

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

**CHRISTY McCRANIE as next best friend of JOHN DOE 1, JANE DOE 1; JAMI TUCKER, BRETT CHROMY as next best friend of JOHN DOE 2, JOHN DOE 3, JANE DOE 2; HEATHER KLATT, TIM KLATT as next best friend of JOHN DOE 4; JORDAN CHADWELL as next best friend of JOHN DOE 5, JOHN DOE 6; JILL WRIGHT, MARC WRIGHT as next best friend of JANE DOE 3, JOHN DOE 7; SUNG YANG as next best friend of JOHN DOE 8, JANE DOE 4; ERIN MEADE as next best friend of JOHN DOE 9; MICHAEL PALAZZO as next best friend of JOHN DOE 10; DANIELLE DENLEIN, SHAWN DENLEIN as next best friend of JANE DOE 5; KRISSANY TAUBER, ANTHONY TAUBER as next best friend of JANE DOE 6, JANE DOE 7; and BRAD BOWERS as next best friend of JOHN DOE 11, JOHN DOE 12,**

**Plaintiffs,**

**v.**

**FULTON COUNTY SCHOOL BOARD; KATHA STUART, in Her Official Capacity; KATIE REEVES, in Her Official Capacity; GAIL DEAN, in Her Official Capacity; FRANCESCA WARREN, in Her Official Capacity; LINDA McCAIN, in Her Official Capacity; KIMBERLY DOVE, in Her Official Capacity; JULIA BERNATH, in Her Official Capacity; and MIKE LOONEY, in His Official Capacity,**

**Defendants.**

**CIVIL ACTION FILE NO.  
2021CV354758**

**HON. ERIC K. DUNAWAY**

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**ORDER DENYING PLAINTIFFS' REQUEST FOR TEMPORARY RESTRAINING  
ORDER AND/OR INTERLOCUTORY INJUNCTION**

Plaintiffs in the above referenced case, on behalf of their minor children, seek an injunction to enjoin Defendants from mandating students to wear face masks in Fulton County Schools (“FCS”). Pursuant to the Court’s Notice of Hearing issued on September 24, 2021, on October 1, 2021, the case came before the Court for a virtual hearing via the Zoom Application on Plaintiffs’ Request for Temporary Restraining Order and/or Interlocutory Injunction, as stated in Count IX of the Complaint. Having considered the record of the case, the evidence presented at the hearing and in the record, the arguments of counsel, and the applicable law, Plaintiffs’ request is hereby DENIED for the reasons that follow.

### **Factual Background**

The general facts underlying the instant case are well-known. Beginning in early 2020, the United States, along with the rest of the world, was confronted with challenges surrounding the rapid spread of Coronavirus/Covid-19. In March 2020, Georgia Governor Brian Kemp issued Executive Order No. 03.14.20.01, declaring a Public Health State of Emergency pursuant to O.C.G.A. § 38-3-50, *et seq.* In the Order, among other things, Governor Kemp authorized public school districts in Georgia to mandate masking policies within the schools.

Plaintiffs filed their Verified Emergency Complaint for Declaratory and Injunctive Relief in this case on September 21, 2021. Therein, they allege that, on August 5, 2021, four days before the start of the 2021 school year, FCS announced that students would be required to wear face masks in order to attend school within the district (“the Mask Mandate”). Plaintiffs contend that the “hasty and ill-thought-out update” to FCS’s policy left parents with few available options and “made it financially impossible for parents to plan for their children’s individual needs.” Complaint, ¶ 3. Plaintiffs further claim that being forced to wear masks throughout the school

day has caused physical and mental health issues for children of all ages, including but not limited to shortness of breath, fatigue, headaches, and general aggravation, as well as difficulty focusing, learning, and retaining information from their teachers.

In support of their allegations and request for temporary restraining order, Plaintiffs have submitted their own affidavits and testimony of Jill Wright regarding their children's experiences, as well as the affidavit and testimony of Ashley Loyd, a Clinical Psychologist. Among other things, Loyd avers that "the mask mandates have negatively reinforced the notion that the world is not safe." Loyd Aff. ¶ 10. Loyd further opines that "[c]overing a child's face mutes ... nonverbal forms of communication and can result in robotic and emotionless interactions, anxiety, depression, as well as a plethora of other mental health issues." Loyd Aff. ¶ 20. Plaintiffs further offer the affidavit of Scott Barbour, an orthopedic surgeon, regarding the impact of mask wearing upon school-aged children. Barbour opines that face masks significantly handicap children, especially those who wear eyeglasses, in the school setting, highlighting "effects on self-esteem, difficulty in communication, and the facial irritation that causes people to touch their faces and spread secretions" as "just a few of the unintended negative consequences of masking school aged children." Barbour Aff. ¶ 17.

### **Legal Authority and Analysis**

When deciding whether to issue an interlocutory injunction, a trial court should consider whether:

(1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest.

Grossi Consulting, LLC v. Sterling Currency Grp., LLC, 290 Ga. 386, 388 (2012). “The first factor—substantial threat of irreparable injury if an interlocutory injunction is not entered—is the most important one, given that the main purpose of an interlocutory injunction is to preserve the status quo temporarily to allow the parties and the court time to try the case in an orderly manner.” Bishop v. Patton, 288 Ga. 600, 604-605 (2011).

Applying the above factors to the case at bar, the Court finds that there is insufficient evidence in the record to support the grant of the requested interlocutory injunction. With respect to the first factor, Plaintiffs have failed to demonstrate that they will suffer an irreparable injury if the requested injunction is not granted. Despite Plaintiffs’ contention that “the Mask Mandate has caused both physical and mental health issues across all ages” (Complaint, ¶ 5) and the testimony with respect to their children’s difficulties allegedly caused by mask wearing, there is no evidence to show that any alleged harm is irreparable. In order to meet this threshold factor, Plaintiffs must demonstrate a “vital necessity for the injunction so that [they] will not be damaged and left without adequate remedy.” Price v. Empire Land Co., 218 Ga. 80, 84 (1962). Plaintiffs have made no such showing here. Indeed, they concede the Mask Mandate about which they complain has been in place since FCS resumed in-person classes in the fall of 2020. See Complaint, ¶ 3; H. Klaff Aff. ¶¶ 8-9; T. Klaff Aff., ¶¶ 8-9, J; Chadwell Aff. ¶ 7.

Accordingly, the Court finds that the evidence of Plaintiffs’ concerns, while maybe legitimate, is insufficient to demonstrate a threat of irreparable injury from a policy that has already been in place for over a year. As to the second factor, absent such a threat, the Court cannot find that the threat of injury to Plaintiffs outweighs the threatened harm that lifting the Mask Mandate would impose upon Defendants and the other constituents they serve. In response to the Plaintiffs’ motion, Defendants have submitted the affidavit of Lynne Meadows, a Registered Nurse and

Director of District Health Services for the Fulton County School District. RN Meadows asserts that “..., I have reviewed numerous reports and guidance documents from the Centers for Disease Control (“CDC”), Georgia Department of Public Health (“GDPH”), and FCBOH on methods to reduce the transmission of COVID-19 in public spaces and especially in schools.” RN Meadows continues to say that, “There is overwhelming medical evidence that wearing masks is an important, effective tool in preventing and reducing the spread of COVID-19.”

Turning to the third factor, while it is usually difficult to determine a likelihood of success on the merits based upon a preliminary hearing, in this case, the Court notes that Plaintiffs have a significant amount of precedent to overcome with respect to their claims. As Defendants point out, courts across the country, including a federal district court in Georgia, have routinely declined to enjoin local government mask mandates and have consistently held that there is no constitutional right not to wear a mask. See e.g. Kelly v. ImagineIF Library Entity, 2021 U.S. Dist. LEXIS 111958, 8 (D. Mont. June 15, 2021); Whitfield v. Cuyahoga Cnty. Pub. Library Found., 2021 U.S. Dist. LEXIS 92944, 4 (N.D. Ohio May 17, 2021); Denis v. Ige, \_\_ F. Supp.3d \_\_, 2021 U.S. Dist. LEXIS 91037, 14 (D. Haw. May 12, 2021); W.S. by Sonderman v. Ragsdale, \_\_ F. Supp.3d \_\_, 2021 U.S. Dist. LEXIS 98185, 5 (N.D. Ga. May 12, 2021); Forbes v. City of San Diego, 2021 U.S. Dist. LEXIS 41687, 11 (S.D. Cal. Mar. 4, 2021); Stewart v. Justice, \_\_ F. Supp.3d \_\_, 2021 U.S. Dist. LEXIS 24664, 20 (S.D. W. Va. Feb. 9, 2021); Oakes v. Collier Cnty., 2021 U.S. Dist. LEXIS 15174, 4 (M.D. Fla. Jan. 27, 2021); Shelton v. City of Springfield, 497 F. Supp.3d 408, 414 (W.D. Miss. 2020). See also Ryan v. Cnty. of DuPage, 45 F.3d 1090, 1092 (7th Cir. 1995) (no constitutional right to wear a mask); United States v. Berglund, 2021 U.S. Dist. LEXIS 78476, 2 (D. Minn. Apr. 23, 2021).

Defendants further argue that Plaintiffs cannot succeed on the merits of their claims

because they are barred by sovereign immunity. Defendants cite *Bomia v. Ben Hill County School District*, among other cases, which states that sovereign immunity extends to a county-wide school district. *Bomia v. Ben Hill County School District*, 320 Ga. App. 423, 424 (2013). Unless it is waived by the Constitution or statutory law, sovereign immunity bars both claims for injunctive and declaratory relief. *Lathrop v. Deal*, 301 Ga. 408 (2017). The sovereign immunity of the state and its departments and agencies can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver. Ga. Constitution, Article I, § 2, ¶ IX(e). The party seeking to benefit from a waiver of sovereign immunity has the burden of establishing such waiver. *Bomia*, 320 Ga. App. at 426. Here, Plaintiffs will have to overcome the threshold issue of sovereign immunity. Accordingly, the Court finds that this factor weighs against Plaintiffs in their request for an interlocutory injunction.

As to the fourth and final factor of the analysis, the Court cannot find that granting the interlocutory injunction and enjoining the Mask Mandate would not disserve the public interest. Again, while Plaintiffs have raised concerns regarding the impact of masking and, indeed, a global pandemic generally, upon children's development, the overarching goal of containing the virus is undeniably also a matter of grave public concern. Furthermore, while there are some unique circumstances when wearing a mask could arguably negatively impact an individual student's educational experience, as illustrated by Plaintiffs' testimony, the Court finds that Plaintiffs have failed to demonstrate that the Mask Mandate imposes such a detrimental impact upon the public as a whole.

In sum, "[t]he purpose for granting interlocutory injunctions is to preserve the status quo, as well as balance the conveniences of the parties, pending a final adjudication of the case."

Benton v. Patel, 257 Ga. at 672. Here, the current status quo is that the Mask Mandate has been in place since the fall of 2020. Accordingly, the Court finds that granting an injunction removing such mandate would disrupt the status quo. Furthermore, Plaintiffs have asserted a negligence claim against Defendants for emotional distress, costs of private school, and other related harms allegedly caused by the Mask Mandate, and it is well settled that “[e]quity will not take cognizance of a plain legal right where an adequate and complete remedy is provided by law.” O.C.G.A. § 23-1-4. See Veterans Parkway Developers, LLC v. RMW Dev. Fund II, LLC, 300 Ga. 99, 102-103 (2016). For all of the foregoing reasons, the Court finds that Plaintiffs’ request for immediate injunctive relief in the form of an interlocutory injunction enjoining the Mask Mandate fails as a matter of law.

### **Conclusion**

In accordance with the foregoing, it is hereby ORDERED that Plaintiffs’ Request for a Temporary Restraining Order and/or Interlocutory Injunction is DENIED.

**SO ORDERED**, this 5<sup>th</sup> day of October, 2021.



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**Honorable Eric K. Dunaway**  
Judge, Fulton County Superior Court  
Atlanta Judicial Circuit

**Filed and served electronically via Odyssey eFileGA**