enforcement of an executive order that allowed parents to opt-out of in-school mask mandates)).⁵²

Masking policies are a reasonable precaution to protect children who otherwise would be incapable of attending school in-person, and to better safeguard children’s overall wellbeing. For these reasons, AAP urges this Court to join the majority of its sister courts in recognizing the

⁵² Courts have also held that under the ADA, states and school districts must allow mask policies as a reasonable accommodation for students with disabilities. See, e.g., *Arc of Iowa v. Reynolds*, No. 4:21-CV-00264, 2021 WL 4166728, at *8 (S.D. Iowa Sept. 13, 2021) (recognizing that “by enforcing the ban [on mask mandates] Defendants appear to be violating the ADA’s requirement that schools must provide ‘reasonable modifications’ to disabled students” and preventing them from getting “equal access to school programs, services, and activities” in the “‘most integrative setting’”); *Disability Rts. S.C. v. McMaster*, No. CIV 3:21-02728-MGL, 2021 WL 4444841, at *7–9 (D.S.C. Sept. 28, 2021) (granting a preliminary injunction enjoining a ban on mask mandates and explaining “[n]o one can reasonably argue that it is an undue burden to wear a mask to accommodate a child with disabilities”), *mot. to stay injunction pending appeal denied*, No. 21-2070 (4th Cir. Nov. 10, 2021); *E.T. v. Morath*, No. 1:21-CV-717-LY, 2021 WL 5236553 (W.D. Tex. Nov. 10, 2021) (granting a permanent injunction enjoining a ban on mask mandates because under the ban, students with disabilities “are being denied the benefits of in-person learning on an equal basis as their peers without disabilities”), *injunction stayed pending appeal*, No. 21-51083 (5th Cir. Dec. 1, 2021).

overwhelming scientific consensus on mandatory mask policies and their efficacy in keeping children and communities safe and find that an injunction is in the public interest.

CONCLUSION

For the foregoing reasons, Amici respectfully request that this Court grant Plaintiff's amended motion for a preliminary injunction.

Respectfully submitted,

/s/ Perry Lange

Dated: January 21, 2022

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