

VIRGINIA:
IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

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CIRCUIT COURT
FAIRFAX, VA

Carrie Lukas, Stephanie Lundquist-Arora, and Misty Lombardo, on behalf of themselves and their minor children,

Plaintiffs

v.

FAIRFAX COUNTY SCHOOL BOARD, and SCOTT BRABRAND, Division Superintendent,

Defendants.

SERVE:
Fairfax County School Board
Gatehouse Administration Center
8115 Gatehouse Road
Falls Church, VA 22042

Scott Brabrand
Gatehouse Administration Center
8115 Gatehouse Road
Falls Church, VA 22042

Case No. _____
2022 02033

VERIFIED COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER APPROPRIATE RELIEF

Plaintiffs Carrie Lukas, Stephanie Lundquist-Arora, and Misty Lombardo, on behalf of themselves and their minor children, state as follows:

I. INTRODUCTION

The Fairfax County School Board and Fairfax County’s Division Superintendent Scott Brabrand are openly and willfully violating the lawful Executive Order No. 2 issued by Governor Glenn Youngkin, and state laws referenced therein. Executive Order No. 2 mandates that

Defendants recognize a codified right of Virginia parents to make decisions regarding the health and education of their children. Defendants are violating Executive Order No. 2, as well as parents' codified rights referenced therein, through their continued requirement, and punishments imposed for violation of the requirement, that all students wear face coverings while attending school. That continued mandate directly violates Governor Youngkin's Executive Order No. 2, a public health directive issued pursuant to his emergency powers, and infringes on parents' rights to make decisions regarding their children's health and education.

The continued mandate regarding face masking while in school directly contradicts the overwhelming body of scientific data and evidence—which discovery will show were known to the Defendants or willfully ignored—demonstrating that (1) mandatory face masking in schools provides no health benefits, (2) mandatory face masking does not limit community spread, (3) cloth masks required to be worn provide no benefit in stopping transmission of the virus and, (4) most unfortunately for the kids that rely on the Board and Superintendent to make decisions in their best interests, mandatory face masking has well-known harmful effects on students.

Plaintiffs request that the Court provide relief from these continued mandates and punishments and grant all relief requested herein, as well as any other relief justified under the circumstances.

PARTIES

1. Plaintiff Carrie Lukas is a mother of five children that attend Fairfax County Public Schools. Her children, who will be referred to herein by their initials, M.D.L., M.M.L., P.F.L., M.A.L. and M.E.L., attend Langley High School (M.D.L. and M.M.L.), Cooper Middle School (P.F.L.), and Forestville Elementary School (M.A.L. and M.E.L.), subject to the oversight of the Defendants.

2. Plaintiff Stephanie Lundquist-Arora is the mother of three children that attend Fairfax County Public Schools. Her children, who will be referred to by their initials, S.K.A, V.D.A, and S.C.A., attend Irving Middle School (S.K.A.) or Hunt Valley Elementary School (V.D.A. and S.C.A.), subject to the oversight of the Defendants.

3. Plaintiff Misty Lombardo is the mother of two children that attend Fairfax County Public Schools. Her children, who will be referred to by their initials, W.L.L. and J.J.L., attend West Springfield High School, subject to the oversight of the Defendants.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to Code §§ 8.01-184, 8.01-186, 8.01-189, 8.01-620, 17.1-513, 22.1-70-71, and 22.1-87.

5. Venue is proper in this judicial district pursuant to Code § 8.01-261 because the petition is brought in the Circuit Court of the county in which the Defendants reside and/or regularly conduct affairs or business activity, and all events alleged herein transpired in Fairfax County.

STATEMENT OF FACTS

6. Public reaction to the Covid-19 pandemic began in early 2020, although it is unknown when Covid-19 reached the United States or the state of Virginia.

7. Since that time, school children in Virginia have endured a number of disruptions to their lives, which has impacted their social development, their ability to see friends and classmates, their ability to engage in sports and other activities, and their ability to attend school and receive the education Virginia public schools are obligated to provide.

8. Relevant here, at a time when mask requirements were being lifted in public places in Virginia, on May 14, 2021, former Governor Northam issued Executive Order No. 79,

which required all students, teachers, staff, and visitors to wear masks while attending Virginia schools.

9. The order specified that medical-grade masks should be reserved for medical personnel and made clear that wearing cloth masks was compliant with the order.

10. Prior to the start of the 2021-2022 school year, Fairfax County Public Schools, in compliance with the Governor's order, mandated that all students wear masks while attending FCPS, with limited exceptions including for when students are eating and drinking or when outdoors.

11. Defendants did not object to, or otherwise indicate any disagreement regarding Governor Northam's authority to issue, Executive Order No. 79.

12. On January 15, 2022, Governor Glenn Youngkin issued Executive Order No. 2, which revoked the former Governor's school mask mandate provided for in Executive Order No. 79 and provided that, *inter alia*:

- The parents of any child enrolled in an elementary or secondary school may elect for their children not to be subject to any mask mandate in effect at the child's school.
- No parent electing that a mask mandate should not apply to his or her child shall be required to provide a reason or make any certification concerning their child's health or education.
- A child whose parent has elected that he or she is not subject to a mask mandate should not be required to wear a mask under any policy implemented by a teacher, school, school district, the Department of Education, or other state authority.
- The order went into effect at 12:00 a.m. on January 24, 2022.

13. On and after January 24, 2022, after the order's effective date, FCPS continued to require children attending FCPS to wear masks while at school; children that failed to do so were not permitted to attend school or were suspended or otherwise punished.

14. On information and belief, FCPS principals were told by Superintendent Brabrand or by someone at his direction that, because failure to wear a face mask is a “Level 3 infraction” on par with, e.g., bullying, the principals should use their discretion to implement harsher punishments for the fourth and future violations of the mask mandate.

15. The parents of each of the minor Plaintiffs have decided to opt their children out of FCPS’s mask mandate.

16. When plaintiff Carrie Lukas brought her children, M.A.L. and M.E.L. to their school, Forestville Elementary School, on January 25, 2022, they were met by the acting vice principal, who denied them entrance because Ms. Lukas indicated that she intended to exercise her right to have them attend school without face masks. The school recorded their absences as “unexcused” for the day they missed. Her remaining children complied with the mandate, though they would have chosen not to wear masks if given the choice (and in the absence of punishments for failure to do so).

17. Each of plaintiff Stephanie Lundquist-Arora’s three children, S.K.A, V.D.A., and S.C.A., were repeatedly suspended, for nine consecutive days, for attending school without wearing face masks on or after January 25, 2022. S.K.A., V.D.A., and S.C.A. began attending school after nine days of suspension, whereupon they wore face masks in compliance with the mandate, though they would have chosen not to wear masks if given the choice (and in the absence of punishments for failing to do so).

18. Plaintiff Misty Lombardo’s two children attended school without wearing face on January 25, 2022. Both students were told to wear a face mask. W.L.L. was suspended for failing to wear a mask; J.J.L. generally complied with the mandate and has done so since January 25, 2022. W.L.L. complied with the mandate after his suspension. Both W.L.L. and J.J.L.

would choose not to wear masks if not for the mandate and associated punishment for failure to comply.

CLAIMS FOR RELIEF

The School Board's continued requirement that students wear face masks while in school, and Superintendent Brabrand's enforcement of that requirement, violate both Executive Order No. 2 and FCPS parents' rights codified in Virginia Code, Section 1-240.1, and constitute arbitrary and capricious acts subject to this Court's review. Defendants' punishment of students for violation of that policy furthers that violation of the Executive Order and Section 1-240.1, and are also arbitrary and capricious. Accordingly, Plaintiffs state the following claims, reserving all rights to modify, amend, or add to these claims as facts continue to develop surrounding Defendants' varying enforcement of, and punishments for violating, policies relating to FCPS students' mask-wearing.

Count 1: Defendants' Mask Mandate, Enforcement Thereof, and Punishments Related Thereto Violate Executive Order No. 2

19. Plaintiffs incorporate by reference all allegations set forth above.
20. Executive Order No. 2 is a lawful exercise of the Governor's authority and has the "force and effect of law." VA Code § 44-146.17(1).
21. In contravention of that order, Defendants have continued to require that FCPS students wear face masks at school, and they have continued to enforce that policy.
22. In contravention of that order, Plaintiffs risk, and have suffered, punishment for failure to wear a mask while at school.
23. Plaintiffs are suffering harm by virtue of FCPS's mask mandate, and the enforcement thereof, including social, educational, and developmental harms, physical harms

caused by mask wearing, and loss of liberty by virtue of the mask mandate's deprivation of their rights.

Count 2: Defendants' Mask Mandate, Enforcement Thereof, and Punishments Related Thereto Violate Virginia Code § 1-240.1

24. Plaintiffs incorporate by reference all allegations set forth above.

25. FCPS's mask mandate, and Superintendent Brabrand's enforcement thereof, makes no exception for parents that opt for their children not to wear a mask while at school, in violation of Virginia Code § 1-240.1, which provides that parents have a "fundamental right to make decisions concerning the upbringing, education, and care" of their children.

26. Requiring students to wear masks at school has documented harmful effects on students' development and education, and therefore constitutes a decision directly relating to the "upbringing, education, and care" of school children.

27. Plaintiffs are suffering harm by virtue of Defendants' mask mandate, and the enforcement thereof, including social, educational, and developmental harms, physical harms caused by mask wearing, and loss of liberty by virtue of the mask mandate's deprivation of their rights.

Count 3: Defendants' Mask Mandate, Enforcement Thereof, and Punishments Related Thereto Are Arbitrary and Capricious

28. Plaintiffs incorporate by reference all allegations set forth above.

29. In addition to being contrary to law, and therefore *ultra vires*, Defendants' continued imposition of the mask mandate at all schools within FCPS is an arbitrary and capricious act under Virginia Code § 22.1-87.

30. At least as of the date that Executive Order No. 79 expired, objective data compiled over the course of the Covid-19 pandemic demonstrated that mandating mask-wearing in schools provides no benefit to the children subject thereto.

31. At least as of the date that Executive Order No. 79 expired, objective data compiled over the course of the Covid-19 pandemic demonstrated that mandating mask-wearing in schools imposed numerous general and specific harms on children subject thereto.

32. Discovery will demonstrate that the Defendants either knew about, or should have known about but willfully ignored, the lack of benefits provided, and harms imposed, by the FCPS mask mandate.

33. The Defendants' failure to provide for or consider exceptions to the FCPS mask mandate for, e.g., previously infected and recovered students, students that struggle to learn due to masks, and students physically or emotionally harmed by masks, is arbitrary and capricious.

34. Discovery will demonstrate that Defendants either knew about, or should have known about but willfully ignored, that such exceptions could be provided for without diminishing the alleged benefits provided by the FCPS mask mandate.

35. The punishments imposed on students for violation of the FCPS mask mandate have been, and on information and belief will continue to be, arbitrary and capricious.

36. On information and belief, the Virginia General Assembly will soon pass, and Governor Youngkin will sign, a law mandating that FCPS and other schools to honor parents' rights to opt their children out of mask mandates.

37. On information and belief, Defendants will continue to impose arbitrary and capricious punishments on children that exercise that right by, for example, segregating and/or isolating those students and/or imposing punishments bringing shame and indignity.

38. On information and belief, Defendants announced a plan to lift the FCPS mask mandate based on arbitrary and capricious metrics designed to be met before the General Assembly passes the aforementioned law.

JURY TRIAL REQUESTED

Plaintiffs request a jury trial for the resolution of any triable fact.

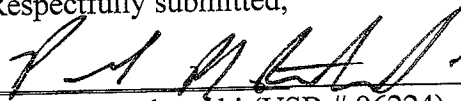
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court issue the following relief:

- a) A declaration that Executive Order No. 2 prohibits the FCPS mask mandate, and/or any punishments imposed on students for declining to wear a mask while at school;
- b) A declaration that Defendants violated Executive Order No. 2 by imposing the FCPS mask mandate with no exceptions for parents and students that opt out;
- c) A declaration that the FCPS mask mandate, and/or any punishments imposed on students for declining to wear a mask, violates Virginia Code § 1-240.1
- d) A declaration that Defendant's continued imposition of the FCPS mask mandate, the absence of exceptions thereto, and/or any punishments imposed on students for declining to wear a mask while at school, are arbitrary and capricious under Virginia Code § 22.1-87.
- e) A declaration that the FCPS mask mandate, and/or any punishments imposed on students for declining to wear a mask, is contrary to law.
- f) Injunctive relief prohibiting the School Board from enforcing the FCPS mask mandate and/or imposing any punishments on students whose parents opt out of the mandate and/or any policy regarding wearing masks while at school.
- g) Any and all other relief that the Court deems proper and just.

Date: February 14, 2022

Respectfully submitted,



Paul M. Bartkowski (VSB # 96224)
BARTKOWSKI PLLC
6803 Whittier Ave., Suite 200A
McLean, VA 22101
Telephone: (571) 533-3581
E-Mail: pbartkowski@bartkowskipllc.com

VERIFICATION OF COMPLAINT

Pursuant to Virginia Code § 8.01-4.3, I, Misty Lombardo, a citizen of the United States and resident of the Commonwealth of Virginia, declare and verify under penalty of perjury on behalf of myself and my minor children that the allegations in the foregoing Verified Complaint for Declaratory, Injunctive, and Other Appropriate Relief are true and correct to the best of my knowledge.

Dated: February 14, 2022, in Fairfax County, VA.


Misty

Lombardo

VERIFICATION OF COMPLAINT

Pursuant to Virginia Code § 8.01-4.3, I, Carrie Lukas, a citizen of the United States and resident of the Commonwealth of Virginia, declare and verify under penalty of perjury on behalf of myself and my minor children that the allegations in the foregoing Verified Complaint for Declaratory, Injunctive, and Other Appropriate Relief are true and correct to the best of my knowledge.

Dated: February 14, 2022, in Fairfax County, VA.

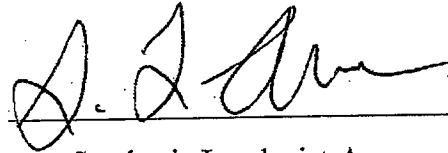


Carrie Lukas

VERIFICATION OF COMPLAINT

Pursuant to Virginia Code § 8.01-4.3, I, Stephanie Lundquist-Arora, a citizen of the United States and resident of the Commonwealth of Virginia, declare and verify under penalty of perjury on behalf of myself and my minor children that the allegations in the foregoing Verified Complaint for Declaratory, Injunctive, and Other Appropriate Relief are true and correct to the best of my knowledge.

Dated: February 14, 2022, in Fairfax County, VA.

A handwritten signature in black ink, appearing to read 'S. Lundquist-Arora', is written over a solid horizontal line.

Stephanie Lundquist-Arora