

**IN THE DISTRICT COURT JOHNSON COUNTY
TENTH JUDICIAL DISTRICT OF KANSAS**

M. M. C., by and through her next friend,)	
B. C., her parent;)	
)	
Petitioner,)	
)	
v.)	Case No.
)	
THE BOARD OF COUNTY)	
COMMISSIONERS OF JOHNSON COUNTY,)	
KANSAS <i>in their official capacity.</i>)	
)	
Defendants.)	
<hr/>		

PETITION

(Under 2021 Senate Bill 40; Supreme Court Administrative Order 2021-RL-032)

COMES NOW, Petitioner M. M. C., a minor child, by and through her next friend and natural and legal parent, B. C., brings this action pursuant to 2021 Senate Bill 40 and Supreme Court Administrative Order 2021-RL-032 as an aggrieved person under Johnson County Board of Health Order No. 001-21 (the "Order"), stating and alleging as follows:

1. Petitioner M. M. C. resides in Johnson County and attends middle school in the Blue Valley School District. Petitioner M. M. C. is a minor child. Accordingly, efforts are being taken to maintain her privacy as a minor child.

2. Petitioner attends school in a building where children in 6th or lower grades also attend school and are not physically separated from higher grades throughout the school day.

3. The Petitioner is aggrieved by Johnson County Board of Health Order No. 001-21, an Order issued by a Local Health Officer and approved by the Board of County Commissioners of Johnson County which qualifies as an order under Senate Bill 40, Sec. 12(d).

Commissioners of Johnson County which qualifies as an order under Senate Bill 40, Sec. 12(d). The Order was issued, approved, and filed on August 5, 2021 within 30 days of the filing of this Petition.

4. A copy of the Order is attached hereto as **Exhibit A**.

5. The Order mandates the wearing of face masks which expressly places the order under the purview of Senate Bill 40, Sec. 12(b)(1)(2).

6. In addition, the Petitioner is engaged in the civic activity of attending school and obtaining a primary education. The Order substantially inhibits the Petitioner's civic activity by interfering with Petitioner M. M. C. ability to complete schoolwork, interact with her friends, and receive instruction from her teachers. Disputes over the "proper" wearing of face masks have resulted conflict between school officials and M. M. C. which was not present prior to the imposition of such masks. Further, school enforcement of the order has caused teachers and administrators to discriminate against and punish unmasked students that otherwise have had no disciplinary action. Such enforcement activity has placed M. M. C. in fear of imminent school discipline during the school day. The school enforcement of the Order against M. M. C. and other unmasked students is deleterious to M. M. C.'s educational civic activity and emotional and mental wellbeing.

7. The Order extends nearly a year, from August 9, 2021 until May 31, 2022 (295 days). The Petitioner requests the Court narrow the effective date of the Order such that it must be reviewed by the Board of Johnson County Commissioners (the "Board") every 30 days, due to the fact that the Local Health Officer, the Board, and the Court cannot know possibly know the applicable conditions, least restrictive means, or even compelling governmental interest regarding the subject matter of the Order 295 days in advance. Accordingly, a 30-day order is

more narrowly tailored than a 295-day order but still allows the Board adequate time to judge changing conditions. Moreover, because the Board does not know the conditions, compelling interest, or least restrictive means that may be most prudent on May 30, 2022 or even September 9, 2021 (31 days after the issuance of the initial order), the Order as written is by definition more restrictive than necessary. Because the Order lasts longer than the period under SB 40 during which an aggrieved party may ask for court review, regardless of the conditions on day 31 or after, the Order is not the least restrictive means by which the Board may achieve the purpose stated in the Order. It is further noted that the Order, which lasts for 295 days, was the first county mask mandate order to be issued after SB 40 (and its 30 day challenge period) went into effect, while pre-SB 40 health orders in Johnson County were substantially shorter than 295 days.

8. No other cases have been filed by the Petitioner related to the Order.

9. The Petitioner acknowledges the Judgement and Final Order After Intervention issued in *Butler, et. al. v. Shawnee Mission School District Board of Education*, Case Number 2021-CV-2385, issued by the Johnson County District Court and notes that it was stayed by the Kansas Supreme Court in Case Number 124205 on August 24, 2021. Given the District Court's Judgement and Final Order After Intervention in 2021-CV-2385, the Petitioner hereby WAIVES strict adherence to the statutory timelines outlined in SB 40, including but not limited to the issuance of a written decision within seven days of hearing, but respectfully requests that this matter be heard as soon as possible by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court issue an Order narrowly tailoring Johnson County Board of Health Order No. 001-21 to limit its effective period to 30 days without action by the Board to extend the mandate.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted this 3rd day of September 2021.

KRIEGSHAUSER NEY LAW GROUP

By:

/s/ Ryan A. Kriegshauser
Ryan A. Kriegshauser, KS Bar No. 23942
Joshua A. Ney, KS Bar No. 24077
Alan M. Vester, KS Bar No. 27892
15050 W. 138th St., Unit 4493
Olathe, KS 66063

ATTORNEYS FOR THE PETITIONER

JOHNSON COUNTY BOARD OF HEALTH ORDER NO. 001-21

Applicable within the entirety of Johnson County, Kansas

This Public Health Order is issued by the Board of County Commissioners of Johnson County, Kansas, sitting as the County Board of Health, on August 5, 2021 and is effective the 9th day of August 2021, at 12:01 A.M. to ensure elementary level schools in Johnson County can safely provide in-person learning and to slow the spread of COVID-19 in Johnson County elementary level schools, pursuant to the authority provided in K.S.A. 65-119 and other applicable laws or regulations.

The Board, sitting and acting as the County Board of Health, upon a motion duly made, seconded, and carried adopted the following Order, to-wit:

WHEREAS, COVID-19 is a respiratory disease that spreads easily from person to person and may result in serious illness or death among some who are infected; and

WHEREAS, the United States Department of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 34,722,631 cases of the illness and more than 609,853 deaths as a result of the illness across the United States; and

WHEREAS, on March 19, 2020, the Board of County Commissioners of Johnson County issued a state of local disaster emergency declaration, which was renewed and extended on May 28, 2020, and which remains in place at the time of this Order; and

WHEREAS, as of this date, in Kansas there have been 330,932 reported positive cases of COVID-19 spread among all 105 counties, including 5,247 deaths; and

WHEREAS, COVID-19 has resulted in 48,983 reported positive cases of COVID-19 in Johnson County and the deaths of 679 Johnson County residents; and

WHEREAS, the highly transmissible Delta variant of COVID-19 is now the dominant strain in Johnson County, resulting in a rapid increase in new cases and numerous outbreaks associated with summer camps and school-age programs; and

WHEREAS, children under the age of 12 are not currently eligible for vaccines and approximately less than forty percent (40%) of children aged 12-17 years in Johnson County have been fully vaccinated against COVID-19; and

WHEREAS, K-12 students benefit from in-person learning and interactions with others; and

WHEREAS, under state law, children between the ages of 7 and 18 are required to attend school; and

WHEREAS, safely returning to in-person classes and keeping public and private K-12 schools open in Johnson County is of the highest priority for students, parents, schools, and the entire community; and

WHEREAS, Centers for Disease Control and Prevention (“CDC”) now recommends universal indoor masking for all teachers, staff, students, and visitors to K-12 schools regardless of vaccination status; and

WHEREAS, wearing face masks while indoors at school will protect the health of Johnson County elementary level students while they are awaiting vaccinations; and

WHEREAS, wearing a mask or other face covering in school gets and keeps children in school and is an effective means to protect students and mitigate the spread of COVID-19 while in school; and

WHEREAS, the intent of this Order is not to deprive any person or entity of any rights protected by the United States Constitution, the Kansas Constitution, or any other law, but merely to set forth restrictions which would best protect Johnson County schools, students, faculty, and staff against the community spread of COVID-19; and

WHEREAS, the Board of County Commissioners of Johnson County, as the County Board of Health, and the Local Health Officer are authorized and required, pursuant to K.S.A. 65-119, to immediately exercise and maintain supervision over known or suspected cases of any infectious or contagious disease during its continuance and to see that all such cases are properly handled, and the Local Health Officer is to use all known measures to prevent the spread of any infectious, contagious, or communicable disease;

WHEREAS, the Local Health Officer is appointed by the Board of County Commissioners of Johnson County pursuant to K.S.A. 65-201, and the Local Health Officer proposes and recommends that masks or other face coverings be worn by students through and including 6th grade while inside school buildings to slow the spread of COVID-19 in Johnson County schools; and

WHEREAS, Johnson County Department of Health and Environment (JCDHE) works in partnership with Johnson County public and private schools to keep our schools open so that our children can learn and benefit from interactions with others. JCDHE will collaborate with and provide guidance to schools on the wearing of masks while in school; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the County’s responsibility to provide for and ensure the health, safety, security, and welfare of the people of Johnson County, requiring that masks or other face coverings be worn by students through and including 6th grade while inside school buildings is a highly effective measure that can be taken to slow and reduce the spread of COVID-19 in our schools and community; and

NOW, THEREFORE, BE IT ORDERED by the Board of County Commissioners of Johnson County, Kansas, sitting and acting as the County Board of Health, that:

Section I. Maintaining Healthy School Environments for Elementary Level Students

1. To ensure that schools may operate as safely as possible, public and private schools for students up to and including 6th grade shall require the following:
 - a. Masks or other face coverings are required for all children while inside a school building where any students through and including 6th grade attend class, unless actively eating or drinking. This requirement includes children in higher grades who attend school in buildings where children in 6th or lower grades also attend school unless 6th graders are physically separated from higher grades throughout the school day.
 - b. Masks or other face coverings are required for all faculty, staff, and visitors while inside a school building where any students through and including 6th grade attend class, unless actively eating or drinking.
 - c. Unless otherwise required by the school, children, faculty, staff, and visitors do not need to wear masks when outdoors on school property. This includes students, faculty and staff participating in elementary level recess.
 - d. All bus riders must wear a mask when riding on a school bus unless documentation has been submitted to the school for a medical mask exemption.
2. The following individuals are exempt from wearing masks or other face coverings while inside school buildings:
 - a. Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
 - i. For students, faculty and staff, documentation of the above condition should be provided to the appropriate school officials pursuant to school guidelines.
 - b. Persons communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication.
 - c. Persons engaged in religious services, ceremonies or activities.
 - d. Persons engaged in activities and athletics inside school buildings, who should follow KSHSAA and/or school guidelines.
3. "Mask or other face covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A mask or other face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. A mask or other face covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels.

Section II. Lawful Order. This Order is a lawfully issued order pursuant to K.S.A. 65-202 and K.S.A. 65-119(a) and is also a "public health directive" as identified in KSA 60-5502. This Order shall apply to all public and private K-12 schools within Johnson County. The Board of Education for each unified school district within Johnson County and the respective governing

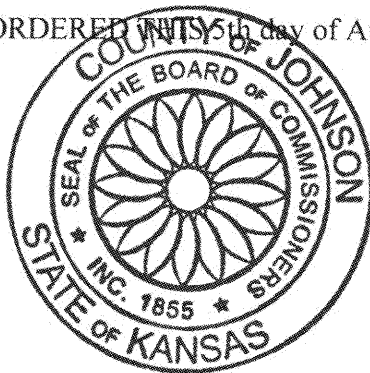
body of each K-12 private school within Johnson County shall be responsible for enforcement of this Order.

Section III. Review by Board of County Commissioners. The Board of County Commissioners may review, amend, or revoke this Order at any time.

Section IV. Severability. If any portion of this Order is found or determined to be invalid, such finding, or determination shall only affect the portion of the Order that is at issue and shall not affect the validity of the remainder of the Order.

Section V. Effective Date; Conclusion. This Order is effective at 12:01 A.M. on Monday, the 9th day of August 2021, and shall remain in effect through 11:59 P.M. on May 31, 2022, unless it is amended, revoked, or replaced.

IT IS SO ORDERED THIS 5th day of August, 2021.



BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS

[Handwritten Signature]
Ed Eilert, Chairman

ATTEST:

[Handwritten Signature]
Lynda Sader
Deputy County Clerk

APPROVED AS TO FORM:

[Handwritten Signature]
Peggy Trent
Chief Counsel

Approved 5-2 (CO MA)

FILED

AUG 05 2021

DEPUTY COUNTY CLERK
JOHNSON COUNTY KANSAS