UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

IN THE MATTER OF S.B., A MINOR STUDENT, BY AND THROUGH HIS PARENTS, M.B. AND L.H.;	)	
M.S., A MINOR STUDENT, BY AND THROUGH HER PARENT, K.P.	)	
T.W., A MINOR STUDENT, BY AND THROUGH HIS PARENTS, M.W. AND J.W.	)	
And	)	
M.K., A MINOR STUDENT, BY AND THROUGH HER PARENT, S.K	)	
Plaintiffs,	)	
	)	No. 3:21-cv-00317-JRG-DCP
v.	)	
GOVERNOR BILL LEE, in his official Capacity as GOVERNOR OF TENNESSEE And KNOX COUNTY BOARD OF EDUCATION	)	
Defendants,	)	
And	)	
M.M, A STUDENT WHO HAS REACHED THE AGE OF MAJORITY, and E.M. and D.M., MINOR STUDENTS, BY AND THROUGH THEIR PARENT, P.M.	)	
Intervenors-Defendants.	)	

MEMORANDUM IN SUPPORT OF INTERVENOR-DEFENDANTS' MOTION TO INTERVENE

I. Introduction

Thus far in this litigation, the plaintiffs have sought through court decree to use the instrumentality of government to secure third parties' compliance with the remedy sought in their claims under the Americans with Disabilities Act, 42 USC 12101 et seq. In brief, the Knox County Board of Education ("KCBOE") opposes the remedy sought by plaintiffs by explaining that it has taken adequate steps to reasonably accommodate plaintiffs and those who stand in plaintiffs' shoes, and the have the prerogative to undertake the course of action in providing these adequate steps. The Tennessee state government ("Gov. Lee") has opposed the plaintiffs mostly on procedural grounds.

Although the KCBOE has alluded to third party rights, it recognizes third parties as absent necessary parties. Proposed Intervenors ("Intervenors") are the third parties recognized by KCBOE who oppose the plaintiffs' remedies on a myriad of grounds, including an encroachment on Intervenors' constitutional rights as a consequence of the judicial edicts that give the relief sought by plaintiffs.

Intervenors' request is timely because this case is still in the pleadings phase. No Fed.R.Civ.P 16 discovery conference has taken place. The issue of preliminary injunction is currently under appeal. No dispositive hearings resulting in a final judgment have taken place.

Intervenors have a significant interest in advocating for the rights of third parties, the current Defendants do not. Thus far Intervenors' defenses to Plaintiffs' claims have not been adequately presented to this court. Indeed, neither government defendant is situated to advocate for Intervenors' interests; neither of the government defendants would be able to advocate Intervenors' interests if they were plaintiffs filing a lawsuit under conventional third-party standing doctrines and their ability to advocate for Intervenors is suspect as a matter of law.

Defendants cannot adequately represent Intervenors' interests because Intervenors bring unique perspectives, raise different arguments, and have different litigation goals. For example, Intervenors deny that masking is a reasonable accommodation, inter alia, because masking is not an effective tool against aerosolized virions. Not only have the government defendants not made such an argument, they hampered in making these arguments, because of previous policy decisions. Indeed, government defendants repeatedly admitted that masks are effective in this litigation. This key fact issue has not been disputed by government defendants, but is disputed by Proposed Intervenors. Additionally, Proposed Intervenors will advocate regulatory, statutory, and constitutional oppositions to the Plaintiffs' remedies that have not yet been articulated.

II. Statement of Facts

The KCBOE sets the policy for all public schools in Knox County, Tennessee, and operates and oversees the administration of all public schools in Knox County, Tennessee. In August 2020, the KCBOE implemented a "Face Coverings" mandate, commonly described as a mask mandate, for academic year 2020-2021, Policy C-240. Based upon the language in Policy C-240, the authority for issuing Policy C-240 was Executive Order 55 issued on July 31, 2020 by Tennessee Gov. Bill Lee, and subsequent Executive Orders, including but not limited to Executive Order 77, issued on February 26, 2021. KCBOE implemented a sunset provision to the mask mandate expressed in Policy C-240, which occurred on May 26, 2021. Although the issue of a mask mandate was raised by the KCBOE on August 4, 2021, prior to the 2021-2022 academic year, the KCBOE declined to renew the mask mandate. As a result of this court's injunction, however, KCBOE implemented a more stringent version of a mask mandate on or about September 24, 2021. On October 12, 2021, the Knox County public school mask mandate was changed to replicate policy C-240 from the previous academic year.

Intervenors are Knoxville residents, residing with their parents. In compliance with FRCP 5.2(a)(3), this document will refer to the minor children by their initials. In addition, because MM is related to the other Intervenors, Proposed Intervenors will refer to him by initials as well. Intervenors oppose the masking of themselves and other children on multiple legal grounds as a matter of principle, because of the encroachment on their Constitutional rights, as well as factual grounds, because of the lack of efficacy of face masking to achieve the desired objective. Additionally, in comparison to the hypothetical or speculative harm alleged by Plaintiffs if the entire school system of 60,000 students are not forced to wear a mask, Intervenors have suffered actual mental and physical harm as a consequence of being forced to wear a face mask for 6+ hours per day, every day, since the imposition of the temporary injunction in this case.

A. Intervenor MM

MM is 18 years old and attends Hardin Valley Academy in Knox County Tennessee. MM will graduate from high school in May 2022. MM opposed the mask mandate from the beginning, when he, his siblings, and classmates were forced to wear masks in 2020-2021. Even though he opposed the mandate, MM acquiesced to wearing the mask in academic year 2020-2021 for several reasons, including the misinformation he received by those who were authorities to him that if everyone wore a mask, Covid would be defeated. Also, MM is a highly successful runner, and to pursue the greatest opportunity to demonstrate his potential to college recruiters, it was necessary for him to continue to attend school rather than enroll in home schooling. MM has never been convicted of a felony, nor been stripped of his constitutional rights.

The re-implementation of the mask mandate in the 2021-2022 academic school year was devastating to MM, a huge psychological blow. He experienced and continues to experience feelings of depression and powerlessness, because other people are making a decision about what

happens with his body. As a result he is daily confronted with the requirement that he either wear a mask, which is repugnant and exhausting, or be subject to disciplinary measures, including but not limited to daily expulsion, which leads to a cascade of negative consequences including damage to grades and claims of truancy by the county. Yet he has no voice in the decision whatsoever. Like many students who oppose the mask mandate but are still enrolled in a Knox County public school, at times he simply does not comply with the requirement to keep the mask over his nose.

MM relates that wearing a mask brings unpleasant physical side effects. In addition to making the simple act of breathing more labored, wearing a mask for 6+ hours a day causes him to suffer from acne, which has never been an issue for him during his adolescence. He has suffered from a higher incidence of sinus infections and constantly suffers from rhinitis. Wearing a mask and being around others who are wearing a mask interferes with normal social interactions and impedes instruction by teachers.

MM was one of the students who chose to go mask-less during KCBOE's short-lived "isolation room" method of dealing with students opposing the mask mandate shortly after its re-imposition in September 2021. He reports that students were punished for refusing to wear a mask by, inter alia, being prohibited from interacting with the rest of the student body when the general student body itself was not required to wear a mask, such as at lunch. Students in the isolation room were required to stay in the isolation room all day, with no instruction. When this quarantine was eliminated, MM was forced to resume wearing a mask or be subject to disciplinary measures, a Hobson's choice.

B. Intervenor EM

EM is 15 years old and attends Hardin Valley Academy in Knox County Tennessee. She is in the Freshman class. EM opposes the mask mandate. Like her brother, MM, EM suffers from feelings of depression by being forced to wear a mask, and she has no agency to speak to this violation of her constitutional rights. She struggles with apathy. EM also finds the simple act of breathing to be an exhausting chore over the course of the day, when she is forced to breathe though a mask. Her grades have declined compared to previous years when there was no mask mandate. Wearing a mask and being around others who are wearing a mask interferes with normal social interactions and impedes instruction by teachers. Wearing a mask directly interferes with some of her curriculum activities, such as flute and violin. It is impossible for her to play a flute with a mask on, even the useless, instrument mouthpiece split mask that some children have used to play other wind-based instruments. Even though her violin is not air-powered, she is required to place her chin on the violin, and the mask makes this impracticable. EM struggles comprehending the arbitrariness of requiring students in band to wear a split mask while blowing through an instrument, resulting in the air they are blowing coming out of the instrument unhampered. She sees no valid purpose in requiring students playing wind-based instruments to wear a mask, other than mandate compliance-signaling. EM has observed other examples of arbitrariness.

EM also suffers acne from her mask, to the point that she has developed acne scars on her face during the past two academic years. Before being forced to wear a mask on a daily basis for hours at a time, EM suffered no acne scars. EM has additional physical complications from wearing a mask for 6+ hours per day, day in and day out, because she suffers from temporomandibular joint disorder. The straps to any kind of face covering cause pain to her jaw and the back of her ears after wearing a face covering even for a short period of time. EM suffers

headaches from wearing a mask at school day in and day out. Like her brother and many students who oppose the mask mandate but are still enrolled in a Knox County public school, at times she simply does not comply with the requirement to keep the mask over her nose. But, unlike her brother, she still suffers pain even wearing the mask under her nose or on her chin, due to her TMJ problem. Wearing a mask and being around others who are wearing a mask interferes with normal social interactions and impedes instruction by teachers.

EM also was forced into the "isolation room" for the one to one and a half weeks that it was in place. She also recalls that the school administration was not simply isolating students who would not wear masks when other students were wearing masks, but were engaging in punishment tactics by continuing to segregate those who opposed wearing a mask from the rest of the student body, even when the rest of the student body were not wearing masks, such as at lunch. Students in the isolation room were required to stay in the isolation room all day, with no instruction. Some teachers gave unexcused absences, even though the students were in the school building, yet they were counted present for truancy purposes. When this quarantine was eliminated, EM was forced to resume wearing a mask or be subject to disciplinary measures, a Hobson's choice.

C. Intervenor DM

DM is 9 years old and attended Hardin Valley Elementary in Knox County Tennessee until October 15, 2021, when he enrolled in home schooling. The prospect of wearing a mask day in and day out for 6+ hours per day was too overwhelming for DM to bear. Although he does not have the same ability to articulate his opposition to the mask to the same extent as his siblings, he intuitively believes that it is a violation of his bodily autonomy for the school to force him to wear a mask.

DM is an extroverted child who enjoyed socializing with his classmates and school. He would like to return to school so he can be with his friends on a daily basis and attend the field trips they attend, when there is no more mask mandate or threat of a mask mandate. He was willing to stay in the school library during class instruction to be in isolation, but was informed that even when his classmates were at lunch or outside and did not have to wear a mask, he would not be able to join them. In his mind, overnight the school became an unsafe place for him and the teachers and staff became the enemy. He could not understand why the teachers and school administration would not allow him to go outside and play with his friends, when no one was wearing a mask. His perception is that the teachers and staff were punishing him for his principled stance against being forced to wear a mask.

DM, with the assistance of his parents, made the decision to home school, because the indignities of forced masking loomed too large, in light of the alternative of homeschooling.

ARGUMENT

Federal Rule of Civil Procedure 24 authorizes intervention as of right. The Sixth Circuit favors intervention, and Rule 24 should be "broadly construed in favor of potential intervenors." Purnell v. Akron, 925 F.2d 941, 950 (6th Cir. 1991). The Intervenors should be granted intervention as of right because their motion is timely, they have protectable interests directly affected by this litigation, and their arguments are unique from those of the Government Defendants involved in this case.

The Sixth Circuit uses four factors to evaluate a request to intervene as of right: (1) timeliness of the motion to intervene; (2) the intervenors' "substantial legal interest" in the case; (3) whether the intervenors' "ability to protect that interest may be impaired in the absence of

intervention"; and (4) whether "the parties already before the court may not adequately represent their interest." Grutter v. Bollinger, 188 F.3d 394, 397–98 (6th Cir. 1999). Intervenors satisfy each requirement.

I. The Motion to Intervene Is Timely.

The Intervenors' motion is timely because this lawsuit is in its infancy, procedurally speaking. The Sixth Circuit measures timeliness by considering five factors: "1) the point to which the suit has progressed; 2) the purpose for which intervention is sought; 3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; 4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and 5) the existence of unusual circumstances militating against or in favor of intervention." Blount-Hill v. Zelman, 636 F.3d 278, 284 (6th Cir. 2011). No one factor is determinative, and the factors should be weighed in relation to all relevant circumstances. Blount-Hill, 636 F.3d at 284.

First, the Court looks to the point to which the suit has progressed. Blount-Hill, 636 F.3d at 284. Here, the case is in its infancy as the parties are still addressing issues related to the initial injunctive relief sought by Plaintiffs. Courts regularly grant requests in similar time frames or even much later than this intervention. In Gratz v. Bollinger, the Court found that the intervention was timely as it was filed approximately four months after the initial complaint and the case was still in its initial stages. 183 F.R.D. 209, 212 (E.D. Mich. 1998), rev'd on other grounds sub nom. Grutter v. Bollinger, 188 F.3d 394 (6th Cir. 1999). On appeal in Grutter, the Court affirmed that the intervention was timely. 188 F.3d at 398. See also, Jansen, 904 F.2d at 340–41 (timely intervention where intervenors moved to intervene during the summary judgment motion

process, halfway through the discovery process); Chill v. Farmers Ins. Co., No. 3:20-CV-00191, 2021 WL 638124, at *6 (M.D. Tenn. Feb. 18, 2021) (timely intervention where intervenor moved to intervene before the initial case management conference); Morelli v. Morelli, No. 2:00-CV-988, 2001 WL 99859, at *2 (S.D. Ohio Feb. 1, 2001) (timely intervention where motion to intervene filed before discovery had been initiated, and pretrial conference had not yet been held).

The Intervenors easily clear this hurdle established by case precedent in light of this case's procedural status. The extant parties have not received a notice of a scheduling conference or filed a scheduling order. This case is at the relative beginning of the litigation. Furthermore, the reason that Intervenors were unable to file a motion to intervene before this point is due to the scarcity of attorneys both willing and able to participate in this case on behalf of Proposed Intervenors and children standing in the shoes of Proposed Intervenors. The paucity of available advocates should not be held against Intervenors.

Second, courts have looked at whether the intervenor asserted a legitimate purpose for the intervention and at other times looked at whether the intervention was timely. Kirsch v. Dean, 733 F. App'x 268, 275–76 (6th Cir. 2018). Here, the purpose for intervention is to advocate for the rights of third parties, as third parties must be forced to perform the remedy sought by Plaintiffs. Intervenors and those whom they will represent are necessary parties, and the government defendants cannot adequately represent their interests.

For example, the government defendants are hamstrung by ill-advised and unscientific policy decisions made early in the pandemic, and for this reason cannot adequately defend against the claim that that masking with face coverings, cloth masks, or surgical masks is an effective countermeasure to a transmitting or acquiring respiratory illnesses. Also, as stated hereinabove, the government defendants are not situated to argue Intervenor's defenses based upon

constitutional rights, as these government defendants could not as plaintiffs assert these rights on behalf of third parties. Government defendants do not meet the first prong of the test for third-party standing, because they have no close relationship with Intervenors – Intervenors were adverse to KCBOE throughout all of the 2020-2021 academic school year, because they opposed the mandatory school masking. See, Kowalski v. Tesmer, 543 U.S. 125, 130 (2004). Regardless, the government defendants are not making the arguments that Intervenors will make, discussed hereinbelow.

Third, the Court considers the length of time the proposed intervenors knew their interests would be affected by the litigation. Stotts v. Memphis Fire Dep't, 679 F.2d 579, 582–83 (6th Cir. 1982). Intervenors believed their interest would be affected by the litigation after the KCBOE implemented the mandate, upon the court issuing an injunction. The public education component of Title II of the Americans with Disabilities Act itself is a niche area of practice, and the issues presented by Plaintiffs are novel within this area practice. Unlike the unreported or trial-court level cases cited by the court pertaining to safety as a potential barrier to access, which involve some type of physical, tangible impediment or process within the control of the public entity, such as Dickinson v. Gould York, 828 Fed App'x. 780 (2d Cir. 2020)(transportation barrier) or Medina-Rodriguez v. Fernandez Bakery, Inc., 255 Fed. Supp.3d 334 (D. P.R. 2017)(architectural barrier); this case, the companion cases filed in the Western and Middle Districts, and the smattering of other similar cases filed across the country, purport the barrier to access to be an amorphous medical risk generated by other people's mere existence in the proximity of Plaintiffs.[1]

[1] Amended complaint, Paragraph 54, "[t]hey are, or would be, in close proximity to unmasked students in hallways, bathrooms, the cafeteria, the gym, the playground, on buses, and in classrooms, and are exposed to substantial likelihood or risk of serious injury or even death."

These novel issues require the steeping of counsel in esoteric areas of law before acquiring competence to adequately represent intervenors.

Although this counsel has litigated civil liberties matters, entering into this case required an enormous amount of research to become apprised on the Americans with Disabilities Act and significant time spent examining the many filings in the case generated by the parties. This court should not take into consideration the length of time between Intervenors knowledge that their interests would be affected and actual filing of a motion to intervene, given the peculiarities of this case.

Fourth, the other parties will not be prejudiced by adding Proposed Intervenors. Courts consider the prejudice caused by the delay and not the prejudice caused by the intervention itself. U.S. v. City of Detroit, 712 F.3d 925, 933 (6th Cir. 2013). The litigation just started and thus far the Plaintiffs have been successful. Intervenors will not slow pursuit of a possible remedy, because the Plaintiffs have already received injunctive relief, pending the outcome of the appeal. And finally, there are no unusual factors here that would mitigate for or against intervention. *Jansen*, 904 F.2d at 340–41.

II. Proposed Intervenors Have a Substantial and Legally Protectable Interest Affected by Plaintiffs' Proposed Remedy.

Along with timeliness, Proposed Intervenors must demonstrate they have a substantial interest in the subject matter of this litigation. Grutter, 188 F.3d at 398. The Sixth Circuit takes a "rather expansive notion of the interest sufficient to invoke intervention of right," Michigan State AFL-CIO v. Miller, 103 F.3d 1240, 1245 (6th Cir. 1997). The subject matter of this lawsuit is fundamentally about whether the government has the power to make citizens wear a medical device for the benefit of another citizen, a medical device that interferes with the wearers' own

biological (breathing) and legal (bodily control by government) interests. Although the government defendants are cast as those who refuse to take action, it is the Intervenors and those who stand in their shoes who must perform the remedy sought by Plaintiffs, which is the wearing of a mask all day at school for six or more hours per day. Plaintiffs specifically complained in ¶ 47 of the Amended Complaint that parents "substitute their own judgments about masks." This choice by parents who do not require their children to wear a mask is the target of Plaintiffs, through the instrumentality of the ADA.

Intervenors have an interest in the most basic biological function, respiration, remaining unmolested by government mandates. This lawsuit implicates the most basic of personal liberties – whether a person can breathe air freely, unmolested and unimpeded by a mask of any type. The persons who must ultimately be the ones on a daily basis acting for the benefit of Plaintiffs should have a voice before this court about whether the government can force this action that Intervenors and those standing in their shoes may be required to take.

Intervenors' substantial interest can be cast in a number of different ways, including: 1) Intervenors have a Fourth Amendment right to be secure in their persons and a right against an unreasonable seizure of their body; 2) Intervenors have a 13th Amendment right against involuntary servitude of wearing a mask 6+ hours per day, five days per week, for someone else's benefit, which is a form of labor; 3) Intervenors have a 14th Amendment substantive due process right of bodily autonomy against the government restricting their breathing, and there is no governmental interest compelling enough in these circumstances to interfere with this most basic biological function. Although all of these descriptions could potentially form the basis for an independent cause of action, the threshold of an independent cause of action is far above what is

necessary to hold a substantial legal interest pursuant to F.R.P 24 (a). Grutter, 188 F.3d at 398-399.

Under the Sixth Circuit's construction of a substantial legal interest, Intervenors' desire for exercising their statutory right under 21 U.S.C. §360BBB-3(e)(1)(A) to reject the administration of a medical device authorized under an Emergency Use Authorization also is a substantial legal interest. Although it is debatable whether the statute provides for a private cause of action, nevertheless Congress has spoken on the issue of the necessity of consent before a medical device authorized under an Emergency Use Authorization can be administered on the recipient. The Food & Drug Administration ("FDA") has never approved of the use of masks to combat Covid-19.

The only basis for using a face mask or cloth face covering over the mouth and nose as source control is the April 24, 2020 letter from the FDA granting Emergency Use Authorization pursuant to 21 U.S.C. § 360bbb-3(b)(1).[2] A face mask or cloth face covering is defined as a product by the Emergency Use Authorization statute. 21 U.S.C. § 360bbb-3(a)(4)(C) (The term "product" means a drug, device, or biological product) (emphasis added). The Emergency Use Authorization statute specifically provides for " . . . The option to accept or refuse administration of the product . . . ." 21 U.S.C. § 360bbb-3(e)(1)(A). Consequently, Congress has expressed the policy that anyone who is subject to the administration of a product authorized only under an Emergency Use Authorization – such as a face mask or cloth face covering in this instance – has the right to reject administration of the product.

Furthermore, surgical masks are not even eligible for service in the capacity offered for face masks or cloth face coverings under the FDA's 4/24/2020 EUA, because, according to author

[2] https://www.fda.gov/media/137121/download, last checked on February 28, 2022.

of the FDA's 4/24/2020 letter, Denise M. Hinton, Chief Scientist for the Food and Drug Administration, surgical masks "are regulated under 21 CFR 878.4040 as class II devices requiring premarket notification."[3] A class II device must be supported by actual evidence that the device will serve in the capacity that its manufacturers claims it will serve.[4] Ultimately the FDA did grant an EUA for use of garden-variety surgical masks for healthcare settings only, but as PPE for the wearer not as source control.[5] With regard to other, non healthcare-setting uses of surgical masks, the FDA issued a nonbinding statement that it would refrain from objecting to the introduction into commerce of noncomplying surgical masks so long as, inter alia, the manufacturer does not label the masks as useful for " . . . antimicrobial or antiviral protection or related uses, or uses for infection prevention or reduction or related uses, and does not include particulate filtration claims."[6] (emphasis added). Proposed Intervenors have an interest in not being forced to participate in a purported reasonable accommodation that is ineffective from the perspective of the FDA.

Proposed Intervenors also have a substantial protectable interest in that they all have a Tennessee statutory and Tennessee constitutional right to a public education. Project Reflect, Inc. v. Metropolitan Nashville Board of Public Education, 947 F.Supp.2d 868, 879 (M.D. Tenn. 2013), citing Heyne v. Metropolitan Nashville Board of Public Education, 380 S.W.3d 715, 731-32 (Tenn. 2012). Under the current remedy sought by Plaintiffs, Proposed Intervenors are forced to

---

[3] Id.

[4] https://www.fda.gov/medical-devices/premarket-submissions-selecting-and-preparing-correct-submission/premarket-notification-510k ("A 510(k) is a premarket submission made to FDA to demonstrate that the device to be marketed is as safe and effective, that is, substantially equivalent, to a legally marketed device (section 513(i)(1)(A) FD&C Act). Submitters must compare their device to one or more similar legally marketed devices and make and support their substantial equivalence claims")(emphasis added)

[5] https://www.fda.gov/media/140894/download, page 1 and footnote 4.

[6] https://www.fda.gov/media/136449/download, page 14.

subvert their multiple constitutional rights against government interfering with their respiration, in order to exercise their right to a public education. The government's forcing students to give up one set of rights in order to exercise another right is a form of coercion and duress, and is an unconstitutional deprivation of rights. Proposed intervenors have an interest in exercising their right to a public education without coercion or duress to give up other constitutional rights.

III. Proposed Intervenors and those standing in their shoes have already had their interests impaired.

Third, to determine whether a proposed intervenor's interests will be impaired, "a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied." Grutter, 188 F.3d at 399. But "it is not necessary that the would be intervenor demonstrate that the impairment is probable; they need only demonstrate that such is possible." Blount-Hill v. Ohio, 244 F.R.D. 399, 403 (S.D. Ohio 2005), aff'd sub nom. Blount-Hill v. Bd. of Educ. of Ohio, 195 F. App'x 482 (6th Cir. 2006). The burden to meet this element is minimal. Miller, 103 F.3d at 1247.

The interests that Proposed Intervenors seek to protect have already been impaired. Because this court granted injunctive relief at the outset of the case, what normally would be potential interests to be defended have already become a reality for Proposed Intervenors and those who stand in their shoes. Proposed Intervenors are already suffering encroachment on their Fourth Amendment rights to be secure in their persons, and their right against unreasonable seizure of their persons. Proposed Intervenors have already been compelled to labor for the benefit of Plaintiffs against their will, by coercion, because they either have to comply with the mandate laid upon them, or they have to give up the right to a public education. Proposed

Intervenors have already suffered encroachment upon their 14th amendment substantive due process right of bodily autonomy, by subjection to government-imposed physical restraint of their most basic bodily function, respiration. Proposed intervenors have already been stripped of their right to reject administration of a face covering or cloth mask. To the extent that Proposed Intervenors or those who stand in their shoes have been required to wear a surgical mask as an alternative to a face covering or cloth mask because they had no face covering or cloth mask with them, they have already been forced to submit to a device that is technically unlawful as a filtration device and ineffective by admission of the FDA itself. Proposed Intervenors have already been coerced into giving up either the right to a public education or the right to bodily autonomy.

IV. The Government Defendants Do Not Adequately Represent Proposed Intervenors' Interests Because Proposed Intervenors Will Advocate Defenses Not Raised by the Government Defendants.

This court must also consider whether the interests identified above are being adequately represented by the current Defendants. See, Grutter, 188 F.3d at 398. The burden for showing that the current Defendants may not adequately represent Proposed Intervenors' interests is also minimal, and they "need show only that there is a potential for inadequate representation." Grutter, 188 F.3d at 400. Not presenting specific relevant defenses raised by the Proposed Intervenors establishes the possibility of inadequate representation. See Grutter, 188 F.3d at 401. There are multiple defenses to Plaintiffs' claims that will be raised by Proposed Intervenors, which have not been raised by the current Government defendants.

Intervenors will challenge the use of community masking as a reasonable accommodation, because community masking is ineffective in preventing the transmission or acquisition of viral

respiratory illnesses. As explained, for example, in Wright v. New York State Dep't of Corrections, "the hallmark of a reasonable accommodation is its effectiveness." 831 F.3d 64, 72 (2d Cir. 2016). Therefore if a proposed reasonable accommodation is demonstrably ineffective, or if Plaintiffs fail to prove by a preponderance that the reasonable accommodation is effective, by definition it is not a reasonable accommodation. The Plaintiffs have put all their reasonable accommodation eggs in the community masking basket, and because community masking is ineffective, their case must fail.

The fact issues surrounding community masking are a key component to be adjudicated between the parties, if the case gets to the trial stage. Proposed intervenors look forward to challenging under the Daubert standard many of the assertions made by Plaintiffs' experts. But, Proposed Intervenors seek to assert a number of legal defenses against Plaintiffs' theories that have not been raised by current Defendants. Proposed Intervenors will present legal argument that the ADA was never intended to grant the type of remedy that Plaintiffs seek. Additionally, even if the ADA could be used in the fashion suggested by Plaintiffs, the statute controlling Emergency Use Authorization for community masking prevent this court from granting the remedy sought by Plaintiffs.

Furthermore, even if there were no regulatory-based or statutory-based objection to the implementation of Plaintiffs' remedy, the United States Constitution itself recognizes unalienable rights belonging to Proposed Intervenors and those who stand their shoes, excepting them from subjugation to community masking. "The freedom secured by the Constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of governmental power." Schuette v. Coal. to Defend Affirmative Action, Integration & Immigrant Rights & Fight for Equal. By Any Means Necessary (BAMN), 572

U.S. 291, 311 (2014). "An individual can invoke a right to constitutional protection when he or she is harmed . . ." and seek to have the protections of the Constitution enforced by the courts. Obergefell v. Hodges, 576 U.S. 644, 677 (2015).

A. Community Masking is an Ineffective Intervention to Transmission and Acquisition of Viral Respiratory Diseases

There is a reason that the public health authorities never recommended masking to combat respiratory pandemics subsequent to the Spanish Flu, such as the Asian flu of the 1950s, Hong Kong flu of the 1960s, and the H1N1 flu of 2009, all recognized as pandemics. Community masking is an ineffective intervention to transmission and acquisition of viral respiratory diseases, and there was no science behind the US public health authorities abrupt change in April 2020 to suddenly recommend masking, after, for example, U.S Surgeon General Dr. Jerome Adams made the statement that masks "are not effective in preventing general public from catching coronavirus"[7].

Because of the government defendants' early, unwarranted policy initiatives such as Executive Order 38 and KCBOE policy C-240, as well as admissions in pleadings regarding claims by Plaintiffs that masking is a successful intervention measure against respiratory viruses, Government defendants are in a sense judicially estopped from presenting evidence that wearing a mask to stop a virus is akin to having a screen door on a submarine.[8] Neither are the government defendants in a position to present studies showing the lack of efficacy for masking as an

[7] Los Angeles Times; https://www.latimes.com/science/story/2021-07-27/timeline-cdc-mask-guidance-during-covid-19-pandemic. Last checked on February 15, 2022.
[8] Dr. Michael Osterholm; June 12, 2020; https://www.youtube.com/watch?v=3CglBhn0znM. Dr. Osterholm served as an advisor on Covid to President Joe Biden during the President's transition.

intervention to respiratory viral diseases, such as Analysis of the Effects of Covid 19 Mask Mandates on the Hospital Resource Consumption and Mortality at the County Level ("There was no reduction in per-population daily mortality, hospital bed, ICU bed, or ventilator occupancy of COVID-19-positive patients attributable to the implementation of a mask-wearing mandate")[9], or Nonpharmaceutical Measures for Pandemic Influenza and Non Health Care Settings – Personal Protective and Environmental Measures ("Our systematic review found no significant effect of face masks on transmission of laboratory-confirmed influenza").[10]

Most importantly, the government defendants have boxed themselves out from presenting significant, long-term population-wide data reflecting that mask mandates have no impact on the transmission of Covid-19. For example, intervenors attach as Exhibit 1 a graph from the New York Times coronavirus map and case project, which documents raw numbers in an assimilable form. This graph shows the seven-day average of new reported cases in California, which had a statewide indoor mask mandate recently.[11] California implemented its most recent broad-based indoor mask mandate on December 15, 2021.[12] When California implemented its mask mandate, it had a rolling seven-day average of 6,203 cases per day. After imposition of the mask mandate California's rolling average skyrocketed to 119,536 new cases per day at its peak on January 15, 2022, an increase of 1927.44%. Compare California's recent experience to its neighbor, Arizona, depicted in Exhibit 2,[13] which had no indoor mask mandate during the same timeframe.

[9] https://pubmed.ncbi.nlm.nih.gov/34480194/, last checked on February 28, 2022;
[10] https://www.ncbi.nlm.nih.gov/pmc/articless/PMC7181938/, last checked on March 1, 2022.
[11] California Coronavirus Map and Case Count - The New York Times (nytimes.com), https://www.nytimes.com/interactive/2021/us/california-covid-cases/html
[12] These Are the States With Mask Mandates During the Coronavirus Pandemic | Best States | US News
[13] Arizona Coronavirus Map and Case Count - The New York Times (nytimes.com), https://www.nytimes.com/interactive/2021/us/arizona-covid-cases/html

On December 15, Arizona's rolling seven-day average was 3200 new cases per day. At its January 24, 2022 peak of covid-19 cases, Arizona went to a seven-day average of 20,778 new cases per day, an increase of only 649%.

What also is remarkable in comparing the graphs of these two neighboring states is the similarity of the curve portraying the rolling seven-day average of new cases. If masking were effective, the graphs of similar time frames should depict different trends between a state mandating indoor masking and a state that does not mandate indoor masking. This similarity of the new-case trends between states that should have different trends due to different policies, and other facts mentioned in this brief, are but examples of many data points that Proposed Intervenors intend to present as evidence to this Court to demonstrate that community masking is not a reasonable accommodation for Plaintiffs, because community masking does not work to stop the transmission or acquisition of viral respiratory diseases.

B. Although the ADA and §504 of the Rehabilitation Act Offer Broad Relief to Qualified Individuals with a Disability, the Claims Raised Are Not Actionable

If intervention is granted, Proposed Intervenors will move this Court to dismiss for failure to state a claim upon which relief can be granted Plaintiffs' claims under the ADA and §504 of the Rehabilitation Act. One basis for this motion will be Proposed Intervenors' argument that these laws, although remedial, were never intended to reach as far as Plaintiffs seek to take them. "Because Section 504 of the Rehabilitation Act and the ADA impose identical requirements," the claims are considered in tandem." Rodriguez, 197 F.3d at 618.

"The ADA requires only that a particular service provide to some not be denied to disabled people." Rodriguez v. City of New York, 197 F.3d 611, 618 (2d Cir. 1999). Before this case was filed, KCBOE offered public education services to all children living in Knox County. At one point in the recent past, the 2020-2021 academic year, KCBOE offered these public education

services with an additional program or activity – community masking – by implementation of a universal policy applicable to all children, KCBOE policy C-240, something never before offered by KCBOE. KCBOE declined to offer education services with the additional component of community masking for the 2021-2022 academic year. What Plaintiffs really are seeking is a re-implementation of services, programs, or activities that had once been made available to all children and then retracted. Plaintiffs admit this in Paragraph 40, 41, and 45 of their amended complaint and in their brief submitted to the court, ". . . The injunction would not cause harm to others – it would actually *protect* others." Plaintiff's Brief In support of Preliminary Injunction, Document 9-1, p. 13. From the perspective of Plaintiffs, implementing a community masking requirement would benefit everyone, but provide even greater benefits to Plaintiffs.[14]

This is analogous to Illustration 5 discussed by the Department of Justice in its technical manual addressing Title II of the ADA, the driveway snow removal service scenario. ADA Title II Technical Assistance Manual, https://www.ada.gov/taman2.html, Section II-3.3000 Equality in participation/benefits. These interpretations by the Attorney General are given "'controlling weight' unless they conflict with other departmental regulations or the ADA itself." E.g., Nat'l Fed'n of the Blind v. Lamone, 813 F.3d 494, 506 (4th Cir. 2016). This portion of the technical manual interprets 28 CFR §35.130.

The manual states, "The ADA does not require a city government to provide snow removal service for the private driveways of residents with disabilities, if the city does not provide such service for residents without disabilities." ADA Title II Technical Assistance Manual, Section II-3.3000, Illustration 5. There would certainly be disabled individuals who would benefit greatly from having snow removed from their driveways, such as those who are in wheelchairs, those who need crutches, those who have suffered amputation to one or more limbs, those who suffer from muscle wasting diseases, etc. But the public at large would also benefit. Even those

[14] Proposed Intervenors do not concede this premise, but are merely summating Plaintiff's' argument.

who are surefooted suffer risk from falling on ice and snow-covered driveways while walking to their car or while cleaning the driveway off themselves.

A disabled individual may argue that without a "reasonable accommodation" of adopting a policy of snow removal[15], they will be unable to participate in services offered by their municipality, such as public streets or sidewalks. Therefore, the disabled individual and everyone else should get the benefit of snow removal services. Nevertheless, the disabled individual would not be seeking a reasonable accommodation, really what he or she would be seeking is a service, program, or activity not offered by the city, according to the interpretation of the Department of Justice in its technical manual. The Plaintiffs in this case are asking for a service, program, or activity – community masking – of a public entity, KCBOE, which was not being offered to anyone at the time of the lawsuit. This case should be dismissed, as the ADA does not require a public entity to create or resurrect a service, program, or activity that may be useful to all but particularly useful to a disabled individual. See Rodriguez, 197 F.3d at 619 ("Appellees want New York to provide a new benefit, while *Olmstead* reaffirms that the ADA does not mandate the provision of new benefits").

Furthermore, in the context of breathing environments, the premise that a disabled individual is entitled to a safe and filtered environment has been addressed by a United States Circuit Court and summarily dismissed. In McCAuley v. Winegarden, the 11th Circuit dealt with a claim under the ADA filed against the Superior Court of Gwinnett County because the Plaintiff was not provided a filtered breathing environment by the County, a Public entity. 60 F.3d 766, 766-767 (11th Cir. 1995). The court dismissed the appeal with a per curiam opinion.

The court reiterated the district court's analysis, declaring, inter alia, that in the context of a breathing environment, the provision of a filtered environment was equivalent to providing a personal device. McCauley, 60 F.3d at 767. The ADA regulations promulgated by the

[15] There is a difference between the scenario in Illustration 5 and this case. In Illustration 5, the city would be providing the snow removal. In this case, third parties are forced to provide the remedy sought, by being forced to take positive action and wear a mask, not by merely being restrained for example, from smoking.

Attorney General specifically exempt public entities from providing individuals with disabilities personal devices. McCauley, 60 F.3d at 767, citing 28 CFR §35.135. The Attorney General explains in the 1991 section-by-section analysis that 28 CFR §35.135 serves as a limitation on all of the requirements of the ADA Title II regulations. https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#a1991preamble, 1991 Preamble and Section-by-Section Analysis, §35.135.

In light of the McCauley case, Plaintiffs are asking that each one of them be provided a giant personal device in the form of a filtered breathing environment. They seek to have the KCBOE change its policy, forcing every child, teacher, and staff member to breathe through some type of mask for the purpose of filtering out viruses. What the Plaintiffs seek is far beyond the contemplation of Congress, when it expressly described the types of barriers that the ADA sought to overcome, namely architectural, transportation, and communication barriers. 42 U.S.C. §12101 (5). Plaintiffs seek remedies outside the boundaries of the ADA and §504 of the Rehabilitation Act.

C. Proposed Intervenors Will Advocate for Their Right to Reject the Administration of Devices Not Authorized for the Proposed Use, or Devices Authorized under an EUA

Proposed Intervenors went into detail hereinabove when discussing their substantial interest in exercising their statutory right under 21 U.S.C. §360BBB-3(e)(1)(A) to reject the administration of a medical device authorized under an Emergency Use Authorization. The proposed Intervenors also will argue that they should not be subject to the administration of medical devices, i.e. surgical masks, for which the FDA has declared are not fit for the use proposed by Plaintiffs. None of these arguments have been made by government defendants. Instead they either have implicitly or explicitly accepted the fundamental premise of Plaintiffs that any and all face coverings are effective and allowed by the FDA.

D. Proposed Intervenors Will Present Arguments Relating to Their Constitutional Rights

Thus far in this litigation, no defendant has advocated specifically for the constitutional rights of Proposed Intervenors. KCBOE has referenced the rights of third parties in a general sense. Proposed Intervenors will assert legal arguments for the dismissal of this case based upon the Fourth Amendment right against unreasonable searches and seizures and the right to be secure in their persons; the Thirteenth Amendment right against involuntary servitude, and the Fourteenth Amendment right of bodily autonomy.

CONCLUSION

All four factors in the Grutter test for determining whether Proposed Intervenors may intervene are met. 188 F.3d at 397–98. This motion to intervene is timely. Proposed Intervenors have substantial and legally protectable interests in this case. Not only are these interests at risk of being impaired, these interests have already been impaired. The current defendants have not raised the arguments that will be raised by Proposed Intervenors. Proposed Intervenors should be granted permission to enter into this case as defendants. Attached to the Motion to Intervene is a copy of the proposed Answer.

Respectfully submitted this 4th day of March, 2022.

s/ W. Andrew Fox
W. Andrew Fox, BPR No. 017356
Attorney for Proposed Intervenors
Gilbert & Fox Law Firm
625 S. Gay Street, Ste. 540
Knoxville, TN 37902
Telephone: (865) 525-8800
Facsimile: (865) 525-8200
andy@andrewfoxlaw.com

Certificate of Service

I hereby certify that on the 4th day of March, 2022, I electronically filed the foregoing document with the Clerk of Court and that the foregoing document will be served via the CM/ECF system on all counsel of record.

s/ W. Andrew Fox
W. Andrew Fox

Attorney for Proposed Intervenors

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

IN THE MATTER OF S.B., A MINOR STUDENT, BY AND THROUGH HIS PARENTS, M.B. AND L.H.; M.S., A MINOR STUDENT, BY AND THROUGH HER PARENT, K.P. T.W., A MINOR STUDENT, BY AND THROUGH HIS PARENTS, M.W. AND J.W. And M.K., A MINOR STUDENT, BY AND THROUGH HER PARENT, S.K Plaintiffs, v. GOVERNOR BILL LEE, in his official Capacity as GOVERNOR OF TENNESSEE And KNOX COUNTY BOARD OF EDUCATION Defendants, And M.M, A STUDENT WHO HAS REACHED THE AGE OF MAJORITY, and E.M. and D.M., MINOR STUDENTS, BY AND THROUGH THEIR PARENT, P.M. Intervenors-Defendants.	) No. 3:21-cv-00317-JRG-DCP

DECLARATION OF [redacted] PURSUANT TO 28 U.S.C. §1746

1. My full name is [redacted] and I am a Proposed Intervenor in this case. I am usually addressed by my middle name [redacted] and my initials for purposes of this case are MM.

2. I am 18 years of age. I am in the senior class at Hardin Valley Academy, in Knox County Tennessee. I am scheduled to graduate in May 2022. I have never been convicted of a felony, nor have I been stripped of my constitutional rights.

3. I reside in Knox County with my parents, and the two other proposed intervenors, who are my siblings. No one in my family currently has Covid-19.

4. I opposed the mask mandate in 2020-2021, when my fellow Knox County students, including me and my siblings, were forced to wear masks by the Knox County Board of Education.

5. Even though I opposed the mask mandate, I wore a face mask in academic year 2020-2021 for several reasons, including the belief, conveyed by a public health authorities, teachers, and media that if everyone wore a mask, Covid would be defeated. Also, I have been blessed with running talent, and in order to maximize my opportunities post-graduation with the possibility of scholarship and competing in college, I need to continue attending public school at Hardin Valley. Home schooling was not a viable option for me, for my junior and senior years.

6. Additionally, I spent quite a bit of the academic year 2020-2021 attending school by virtual learning.

7. I was psychologically devastated by the Knox County Board of Education reimposing the mask mandate in the 2021-2022 academic school year as a result of this Court's injunction. I continue to oppose the mask mandate.

8. I have experienced and I continue to experience feelings of depression and powerlessness, because other people are making a decision about the requirement that I wear a mask, and I do not even have any input in the matter. I believe that being forced to wear a mask is a violation of my constitutional rights. Furthermore, by my understanding of the law, I should

be given a choice, because masks are not approved by the Food and Drug Administration, they are authorized under an Emergency Use Authorization, and the law specifically provides an opportunity for anyone to reject the administration of a medical device that is only authorized under an Emergency Use Authorization.

9. Wearing a mask day in and day out for 6+ hours per day is repugnant and exhausting. At times, I do not comply with the Knox County Board of Education requirement to keep the mask over my nose, and I notice many other students who at times also wear the mask under their nose, or even simply on their chin like a chin strap.

10. If I attend public school in Knox County Tennessee, I have no choice but to wear a mask or be subject to disciplinary measures, including but not limited to being sent home on a daily basis. Being sent home will result in me getting counted absent for truancy purposes and getting a zero in my daily grades or in missed tests.

11. Wearing a mask for 6+ hours a day is exhausting, because breathing through a mask, if it is over my nose and mouth, is more difficult than breathing air freely with no impediment. It is one thing to breathe through a mask for a short period of time, like 15 minutes, and entirely different to breathe through a mask for 6+ hours per day. In addition, I have suffered from additional acne and potential scarring around my chin. I have had sinus infections more frequently, and my nose is constantly stuffy. Wearing a mask and being around others who are wearing a mask interferes with normal social interactions and impedes interaction with and instruction by my teachers.

12. I was one of the students who chose to go mask-less in protest of the Court's injunction in Fall 2021. For about a week, the Knox County Board of Education made me and other conscientious objectors be segregated in an "isolation room". The Knox County Board of

Education went out of its way to punish me and other students, by not allowing us to interact with the rest of the student body, even when the rest of the student body were not wearing masks, such as lunch. We were forced to just sit in a room all day, with no instruction.

13. When this quarantine was eliminated, I was forced to resume wearing a mask, or be subject to disciplinary measures. When I returned to attending classes normally, however, I found that there were and continue to be many students who oppose the mask mandate, but rather than being outspoken about their opposition, they simply refuse to comply with full face covering, by keeping their mask on their chin or under their nose, until called out by a teacher. Then the students will comply for short period of time and return to their opposition behavior by not fully covering their face with a mask.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 3rd day of March, 2022.

[redacted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

IN THE MATTER OF S.B., A MINOR STUDENT, BY AND THROUGH HIS PARENTS, M.B. AND L.H.;	)
M.S., A MINOR STUDENT, BY AND THROUGH HER PARENT, K.P.	)
T.W., A MINOR STUDENT, BY AND THROUGH HIS PARENTS, M.W. AND J.W.	)
And	)
M.K., A MINOR STUDENT, BY AND THROUGH HER PARENT, S.K	)
Plaintiffs,	)
	) No. 3:21-cv-00317-JRG-DCP
v.	)
GOVERNOR BILL LEE, in his official Capacity as GOVERNOR OF TENNESSEE And KNOX COUNTY BOARD OF EDUCATION	)
Defendants,	)
And	)
M.M, A STUDENT WHO HAS REACHED THE AGE OF MAJORITY, and E.M. and D.M., MINOR STUDENTS, BY AND THROUGH THEIR PARENT, P.M.	)
Intervenors-Defendants.	)

DECLARATION OF [redacted] ON BEHALF OF [redacted]

PURSUANT TO 28 U.S.C. §1746

1. My name is [redacted] and I am the father of [redacted], hereinafter referred to as EM.

2. EM is 15 years old and attends Hardin Valley Academy in Knox County Tennessee. She is in the Freshman class. She has never been convicted of a felony, nor has she been stripped of her constitutional rights.

3. EM opposes the mask mandate.

4. Like her brother, MM, EM suffers from feelings of depression by being forced to wear a mask, and she has no agency to speak to this violation of her constitutional rights. She struggles with apathy.

5. EM also finds the simple act of breathing to be an exhausting chore over the course of the 6+ hours per day, when she is forced to breathe though a mask.

6. Her grades have declined compared to previous years when there was no mask mandate.

7. Wearing a mask directly interferes with some of her curriculum activities, such as flute and violin. It is impossible for her to play a flute with a mask on, even the useless, instrument mouthpiece split mask that some children have used to play other wind-based instruments. Even though her violin is not air-powered, she is required to place her chin on the violin, and the mask makes this impracticable. EM struggles comprehending the arbitrariness of requiring students in band to wear a split mask while blowing through an instrument, resulting in the air they are blowing coming out of the instrument unhampered. She sees no valid purpose in requiring students playing wind-based instruments to wear a mask, other than mandate compliance-signaling. EM has observed other examples of arbitrariness.

8. EM also suffers acne from her mask, to the point that she has developed acne scars on her face during the past two academic years. Before being forced to wear a mask on a daily basis for hours at a time, EM suffered no acne scars.

9. EM has additional physical complications from wearing a mask for 6+ hours per day, day in and day out, because she suffers from temporomandibular joint disorder. The straps to any kind of face covering cause pain to her jaw and the back of her ears after wearing a face covering even for a short period of time. EM suffers headaches from wearing a mask at school day in and day out.

10. Like her brother, MM, and many students who oppose the mask mandate but are still enrolled in a Knox County public school, at times she simply does not comply with the requirement to keep the mask over her nose. But, unlike her brother, she still suffers pain even wearing the mask under her nose or on her chin, due to her TMJ problem. Wearing a mask and being around others who are wearing a mask interferes with normal social interactions and impedes instruction by teachers.

11. EM also was forced into the "isolation room" for the one to one and a half weeks that it was in place. She also recalls that the school administration was not simply isolating students who would not wear masks when other students were wearing masks, but were engaging in punishment tactics by continuing to segregate those who opposed wearing a mask from the rest of the student body, even when the rest of the student body were not wearing masks, such as at lunch. Students in the isolation room were required to stay in the isolation room all day, with no instruction. Some teachers gave unexcused absences, even though the students were in the school building, yet they were counted present for truancy purposes.

12. When this quarantine was eliminated, EM was forced to resume wearing a mask or be subject to disciplinary measures.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 3rd day of March, 2022.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

IN THE MATTER OF S.B., A MINOR STUDENT, BY AND THROUGH HIS PARENTS, M.B. AND L.H.; M.S., A MINOR STUDENT, BY AND THROUGH HER PARENT, K.P. T.W., A MINOR STUDENT, BY AND THROUGH HIS PARENTS, M.W. AND J.W. And M.K., A MINOR STUDENT, BY AND THROUGH HER PARENT, S.K Plaintiffs, v. GOVERNOR BILL LEE, in his official Capacity as GOVERNOR OF TENNESSEE And KNOX COUNTY BOARD OF EDUCATION Defendants, And M.M, A STUDENT WHO HAS REACHED THE AGE OF MAJORITY, and E.M. and D.M., MINOR STUDENTS, BY AND THROUGH THEIR PARENT, P.M. Intervenors-Defendants.	) No. 3:21-cv-00317-JRG-DCP

DECLARATION OF [redacted] ON BEHALF OF [redacted]

PURSUANT TO 28 U.S.C. §1746

1. My name is [redacted] and I am the father of [redacted] hereinafter referred to as DM.

2. DM is 9 years old and attended Hardin Valley Elementary in Knox County Tennessee until October 15, 2021, when he enrolled in home schooling.

3. The prospect of wearing a mask day in and day out for 6+ hours per day was too overwhelming for DM to bear. Although he does not have the same ability to articulate his opposition to the mask to the same extent as his siblings, he intuitively believes that it is a violation of his bodily autonomy for the school to force him to wear a mask.

4. DM is an extroverted child who enjoyed socializing with his classmates and school. He would like to return to school so he can be with his friends on a daily basis and attend the field trips they attend, when there is no mask mandate or threat of a mask mandate.

5. DM was willing to stay in the school library during class instruction to be in isolation, but was informed that even when his classmates were at lunch or outside and did not have to wear a mask, he would not be able to join them.

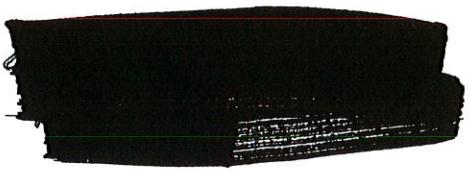
6. In his mind, overnight the school became an unsafe place for him and the teachers and staff became the enemy. He could not understand why the teachers and school administration would not allow him to go outside and play with his friends, when no one was wearing a mask.

7. His perception is that the teachers and staff were punishing him for his principled stance against being forced to wear a mask.

8. DM, with the assistance of his parents, made the decision to home school, because the indignities of forced masking loomed to large, in light of the alternative of homeschooling.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 3rd day of March, 2022.

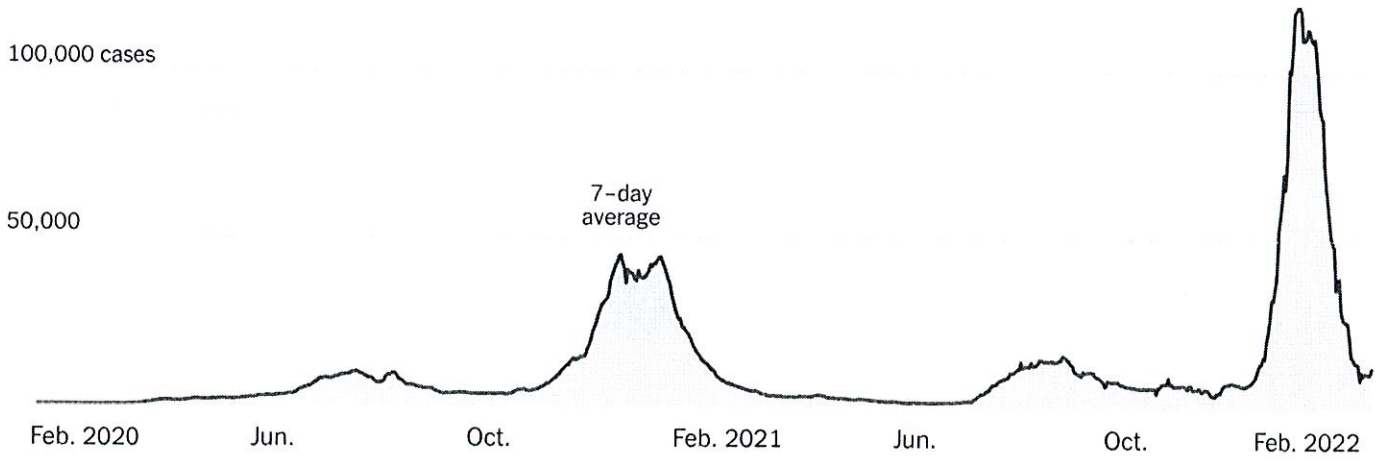


Tracking Coronavirus in California: Latest Map and Case Count

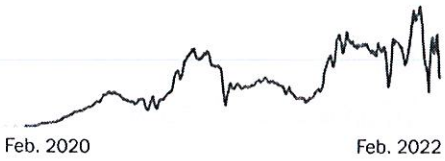
Updated March 1, 2022

New reported cases

All time Last 90 days

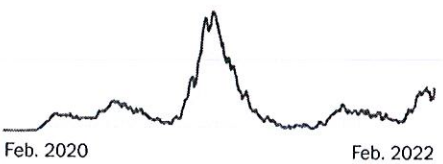


Tests



Hospitalized

Deaths



	DAILY AVG. ON FEB. 28	14-DAY CHANGE	TOTAL REPORTED
Cases	11,818	-53%	8,975,648
Tests	184,376	-42%	—
Hospitalized	5,157	-45%	—
In I.C.U.s	927	-47%	—
Deaths	208	-3%	85,564

About this data

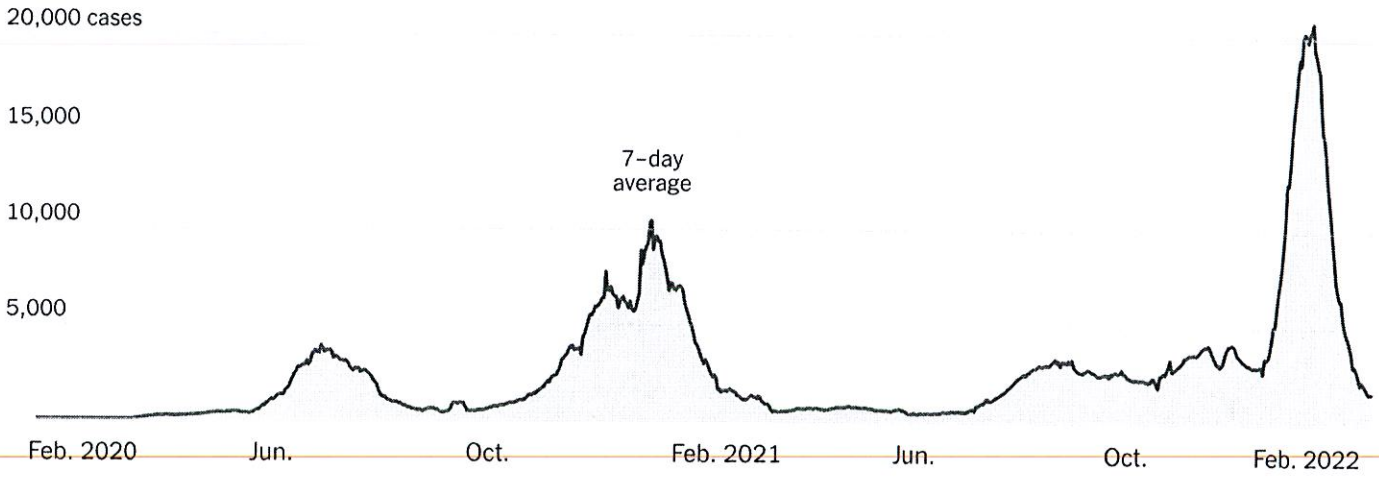
Tracking Coronavirus in Arizona: Latest Map and Case Count

Updated March 1, 2022

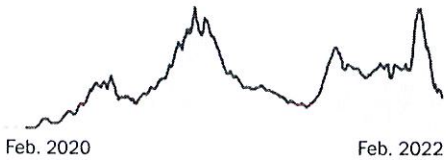
Arizona is transitioning to a weekly reporting schedule.

New reported cases

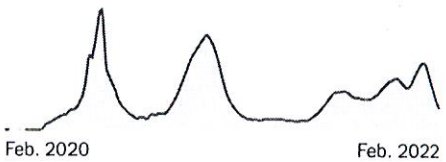
All time Last 90 days



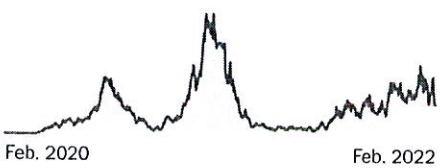
Tests



Hospitalized



Deaths



	DAILY AVG. ON FEB. 28	14-DAY CHANGE	TOTAL REPORTED
Cases	1,604	-63%	1,976,890
Tests	12,686	-24%	—
Hospitalized	1,299	-46%	—
In I.C.U.s	234	-42%	—
Deaths	47	-31%	27,946