NO. 21-2070

In The

United States Court of Appeals

For The Fourth Circuit

DISABILITY RIGHTS SOUTH CAROLINA; ABLE SOUTH CAROLINA; AMANDA MCDOUGALD SCOTT, individually and on behalf of P.S., a minor; MICHELLE FINNEY, individually and on behalf of M.F., a minor; LYUDMYLA TSYKALOVA, individually and on behalf of M.A., a minor; EMILY POETZ, individually and on behalf of L.P., a minor; SAMANTHA BOEVERS, individually and on behalf of P.B., a minor; TIMICIA GRANT, individually and on behalf of E.G., a minor; CHRISTINE COPELAND, individually and on behalf of L.C., a minor; HEATHER PRICE, individually and on behalf of H.P., a minor; and CATHY LITTLETON, individually and on behalf of Q.L., a minor,

Plaintiffs–Appellees,

v.

HENRY MCMASTER, in his official capacity as Governor of the State of South Carolina; and ALAN WILSON, in his official capacity as Attorney General of South Carolina

Defendants–Appellants,

AND

MOLLY SPEARMAN, in her official capacity as State Superintendent of Education; GREENVILLE COUNTY SCHOOL BOARD; HORRY COUNTY SCHOOL BOARD; LEXINGTON COUNTY SCHOOL BOARD ONE; OCONEE COUNTY SCHOOL BOARD; DORCHESTER COUNTY SCHOOL BOARD TWO; CHARLESTON COUNTY SCHOOL BOARD; and PICKENS COUNTY SCHOOL BOARD,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

EMERGENCY MOTION TO STAY INJUNCTION PENDING APPEAL AND FOR ADMINISTRATIVE STAY

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INTRODUCTION

COVID-19 has provoked intense debates on a range of topics. Perhaps no debate has been as intense as the one over whether masks should be required in public schools. In South Carolina, the General Assembly addressed this debate by enacting a proviso that prohibits any state-authorized or -appropriated funds from being used to announce or enforce a mask mandate in schools.

As these debates often do, this one moved from the political arena to the courtroom. The South Carolina Supreme Court unanimously upheld the proviso against state-law challenges. *See Wilson v. City of Columbia*, ___ S.E.2d ___, No. 2021-000889, 2021 WL 3928992 (S.C. Sept. 2, 2021). In doing so, the court noted that the General Assembly enacted the Proviso "in good faith," concluding that the legislature endeavored to settle this policy debate by "elect[ing] to leave the ultimate decision to parents," "[w]hile allowing school districts flexibility to encourage one policy or the other." *Id.* at *1. Not long after the state court case was filed, Appellees attacked the proviso in federal court, asserting claims under Title II of the Americans with Disabilities Act ("ADA") and §504 of the Rehabilitation Act of 1973.

The district court granted their motion for a temporary restraining order and preliminary injunction. That decision was an abuse of discretion because it is replete with legal errors. *First*, the district court ignored the logical end of Appellees' claims: Title II and §504 effectively impose a federal mask mandate in all public

schools across the country. Such a sweeping reading of those statutes is untenable. *Second*, the district court wrongly concluded that this Court has already decided Title II and §504 permit disparate-impact and failure-to-accommodate claims. This Court has not done so, and both Supreme Court precedent and the statutory text preclude such claims. *Third*, the district court showed insufficient deference to the General Assembly's decision about masks in schools, wading into the debate to pick winners and losers in direct conflict with the Chief Justice's admonition in *South Bay*. *Fourth*, the district court's irreparable-harm analysis makes no sense, as it reasoned that "just contracting COVID-19 constitutes irreparable harm." App.243.

Given these shortcomings in the district court's analysis, the Governor and Attorney General are likely to prevail on appeal. That vindication, however, cannot wait. The proviso is in effect for only this school year. By the time this appeal could be decided in the ordinary course, the school year may well be over. A stay pending appeal is necessary to avoid the proviso being wrongly enjoined for the entire school year.

The Governor and Attorney General therefore seek a stay of the preliminary injunction pending appeal and an administrative stay while the Court decides this Motion. Because students are in school now and the preliminary injunction may lead to (hopefully temporary) changes in mask policies across the State, the Governor and Attorney General ask this Court to decide this Motion as quickly as possible.

JURISDICTIONAL STATEMENT

The district court granted a preliminary injunction on September 28, 2021. App.250. This Court has jurisdiction under 28 U.S.C. §1292(a)(1). Seeking a stay from the district court is impracticable, given the language of the district court's order and the fact that children are currently in school. *See* Fed. R. App. P. 8(a)(2)(A)(ii).

STATEMENT OF THE CASE

In the 2021-22 Appropriations Act, the General Assembly prohibited school districts in this State from using appropriated or authorized funds to announce or enforce a mask mandate:

> No school district, or any of its schools, may use any funds appropriated or authorized pursuant to this act to require that its students and/or employees wear a facemask at any of its education facilities. This prohibition extends to the announcement or enforcement of any such policy.

2021 S.C. Acts No. 94, Part IB, §1.108 ("Proviso"). The Proviso has been challenged in state court but remains in effect because it is a valid exercise of the General Assembly's legislative power. *See Wilson*, 2021 WL 3928992, at *1.

Appellees in this case are nine parents of public-school students with disabilities and two disability-rights groups. *See* App.24-26. They contend that the individual Appellees' children are high risk for COVID-19, including the Delta variant. *See* App.32-34. With a rising number of COVID-19 cases as schools

returned,[1] they allege their children cannot safely return to in-person learning if masks are not mandated for everyone in schools, including students, teachers, and staff. *See* App.40-45. They demand that schools be allowed to adopt mask mandates, based on recommendations from the Centers for Disease Control and Prevention ("CDC") and S.C. Department of Health and Environmental Control ("DHEC"). *See* App.22.

Based on these allegations, Appellees asserted three claims. Their first two are similar, under Title II and §504. *See* App.45-49. Their third claim is based on the American Rescue Plan Act of 2021 ("ARPA"), claiming that a section of that act preempts the Proviso. *See* App.49-52. Appellees seek declaratory and injunctive relief. *See* App.52.

The district court granted Appellees' request for injunctive relief without a hearing. *See* App.229-250. Governor McMaster and General Wilson promptly appealed, and now they seek from this Court a stay of the preliminary injunction pending appeal.

[1] Cases are now trending down. The statewide seven-day moving average is down almost 50 percent as of September 27 from its September 6 high. *See County-Level Data for COVID-19*, S.C. Dep't Health & Envtl. Control, https://tinyurl.com/ac62h5hw (last accessed Sept. 29, 2021).

STANDARD OF REVIEW

Whether an injunction should be stayed pending appeal is a four-part inquiry. An appellant must show "(1) that he will likely prevail on the merits of the appeal, (2) that he will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay." *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970).

ARGUMENT

I. The Governor and Attorney General are likely to prevail on the merits.

A. The district court's logic results in a federal mask mandate in schools.

Title II and §504 are similar in their scope and their elements. Thus, these claims are often considered together. *Se Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 503 n.4 (4th Cir. 2016). Although Appellees cite myriad provisions of the Code of Federal Regulations specific to each claim, *see* App.45-49, both claims essentially boil down to this syllogism: Schools are not safe without masks. Disabled students cannot attend a school that is not safe. Therefore, disabled students cannot attend schools without universal mask mandates.

Take that logic, and play out where Appellees' claims ultimately end. For now, Appellees target and the district court enjoined only the Proviso. *See* App.231. In this situation, school districts are free to impose a mask mandate without regard

to the Proviso's restrictions. They are also, under the district court's injunction, free *not* to impose a mask mandate.

But if a school district does not impose a mask mandate, Appellees' syllogism is still there. Except now, the primary defendant will necessarily be the school district, not state officials. In other words, under Appellees' theory, schools are safe for disabled students only when masks are mandated for everyone. Thus, for Appellees, enjoining the Proviso cannot be enough. A school district *must* then impose a mask mandate; otherwise, the district is violating Title II and §504. *Cf. Bacon v. City of Richmond, Va.*, 475 F.3d 633, 638 (4th Cir. 2007) (remedies are available against a defendant who wrongs a plaintiff). Hence, the district court erred in accepting Appellees' assertion that they really want to leave the question of masks to school districts. *See* App.246. Appellees' logic ultimately results in Title II and §504 being, in effect, a federal mask mandate for schools across the country.[2]

[2] Appellees might concede that, at some point, the spread of COVID-19 could decline enough that disabled students could attend schools where everyone was not required to wear masks, making any federally imposed mandate temporary. This concession only highlights other problems with Appellee's theory, most notably the line-drawing problem. How much of a decline is enough? When is the risk of spread in school low enough? These are precisely the types of questions "fraught with medical and scientific uncertainties" about "safety and health of the people" that an "unelected federal judiciary . . . lacks the background, competence, and expertise to assess public health" to answer. *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613-14 (2020) (Roberts, C.J., concurring in denial of application for injunctive relief).

This is an untenable and illogical result. These two "statutes aim to root out disability-based discrimination." *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 756 (2017). That is, no doubt, a laudable goal. But a noble purpose does not mean these statutes have no limit. Until now, neither statute has ever been interpreted so broadly as to create and impose such a sweeping federal decree.

For good reason. The plain text of the statutes prohibit only discrimination "by reason of" a disability. 42 U.S.C. §12132 (Title II); *see also* 29 U.S.C. §794(a) ("solely by reason of" a disability). A facially neutral prohibition on using state funds to impose mask mandates does not discriminate against anyone because of a disability. *See Baird ex rel. Baird v. Rose*, 192 F.3d 462, 468 n.6 (4th Cir. 1999) ("application of a neutral rule that applies to disabled and nondisabled individuals alike cannot be considered discrimination on the basis of disability").

Nor do the regulations justify a nationwide school mask mandate.[3] Since they were enacted, Title II and §504 have, like many federal laws, spawned a deluge of federal regulations. *See, e.g.*, 28 C.F.R. §35.101 *et seq.* (Title II); 34 C.F.R. §104.1 *et seq.* (§504). Most relevant here is the concept of reasonable modification to accommodate people with disabilities. *See, e.g.*, 28 C.F.R. §35.130(b)(7); App.239-41. But the district court did not order a modification. Rather, the district court

[3] In fact, the regulations do not even let Appellees bring these claims. *See infra* Part I.B.

vacated the State's policy in the Proviso, and now Appellees (as well as other plaintiffs around the country) will push school boards to effectively reverse the Proviso and mandate masks in schools under threat of similar lawsuits.

Given that "education is a traditional concern of the States," *United States v. Lopez*, 514 U.S. 549, 580 (1995) (Kennedy, J., concurring), any federal intervention to require more than 50 million public-school students, as well as all teachers and staff, to wear masks must be more direct than a novel interpretation of decades' old statutes. The Supreme Court has already rejected backdoor attempts to expand federal law during this pandemic. *See Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, ___ S. Ct. ___, No. 21A23, 2021 WL 3783142, at *1 (U.S. Aug. 26, 2021) (vacating stay of injunction pending appeal of CDC's eviction moratorium because "applicants are virtually certain to succeed on the merits of their argument that the CDC has exceeded its authority"). This Court should do the same here.

B. Appellees do not have a private right of action for their disparate-impact and failure-to-accommodate claims under Title II and §504.

Before getting to the reasons why these claims do not exist under Title II and §504, it's worth noting that the Supreme Court is taking up this question this Term. The Ninth Circuit recently interpreted §504 as permitting disparate-impact claims. *See Doe v. CVS Pharmacy, Inc.*, 982 F.3d 1204 (9th Cir. 2020). The Supreme Court has granted certiorari to decide whether §504 does so. *See CVS Pharmacy, Inc. v. Doe*, No. 20-1374 (U.S.). For at least six reasons, the district court erred in

concluding Appellees have a private right of action for disparate-impact and unintentional-failure-to-accommodate theories under Title II and §504.

First, there are the enforcement provisions for Title II and §504. Title II provides a person with the "remedies, procedures, and rights set forth in" the Rehabilitation Act to enforce a violation of Title II. 42 U.S.C. §12133. The Rehabilitation Act, in turn, provides a person with the "remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964" to enforce a violation of §504. 29 U.S.C. §794a(a)(2). In other words, these statutes create a "domino effect." *Payan v. Los Angeles Cmty. Coll. Dist.*, 11 F.4th 729, 2021 WL 3730692, at *12 (9th Cir. 2021) (Lee, J., dissenting). The Supreme Court has held that Title VI of the Civil Rights Act does not create a private right of action for disparate-impact claims.[4] *See Alexander v. Sandoval*, 532 U.S. 275, 284-91 (2001). So "[i]f Title VI does not allow a disparate impact claim, then the Rehabilitation Act cannot (because it derives its remedies and rights from Title VI), and the ADA cannot either (because it, in turn, relies on the Rehabilitation Act for its remedies and rights)." *Payan*, 2021 WL 3730692, at *12.

[4] The Supreme Court concluded that §601 of Title VI (prohibiting discrimination "on the ground of" race, color, or national origin) does not outlaw disparate-impact discrimination and that regulations enacted under §602 (that implement §601) could not create a private right of action for something Congress had not actually prohibited by statute.

Second, there is the plain text of Title II and §504. Title II prohibits discrimination "by reason of" a disability, 42 U.S.C. §12132, and §504 prohibits it "solely by reason of" a disability, 29 U.S.C. §794(a). "By reason of" means "because of." *By reason of*, Merriam-Webster (2021), https://tinyurl.com/cn5wm7rd; *see also Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1842 (2018) ("And 'by reason of' is a 'quite formal' way of saying 'because of.'" (cleaned up)). For an act to be "because of" a disability, the disability must motivate—not simply be the result of—that act. *Cf. Sellers by Sellers v. Sch. Bd. of City of Mannassas, Va.*, 141 F.3d 524, 529 (4th Cir. 1998) (in "the context of education of handicapped children," "either bad faith or gross misjudgment should be shown before a §504 violation can be made out").

Third, there is the similarity between the text of Title II and §504 and the text of Title VI. Both Title II and §504 have rights-creating language that mirrors §601 of Title VI. *See Cmty. Television of S. Cal. v. Gottfried*, 459 U.S. 498, 509 (1983) ("§504 was patterned after Title VI"); *Sheely v. MRI Radiology Network, P.A.*, 505 F.3d 1173, 1191 n.19 (11th Cir. 2007) ("Title II . . . was modeled after §601"). Because §601's language does not create a private right of action for disparate-impact claims, neither can Title II's or §504's language.

Fourth, there is the contrast between the language of Title II and §504 and the language Congress uses when Congress has prohibited disparate-impact

discrimination. To prohibit disparate-impact discrimination, Congress "has relied on language like 'otherwise adversely affect' or 'otherwise make unavailable,' which refers to the consequences of an action rather than the actor's intent." *Doe v. BlueCross BlueShield of Tenn., Inc.*, 926 F.3d 235, 242 (6th Cir. 2019). The Age Discrimination in Employment Act ("ADEA"), for instance, uses "otherwise adversely affect," 29 U.S.C. §623, and the Supreme Court pointed to that language to hold that the ADEA permits disparate-impact claims, *see Smith v. City of Jackson*, 544 U.S. 228 (2005). The same is true of Title VII of the Civil Rights Act, *see* 42 U.S.C. §2000e-2; *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and the Fair Housing Act, *see* 42 U.S.C. §3604; *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015). Unlike these statutes, Title II and §504 do not use sweeping language like "otherwise affected." *See Doe*, 926 F.3d at 242 (§504 does not create a private right of action for disparate-impact claims).

Fifth, there are the internal differences in the ADA. Title I of the ADA focuses on employment and prohibits "discriminat[ion] against a qualified individual on the basis of disability in" various job-related activities. 42 U.S.C. §12112(a). Title I then goes on to define "discriminate" to include "utilizing standards, criteria, or methods of administration that *have the effect of* discrimination on the basis of disability," much like the ADEA. *Id.* §12112(b)(3)(A) (emphasis added). That definition means that disparate-impact claims exist under Title I. *See Raytheon Co. v. Hernandez*, 540

U.S. 44, 53 (2003). Title II, on the other hand, has no provision defining "discrimination" as an act that "has the effect of." *See* 42 U.S.C. §12131 (definitions for Title II). Title II prohibits only discrimination "by reason of such disability," which (as discussed already) does not include disparate-impact claims.

Sixth, there is no way for Appellees to rely on the regulations implementing Title II or §504 to create a private right of action. Like the Department of Justice in *Sandoval*, the Department of Education cannot create private rights of action under Title II and §504 for something Congress did not prohibit by statute. *See Sandoval*, 532 U.S. at 291 ("Agencies may play the sorcerer's apprentice but not the sorcerer himself.").

Arguments to the contrary are unpersuasive. Most often, courts (like the district court here, *see* App.238) have relied on what they deem to be the statutory purpose to find a private right of action exists. *See, e.g.*, *Payan*, 2021 WL 3730692, at *4-7 (majority op.); *Robinson v. Kansas*, 295 F.3d 1183, 1187 (10th Cir. 2002), *abrogated on other grounds by Arbogast v. Kan. Dep't of Labor*, 789 F.3d 1174 (10th Cir. 2015). Although purposivism may have once carried weight in statutory interpretation, it does not now. Instead, the judicial inquiry "must focus on the text." *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175 (2009). To conclude Title II and §504 create a private right of action for disparate-impact and failure-to-accommodate claims, one must "overlook[] the essentially identical text" of these

statutes and Title VI and "elevat[e] the purpose" of the statutes over the text.[5] *Doe*, 926 F.3d at 243.

Courts cannot substitute their judgment for Congress's to imply a private right of action. Decades ago, the Supreme Court believed that it was "the duty of the courts to be alert to provide such remedies as are necessary to make effective the congressional purpose." *J.I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964). No longer. The Court has "sworn off the habit of venturing beyond Congress's intent," and the Court has made clear it "will not accept [an] invitation to have one last drink." *Sandoval*, 532 U.S. at 287. Now, courts "assume that Congress will be explicit if it intends to create a private cause of action." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1856 (2017).

Without anything explicit from Congress, there can be no disparate-impact or unintentional-failure-to-accommodate claims under Title II or §504, at least post-*Sandoval*. That may or may not be good policy, but that is a choice for Congress to make. *See Sandoval*, 532 U.S. at 286-87. This case involves no allegations of any intentional discrimination by the Governor, the Attorney General, or anyone else.

[5] That assumes the purpose is even as broad as these courts claim. For example, in *Alexander v. Choate*, 469 U.S. 287, 296 n.13 (1985), the Court's dicta on the scope of §504 was based on a dubious reading of legislative history that reflected the unhelpful tendency in legislative history to "look[] over a crowd and pick[] out your friends." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

See App.21-52. Accordingly, the district court's conclusion that Appellees are likely to succeed on their Title II and §504 claims cannot stand.

Notably, the district court never engaged with any of these arguments. Instead, the district court said it "need look no further than *Lamone*" to conclude Appellees have a private right of action. App.238. The district court put far more weight on *Lamone* than it can bear. That case is about absentee voting and blind voters, and it *never* discusses a private right of action. The district court instead quoted dicta about the purpose of Title II and §504, while ignoring or declining to engage with the statutory text. Moreover, the defendants in *Lamone* never even raised a private-right-of-action argument. *See* Br. of Appellants, 2015 WL 295743 (4th Cir. Jan. 23, 2015). When an issue is not raised, briefed, or discussed in the opinion, the decision cannot be binding precedent on that issue. *See United States v. L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952). Thus, *Lamone* does not stand for the proposition the district court said it does.

C. The district court gave insufficient deference to the General Assembly's decision about masks in schools.

Another prominent flaw in the district court's injunction is that court's implicit conclusion that universal mask mandates are necessary for schools to be safe. *See* App.240.

To be sure, Governor McMaster and Attorney General Wilson have consistently encouraged South Carolinians to heed applicable public health

guidance, which has included wearing masks in public settings where it is not possible to practice social distancing, and they have encouraged eligible and willing individuals to get vaccinated. But the debate over masks goes beyond politics and beyond schools. Even public health guidance has been divided on the need for, or the effectiveness of, mask mandates. *See, e.g.*, Jenna Gettings, et al., *Mask Use and Ventilation Improvements to Reduce COVID-19 Incidence in Elementary Schools*, Ctrs. for Disease Control & Prevention (May 28, 2021), https://tinyurl.com/4ftx4asx (difference in the rate of COVID-19 cases "in schools that required mask use among students was not statistically significant compared with schools where mask use was optional").

Beyond the debate over the efficacy of masks in certain contexts, there are other concerns about mandating them, particularly in schools. One example of this harm comes from a study on which Appellees' own expert relies. *See* App.69 (citing Jeremy Howard, *et al.*, *An Evidence Review of Face Masks Against COVID-19*, 118 PNAS 1 (2021), https://tinyurl.com/yv5w8z94). That study observed that an issue impacting "schools" "is that over a full day's use, masks may become wet, or dirty." Howard, *supra*, at 9. Studies of this issue in healthcare settings have "found that respiratory pathogens on the outer surface of the used medical masks may result in self-contamination, and noted that the risk is higher with longer duration of mask use." *Id.* (internal quotation marks omitted). Another example is the potential delays

to social development for children if everyone's face is covered. For that reason, decisionmakers from both political parties in Great Britain supported using other methods to slow the spread of COVID-19 in their schools. *See* Dana Goldstein, *In Britain, Young Children Don't Wear Masks in Schools*, N.Y. Times (Aug. 27, 2021), https://tinyurl.com/b4d7cz5s.

Plus, the district court's analysis ignored that mitigation efforts other than mandating masks are proving effective. Consider the Kershaw County School District in South Carolina, which has had great success in keeping schools open to students. This district "checks temperatures as people come into buildings, limits the number of visitors, keeps desks at least 3 feet apart, uses seating charts on buses to determine close contacts, disinfects buildings every day and uses plexiglass dividers. [The district also uses] isolation rooms for anyone who displays any symptoms." Joseph Bustos, *Why SC's McMaster Says Kershaw County Schools Are a "Model" District in Slowing COVID*, The State (Sept. 15, 2021), https://tinyurl.com/2cavm49s. Because other modifications exist, the district court was wrong to enjoin the Proviso and insist on that districts be able to mandate masks. *Cf. Hannah P. v. Coats*, 916 F.3d 327, 337 (4th Cir. 2019) ("the employer has the ultimate discretion to choose between effective accommodations" (internal quotation mark omitted)); *Perdue v. Sanofi-Aventis U.S., LLC*, 999 F.3d 954, 959 (4th Cir. 2021) (similar).

The district court took umbrage at the suggestion it must defer to the decisions of the politically accountable branches, insisting it had the authority to decide whether the Proviso violated federal law (and yet at the same time was somehow also being deferential). *See* App.246-49. To be sure, the district court (like every Article III court) has the constitutional authority to resolve cases and controversies. The Governor and Attorney General never suggested otherwise. What they argued was that the scope of judicial authority here is narrow, and what the district court missed was how much deference it owed the General Assembly in analyzing Appellees' claims. "Our Constitution principally entrusts the safety and health of the people to the politically accountable officials of the States to guard and protect." *S. Bay*, 140 S. Ct. at 1613-14 (cleaned up). These officials have "especially broad" "latitude" when they "act in areas fraud with medical and scientific uncertainties." *Id.* In making decisions involving medical and scientific uncertainties, officials "should not be subject to second-guessing by an unelected federal judiciary." *Id.* at 1614 (cleaned up); *see also Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 74 (2020) (Kavanaugh, J., concurring) (while not abdicating their roles, federal courts nevertheless "must afford substantial deference to state and local authorities about how best to balance competing policy considerations during the pandemic").[6]

[6] The district court actually cited this case as supporting its decision, but the distinctions in that case and this one are plentiful. Most notably, that case involved a constitutional right and a government edict that explicitly discriminated against

In other words, decisions by politically accountable officials during this pandemic may be subject to judicial review, but that review must be particularly deferential when the scientific question being debated is subject to dispute, as well as parental input.

The district court's review here was anything but deferential. It took sides in the debate on mask mandates in schools, declaring one side is right and the other is wrong. *That* is what *South Bay* forbids. The injunction is therefore flawed, and Appellees are not likely to succeed on the merits of their claims.[7]

II. The other factors support a stay.

The three other considerations can be addressed more quickly.

First, the Governor and Attorney General, as well as the State, will be irreparably harmed absent a stay. The Supreme Court has recognized that whenever "a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S.

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religious groups.

[7] Based on its conclusion on the Title II and §504 claims, the district court declined to rule on Appellees' preemption claim. *See* App.245. That claim, however, is not an alternative reason to affirm. A condition on receiving federal funds must be both unambiguous and from Congress. *See South Dakota v. Dole*, 483 U.S. 203, 206 (1987). Appellees' claim relies on an interim final rule from the U.S. Department of Education that (by the Secretary's own admission) "clarif[ies]" ARPA. *See* App.51-52, 209. If a regulation is necessary to establish a clear condition, then Congress did not impose a condition that satisfies *Dole*. *See Tex. Educ. Agency v. U.S. Dep't of Educ.*, 992 F.3d 350, 361 (5th Cir. 2021).

1301, 1303 (2012) (Roberts, C.J., in chambers). Here, the Proviso was duly enacted by the General Assembly, and it represents the debated decision of the People's representatives on one of the most contentious issues of this pandemic. *Cf. S. Bay*, 140 S. Ct. at 1613-14 (noting the leeway elected officials have in responding to evolving public-health issues).

Second, Appellees will not be substantially harmed by a stay, for the same reasons that the district court's analysis of irreparable harm is flawed. *See* App.243-44. No one disputes that COVID-19 might result in death or hospitalization and that such a result is an irreparable harm. But according to the district court, death or hospitalization isn't the issue. The district court concluded that "the risk" of Appellees "just contracting COVID-19 constitutes irreparable harm." App.243.

This conclusion is flawed for multiple reasons. One, more than 40 million people have contracted COVID-19, and most of them have had minor, if any, symptoms. Presumably some of those people have various conditions that, like Appellees, make them high risk under the CDC's guidance. Treating contracting a disease from which the overwhelming majority of people recover quickly and have minor symptoms as irreparable harm opens Pandora's Box of what might constitute irreparable harm and allow injunctions in myriad new contexts.

Two, the district court's analysis ignores *Winter*. The district court never concluded Appellees are likely to get COVID-19. But a "clear showing" of "likely"

is the standard. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). "Likely" means "having a high probability of occurring or being true" or "very probable." *Likely*, Merriam-Webster (2021), https://tinyurl.com/3rxz7k38. The Supreme Court has explicitly said the "possibility" of harm (even an irreparable one) is not enough. *Winter*, 555 U.S. at 22.

Nothing supports the conclusion that Appellees are "very probable" to contract COVID-19, much less suffer a severe outcome if they do. No data—from the CDC, from DHEC, or anywhere else—lets Appellees meet this high standard. In fact, the data prove they can't meet it. The data show that children generally have been remarkably resilient through this pandemic. Of course, even one child's death is tragic (and Appellees' suggestion below that the Governor is playing "Russian roulette with their children's lives" is, to put it mildly, misplaced hyperbole), but the numbers show that children are highly likely to recover if they contract COVID-19. *See County-Level Data for COVID-19*, S.C. Dep't Health & Envtl. Control, https://tinyurl.com/ac62h5hw (last accessed Sept. 29, 2021). Appellees offered nothing in the district court to suggest these low rates for severe outcomes or death are substantially higher for any children with disabilities, much less that such children are "likely" to have such a bad outcome. *See* App.66-67.

Even with the recent but subsiding surge of COVID-19 cases that Appellees say is the reason they filed this lawsuit, it is still not "likely" that Appellees or any

particular person will contract COVID-19. Appellees proved this point below, when in their reply brief on the preliminary-injunction motion, they admitted that this surge has infected less than 1 percent of the State's student population. *See* ECF 70, at 24. Even if that number has grown since that filing, the percentage of students who have contracted COVID-19 is still low.

Third, the public interest favors a stay. Injecting the judiciary into the debate on mask mandates undermines public confidence in the courts. The debate over masks in schools has been ongoing for months. People have lobbied elected officials to impose mask mandates, to permit mask mandates, and to prohibit mask mandates. Thus far, Appellees' views have not prevailed in that debate in South Carolina. But instead of redoubling their efforts, they ran to the courthouse. Concocting novel legal theories is not a proper backup plan to failed efforts to persuade those elected to represent their interest in the General Assembly. The courts are supposed to be the "least dangerous" branch. *The Federalist No. 78*, p. 464 (Hamilton) (C. Rossiter & C. Kelser eds. 2003). Sanctioning Appellees' "legislating by litigating" strategy, particularly with their implausible claims, would present significant federalism and separation-of-powers concerns.

CONCLUSION

For the foregoing reasons, the Court should grant an administrative stay while it decides this Motion and grant a stay pending appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27(d)(2), 32(a)(5), and 32(g)(1), I certify that this motion has 5,199 words and was prepared using Times New Roman, 14-point font.

s/Wm. Grayson Lambert

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 30th day of September, 2021, I caused this *Emergency Motion to Stay Injunction Pending Appeal and for Administrative Stay* to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all counsel of record.

s/Wm. Grayson Lambert

NO. 21-2070

In The

United States Court of Appeals

For The Fourth Circuit

DISABILITY RIGHTS SOUTH CAROLINA; ABLE SOUTH CAROLINA; AMANDA MCDOUGALD SCOTT, individually and on behalf of P.S., a minor; MICHELLE FINNEY, individually and on behalf of M.F., a minor; LYUDMYLA TSYKALOVA, individually and on behalf of M.A., a minor; EMILY POETZ, individually and on behalf of L.P., a minor; SAMANTHA BOEVERS, individually and on behalf of P.B., a minor; TIMICIA GRANT, individually and on behalf of E.G., a minor; CHRISTINE COPELAND, individually and on behalf of L.C., a minor; HEATHER PRICE, individually and on behalf of H.P., a minor; and CATHY LITTLETON, individually and on behalf of Q.L., a minor,

Plaintiffs–Appellees,

v.

HENRY MCMASTER, in his official capacity as Governor of the State of South Carolina; and ALAN WILSON, in his official capacity as Attorney General of South Carolina

Defendants–Appellants,

AND

MOLLY SPEARMAN, in her official capacity as State Superintendent of Education; GREENVILLE COUNTY SCHOOL BOARD; HORRY COUNTY SCHOOL BOARD; LEXINGTON COUNTY SCHOOL BOARD ONE; OCONEE COUNTY SCHOOL BOARD; DORCHESTER COUNTY SCHOOL BOARD TWO; CHARLESTON COUNTY SCHOOL BOARD; and PICKENS COUNTY SCHOOL BOARD,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

APPENDIX

TABLE OF CONTENTS

U.S. District Court
District of South Carolina (Columbia)
CIVIL DOCKET FOR CASE #: 3:21-cv-02728-MGL

Disability Rights South Carolina et al v. McMaster et al
Assigned to: Honorable Mary Geiger Lewis
Cause: 42:12117 Americans with Disabilities Act

Date Filed: 08/24/2021
Jury Demand: None
Nature of Suit: 443 Civil Rights: Accommodations
Jurisdiction: Federal Question

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TERMINATED: 08/26/2021
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08/24/2021	1	COMPLAINT against All Defendants (Filing fee $ 402 receipt number 0420-10033695.), filed by Samantha Boevers, Lyudmyla Tsykalova, Heather Price, Able South Carolina, Disability Rights South Carolina, Tamica Grant, Amanda McDougald Scott, Emily Poetz,

		Christine Copeland, Cathy Littleton, Michelle Finney. Service due by 11/22/2021(asni,) (Entered: 08/24/2021)
08/24/2021	2	Local Rule 26.01 Answers to Interrogatories by Able South Carolina, Samantha Boevers, Christine Copeland, Disability Rights South Carolina, Michelle Finney, Tamica Grant, Cathy Littleton, Emily Poetz, Heather Price, Amanda McDougald Scott, Lyudmyla Tsykalova.(asni,) (Entered: 08/24/2021)
08/24/2021	4	Summons Issued as to Henry McMaster. (asni,) (Entered: 08/24/2021)
08/24/2021	5	Summons Issued as to Alan Wilson. (asni,) (Entered: 08/24/2021)
08/24/2021	6	Summons Issued as to Molly Spearman. (asni,) (Entered: 08/24/2021)
08/24/2021	7	Summons Issued as to Greenville County School Board. (asni,) (Entered: 08/24/2021)
08/24/2021	8	Summons Issued as to Horry County School Board. (asni,) (Entered: 08/24/2021)
08/24/2021	9	Summons Issued as to Lexington County School Board One. (asni,) (Main Document 9 replaced on 8/25/2021) (asni,). (Entered: 08/24/2021)
08/24/2021	10	Summons Issued as to Oconee County School Board. (asni,) (Entered: 08/24/2021)
08/24/2021	11	Summons Issued as to Dorchester County School Board Two. (asni,) (Entered: 08/24/2021)
08/24/2021	12	Summons Issued as to Charleston County School Board. (asni,) (Entered: 08/24/2021)
08/24/2021	13	Summons Issued as to Pickens County School Board. (asni,) (Entered: 08/24/2021)
08/25/2021	14	Case Reassigned to Judge Honorable Mary Geiger Lewis. Judge Honorable J Michelle Childs no longer assigned to the case. (glev,) (Entered: 08/25/2021)
08/25/2021	15	MOTION to Amend/Correct 1 Complaint, *Amend Case Caption* by Able South Carolina, Samantha Boevers, Christine Copeland, Disability Rights South Carolina, Michelle Finney, Tamica Grant, Cathy Littleton, Emily Poetz, Heather Price, Amanda McDougald Scott, Lyudmyla Tsykalova. Response to Motion due by 9/8/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.(Barker, Rita) (Entered: 08/25/2021)
08/26/2021	16	MOTION for Temporary Restraining Order , MOTION for Preliminary Injunction (Response to Motion due by 9/9/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45.) by Able South Carolina, Samantha Boevers, Christine Copeland, Disability Rights South Carolina, Michelle Finney, Tamica Grant, Cathy Littleton, Emily Poetz, Heather Price, Amanda McDougald Scott, Lyudmyla Tsykalova. (Attachments: # 1 Memo in Support, # 2 Saul Declaration and CV, # 3 Attorney Declaration and Exhibits, # 4 McDougald Scott Declaration, # 5 Poetz Declaration, # 6 Tsykalova Declaration, # 7 Price Declaration, # 8 Littleton Declaration, # 9 Boevers Declaration, # 10 Copeland Declaration, # 11 Grant Declaration, # 12 Finney Declaration)No proposed order.(Chaney, David) (Attachment 1 replaced on 8/26/2021) (cbru,). Modified to edit text on 8/26/2021 (cbru,). (Attachment 4 replaced on 8/27/2021) (cbru,). (Attachment 6 replaced on 8/27/2021) (cbru,). (Attachment 5 replaced on 8/27/2021) (cbru,). (Attachment 11 replaced on 8/27/2021) (cbru,). (Attachment 9 replaced on 8/27/2021) (cbru,). (Attachment 12 replaced on 8/27/2021) (cbru,). Supplement filed as entry 41 on 9/7/2021 (cbru,). Supplement filed as entry 78 on 9/27/2021 (cbru,). (Entered: 08/26/2021)
08/26/2021	17	**TEXT ORDER granting 15 MOTION to Amend/Correct 1 Complaint *to Amend Case Caption*. Signed by Honorable Mary Geiger Lewis on 8/26/2021. (cbru,)** (Entered: 08/26/2021)

08/30/2021	18	ACCEPTANCE OF SERVICE OF COMPLAINT by Samantha Boevers, Lyudmyla Tsykalova, Heather Price, Able South Carolina, Timicia Grant, Disability Rights South Carolina, Amanda McDougald Scott, Emily Poetz, Christine Copeland, Cathy Littleton, Michelle Finney. Charleston County School Board served on 8/27/2021, answer due 9/17/2021. (Attachments: # 1 Acceptance of Service for Defendant Charleston County School Board) Refiled by the Clerk to correct event type. (cbru,) (Entered: 08/30/2021)
08/30/2021	19	**TEXT ORDER: Defendants shall file their response[s] to Plaintiffs' motions for a temporary restraining order and for a preliminary injunction 16 not later than 5:00 PM on Friday, September 3, 2021; and Plaintiffs shall file their reply/replies to Defendants' response[s] not later than 12:00 Noon on Tuesday, September 7, 2021. The Court will set a hearing on the motions if it deems one is necessary. Plaintiffs shall provide, by service or otherwise, a copy of this order to each Defendant forthwith. IT IS SO ORDERED. (Response to Motion due by 9/3/2021, Reply to Response to Motion due by 9/7/2021) Signed by Honorable Mary Geiger Lewis on 8/30/2021. (cbru,)** (Entered: 08/30/2021)
08/30/2021	20	SUMMONS Returned Executed by Samantha Boevers, Lyudmyla Tsykalova, Heather Price, Able South Carolina, Timicia Grant, Disability Rights South Carolina, Amanda McDougald Scott, Emily Poetz, Christine Copeland, Cathy Littleton, Michelle Finney. Alan Wilson served on 8/30/2021, answer due 9/20/2021. (Attachments: # 1 Affidavit of Service on Alan Wilson)(Barker, Rita) (Entered: 08/30/2021)
08/31/2021	21	ACCEPTANCE OF SERVICE OF COMPLAINT by Samantha Boevers, Lyudmyla Tsykalova, Heather Price, Able South Carolina, Timicia Grant, Disability Rights South Carolina, Amanda McDougald Scott, Emily Poetz, Christine Copeland, Cathy Littleton, Michelle Finney. Greenville County School Board served on 8/31/2021, answer due 9/21/2021. (Attachments: # 1 Acceptance of Service for Greenville County School Board) (Barker, Rita) (Entered: 08/31/2021)
08/31/2021	22	ACCEPTANCE OF SERVICE OF COMPLAINT by Samantha Boevers, Lyudmyla Tsykalova, Heather Price, Able South Carolina, Timicia Grant, Disability Rights South Carolina, Amanda McDougald Scott, Emily Poetz, Christine Copeland, Cathy Littleton, Michelle Finney. Dorchester County School Board Two served on 8/30/2021, answer due 9/20/2021. (Attachments: # 1 Acceptance of Service for Dorchester County School Board Two)(Barker, Rita) (Entered: 08/31/2021)
08/31/2021	23	ACCEPTANCE OF SERVICE OF COMPLAINT by Samantha Boevers, Lyudmyla Tsykalova, Heather Price, Able South Carolina, Timicia Grant, Disability Rights South Carolina, Amanda McDougald Scott, Emily Poetz, Christine Copeland, Cathy Littleton, Michelle Finney. Henry McMaster served on 8/30/2021, answer due 9/20/2021. (Attachments: # 1 Acceptance of Service for Governor Henry McMaster)(Barker, Rita) (Entered: 08/31/2021)
08/31/2021	24	MOTION to Appear Pro Hac Vice by Tara Williamson (Filing fee $350 receipt number 0420-10047285) by Able South Carolina, Samantha Boevers, Christine Copeland, Disability Rights South Carolina, Michelle Finney, Timicia Grant, Cathy Littleton, Emily Poetz, Heather Price, Amanda McDougald Scott, Lyudmyla Tsykalova. Response to Motion due by 9/14/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Certificate of Good Standing)No proposed order.(Chaney, David) (Main Document 24 replaced on 8/31/2021) (cbru,). (Additional attachment(s) added on 8/31/2021: # 2 Application/Affidavit) (cbru,). Modified to edit text on 8/31/2021 (cbru,). (Entered: 08/31/2021)
08/31/2021	25	NOTICE of Appearance by James Emory Smith, Jr on behalf of Alan Wilson (Smith,

		James) (Entered: 08/31/2021)
08/31/2021	26	MOTION for Extension of Time to File Response/Reply as to 16 MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction by Alan Wilson. Response to Motion due by 9/14/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 SC Supreme Court calendar)No proposed order.(Smith, James) Modified to link correct event to associated event and to edit text on 8/31/2021 (cbru,). (Entered: 08/31/2021)
08/31/2021	29	ACCEPTANCE OF SERVICE OF COMPLAINT by Samantha Boevers, Lyudmyla Tsykalova, Heather Price, Able South Carolina, Timicia Grant, Disability Rights South Carolina, Amanda McDougald Scott, Emily Poetz, Christine Copeland, Cathy Littleton, Michelle Finney. Pickens County School Board served on 8/31/2021, answer due 9/21/2021. (Attachments: # 1 Acceptance of Service for Pickens County School Board) (Barker, Rita) (Entered: 08/31/2021)
08/31/2021	31	**TEXT ORDER: The deadline for Defendants to file their response[s] to Plaintiffs' motions for a temporary restraining order and for a preliminary injunction 16 is hereby extended to not later than 5:00 PM on Friday, September 10, 2021; and the deadline for Plaintiffs to file their reply/replies to Defendants' response[s] is hereby extended to not later than 12:00 Noon on Tuesday, September 14, 2021. The Court will set a hearing on the motions if it deems one is necessary. Plaintiffs shall provide, by service or otherwise, a copy of this order to each Defendant forthwith. IT IS SO ORDERED. IT IS FURTHER ORDERED that Defendant Alan Wilson's motion for extension of time 26 is hereby granted. (Response to Motion due by 9/10/2021, Reply to Response to Motion due by 9/14/2021) Signed by Honorable Mary Geiger Lewis on 8/31/2021. (cbru,)** (Entered: 08/31/2021)
08/31/2021	32	**TEXT ORDER granting 24 Motion to Appear Pro Hac Vice. Signed by Honorable Mary Geiger Lewis on 8/31/2021.(cbru,)** (Entered: 08/31/2021)
09/01/2021	34	NOTICE of Appearance by Leslie Arlen Cotter, Jr on behalf of Molly Spearman (Cotter, Leslie) (Entered: 09/01/2021)
09/01/2021	35	NOTICE of Appearance by Cathy Lynne Hazelwood on behalf of Molly Spearman (Hazelwood, Cathy) (Entered: 09/01/2021)
09/01/2021	36	Local Rule 26.01 Answers to Interrogatories by Molly Spearman.(Cotter, Leslie) (Entered: 09/01/2021)
09/01/2021	37	ACCEPTANCE OF SERVICE OF COMPLAINT by Samantha Boevers, Lyudmyla Tsykalova, Heather Price, Able South Carolina, Timicia Grant, Disability Rights South Carolina, Amanda McDougald Scott, Emily Poetz, Christine Copeland, Cathy Littleton, Michelle Finney. Molly Spearman served on 8/30/2021, answer due 9/20/2021. (Attachments: # 1 Acceptance of Service for Molly Spearman)(Barker, Rita) (Entered: 09/01/2021)
09/02/2021	38	Local Rule 26.01 Answers to Interrogatories by Henry McMaster.(Lambert, William) (Entered: 09/02/2021)
09/03/2021	39	ACCEPTANCE OF SERVICE OF COMPLAINT by Samantha Boevers, Lyudmyla Tsykalova, Heather Price, Able South Carolina, Timicia Grant, Disability Rights South Carolina, Amanda McDougald Scott, Emily Poetz, Christine Copeland, Cathy Littleton, Michelle Finney. Lexington County School Board One served on 9/2/2021, answer due 9/23/2021. (Barker, Rita) Modified to add filers listed on document on 9/3/2021 (cbru,). (Main Document 39 replaced on 9/7/2021) (cbru,). (Additional attachment(s) added on 9/7/2021: # 1 Acceptance of Service for Lexington County School Board One) (cbru,). (Entered: 09/03/2021)

09/07/2021	41	SUPPLEMENT by Able South Carolina, Samantha Boevers, Christine Copeland, Disability Rights South Carolina, Michelle Finney, Tamica Grant, Timicia Grant, Cathy Littleton, Emily Poetz, Heather Price, Amanda McDougald Scott, Lyudmyla Tsykalova to 16 MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction. (Attachments: # 1 Exhibit A - G.S. v. Lee Order, # 2 Exhibit B - Scott v. DeSantis Order) (Chaney, David) Modified to edit text on 9/7/2021 (cbru,). (Entered: 09/07/2021)
09/07/2021	42	SUMMONS Returned Executed by Samantha Boevers, Lyudmyla Tsykalova, Heather Price, Able South Carolina, Timicia Grant, Disability Rights South Carolina, Amanda McDougald Scott, Emily Poetz, Christine Copeland, Cathy Littleton, Michelle Finney. Horry County School Board served on 9/7/2021, answer due 9/28/2021. (Attachments: # 1 Affidavit of Service for Horry County School Board)(Barker, Rita) (Entered: 09/07/2021)
09/08/2021	43	MOTION to Appear Pro Hac Vice by John A. Freedman (Filing fee $350 receipt number 0420-10059043) by Able South Carolina, Samantha Boevers, Christine Copeland, Disability Rights South Carolina, Michelle Finney, Tamica Grant, Timicia Grant, Cathy Littleton, Emily Poetz, Heather Price, Amanda McDougald Scott, Lyudmyla Tsykalova. Response to Motion due by 9/22/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Application/Affidavit, # 2 Certificate of Good Standing)No proposed order.(Chaney, David) Modified to edit text on 9/8/2021 (cbru,). (Entered: 09/08/2021)
09/08/2021	44	NOTICE of Request for Protection from Court Appearance by James Emory Smith, Jr for Sept. 27 & 30; Oct. 1, 7 & 8 (Smith, James) (Entered: 09/08/2021)
09/10/2021	45	ACCEPTANCE OF SERVICE OF COMPLAINT by Samantha Boevers, Lyudmyla Tsykalova, Heather Price, Able South Carolina, Timicia Grant, Disability Rights South Carolina, Amanda McDougald Scott, Emily Poetz, Christine Copeland, Cathy Littleton, Michelle Finney. Oconee County School Board served on 9/9/2021, answer due 9/30/2021. (Attachments: # 1 Acceptance of Service for Oconee County School Board)(Barker, Rita) (Entered: 09/10/2021)
09/10/2021	46	NOTICE of Appearance by John M Reagle on behalf of Charleston County School Board, Dorchester County School Board Two, Greenville County School Board, Horry County School Board, Oconee County School Board, Pickens County School Board (Reagle, John) (Entered: 09/10/2021)
09/10/2021	47	NOTICE of Appearance by Thomas Kennedy Barlow on behalf of Charleston County School Board, Dorchester County School Board Two, Greenville County School Board, Horry County School Board, Oconee County School Board, Pickens County School Board (Barlow, Thomas) (Entered: 09/10/2021)
09/10/2021	48	NOTICE of Appearance by Allison A Hanna on behalf of Charleston County School Board, Dorchester County School Board Two, Greenville County School Board, Horry County School Board, Oconee County School Board, Pickens County School Board (Hanna, Allison) (Entered: 09/10/2021)
09/10/2021	49	Local Rule 26.01 Answers to Interrogatories by Charleston County School Board.(Reagle, John) (Entered: 09/10/2021)
09/10/2021	50	Local Rule 26.01 Answers to Interrogatories by Dorchester County School Board Two. (Reagle, John) (Entered: 09/10/2021)
09/10/2021	51	Local Rule 26.01 Answers to Interrogatories by Greenville County School Board.(Reagle, John) (Entered: 09/10/2021)
09/10/2021	52	Local Rule 26.01 Answers to Interrogatories by Oconee County School Board.(Reagle, John) (Entered: 09/10/2021)

09/10/2021	53	Local Rule 26.01 Answers to Interrogatories by Pickens County School Board.(Reagle, John) (Entered: 09/10/2021)
09/10/2021	54	RESPONSE in Opposition re 16 MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction Response filed by Charleston County School Board, Dorchester County School Board Two, Greenville County School Board, Horry County School Board, Oconee County School Board, Pickens County School Board.Reply to Response to Motion due by 9/17/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # 1 Exhibit 1 - Memorandum from SCDE to S.C. Districts)(Reagle, John) Modified to edit text on 9/10/2021 (cbru,). (Main Document 54 replaced on 9/10/2021) (cbru,). (Main Document 54 replaced on 9/13/2021) (cbru,). (Entered: 09/10/2021)
09/10/2021	55	RESPONSE in Opposition re 16 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction Response filed by Alan Wilson.Reply to Response to Motion due by 9/17/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Smith, James) (Entered: 09/10/2021)
09/10/2021	56	Local Rule 26.01 Answers to Interrogatories by Alan Wilson.(Smith, James) (Entered: 09/10/2021)
09/10/2021	57	RESPONSE to Motion re 16 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction Response filed by Molly Spearman.Reply to Response to Motion due by 9/17/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Cotter, Leslie) (Entered: 09/10/2021)
09/10/2021	58	RESPONSE in Opposition re 16 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction Response filed by Henry McMaster.Reply to Response to Motion due by 9/17/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Lambert, William) (Entered: 09/10/2021)
09/10/2021	59	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Henry McMaster. Response to Motion due by 9/24/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order. (Limehouse, Thomas) (Entered: 09/10/2021)
09/10/2021	60	NOTICE of Appearance by David Nelson Lyon on behalf of Lexington County School Board One (Lyon, David) (Entered: 09/10/2021)
09/10/2021	61	RESPONSE in Opposition re 16 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction. Response filed by Lexington County School Board One.Reply to Response to Motion due by 9/17/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # 1 Exhibit 1 - Memorandum dated August 18, 2021)(Lyon, David) Modified to add description to attachment on 9/13/2021 (cbru,). (Entered: 09/10/2021)
09/10/2021	62	Local Rule 26.01 Answers to Interrogatories by Lexington County School Board One. (Lyon, David) (Entered: 09/10/2021)
09/13/2021	63	MOTION for Leave to File Excess Pages *in Reply* by Able South Carolina, Samantha Boevers, Christine Copeland, Disability Rights South Carolina, Michelle Finney, Tamica Grant, Timicia Grant, Cathy Littleton, Emily Poetz, Heather Price, Amanda McDougald Scott, Lyudmyla Tsykalova. Response to Motion due by 9/27/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.(Chaney, David) (Entered: 09/13/2021)
09/13/2021	64	**TEXT ORDER: Defendants Henry McMaster, Alan Wilson, Molly Spearman, and Oconee County School Board shall file a response to Plaintiff's 63 MOTION for**

		Leave to File Excess Pages no later than 11:00pm today, September 13, 2021. IT IS SO ORDERED. (Response to Motion due by 9/13/2021) Signed by Honorable Mary Geiger Lewis on 9/13/2021. (cbru,) (Entered: 09/13/2021)
09/13/2021	65	RESPONSE to Motion re 63 MOTION for Leave to File Excess Pages *in Reply* Response filed by Alan Wilson.Reply to Response to Motion due by 9/20/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Smith, James) (Entered: 09/13/2021)
09/13/2021	66	MOTION to Amend/Correct 63 MOTION for Leave to File Excess Pages *in Reply* by Able South Carolina, Samantha Boevers, Christine Copeland, Disability Rights South Carolina, Michelle Finney, Tamica Grant, Timicia Grant, Cathy Littleton, Emily Poetz, Heather Price, Amanda McDougald Scott, Lyudmyla Tsykalova. Response to Motion due by 9/27/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Amended Motion for Leave to File Excess Pages in Reply)No proposed order.(Chaney, David) (Entered: 09/13/2021)
09/13/2021	67	RESPONSE in Opposition re 63 MOTION for Leave to File Excess Pages *in Reply* Response filed by Henry McMaster.Reply to Response to Motion due by 9/20/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Lambert, William) (Entered: 09/13/2021)
09/14/2021	68	**TEXT ORDER: Pending before the Court is Plaintiffs' 63 motion for leave to file an oversized reply of no more than thirty-five pages. Having carefully considered Plaintiffs' motion, the responses, the record, and the applicable law, it is the judgment of the Court that Plaintiffs' motion is GRANTED. IT IS SO ORDERED. Signed by Honorable Mary Geiger Lewis on 9/14/2021.(cbru,)** (Entered: 09/14/2021)
09/14/2021	69	**TEXT ORDER finding as moot 66 Motion to Amend/Correct. Signed by Honorable Mary Geiger Lewis on 9/14/2021.(cbru,)** (Entered: 09/14/2021)
09/14/2021	70	REPLY to Response to Motion re 16 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction. Response filed by Able South Carolina, Samantha Boevers, Christine Copeland, Disability Rights South Carolina, Michelle Finney, Tamica Grant, Timicia Grant, Cathy Littleton, Emily Poetz, Heather Price, Amanda McDougald Scott, Lyudmyla Tsykalova. (Attachments: # 1 Exhibit A - The Arc of Iowa v. Reynolds (Iowa TRO))(Chaney, David) Modified to edit text on 9/14/2021 (cbru,). (Entered: 09/14/2021)
09/16/2021	71	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , MOTION to Dismiss for Lack of Jurisdiction (Response to Motion due by 9/30/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45.) by Alan Wilson. (Attachments: # 1 Memo in Support)No proposed order.(Smith, James) (Entered: 09/16/2021)
09/20/2021	72	Consent MOTION for Extension of Time to File Answer re 1 Complaint by Molly Spearman. Response to Motion due by 10/4/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. No proposed order.(Cotter, Leslie) Modified to link correct event to associated event on 9/20/2021 (cbru,). (Entered: 09/20/2021)
09/20/2021	73	**TEXT ORDER granting 72 Motion for Extension of Time to Answer re 1 Complaint. (Molly Spearman answer due 10/29/2021) Signed by Honorable Mary Geiger Lewis on 9/20/2021.(cbru,)** (Entered: 09/20/2021)
09/23/2021	75	**TEXT ORDER: Plaintiffs shall file a response to Defendant Alan Wilson's 71 Motion to Dismiss no later than 12:00pm on September 27, 2021. IT IS SO ORDERED. (Response to Motion due by 9/27/2021) Signed by Honorable Mary Geiger Lewis on**

		9/23/2021. (cbru,) Modified to edit text to correct scrivener's error on 9/23/2021 (cbru,). (Entered: 09/23/2021)
09/23/2021	76	RESPONSE in Opposition re 59 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM ; 71 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, MOTION to Dismiss for Lack of Jurisdiction. Response filed by Able South Carolina, Samantha Boevers, Christine Copeland, Disability Rights South Carolina, Michelle Finney, Timicia Grant, Cathy Littleton, Emily Poetz, Heather Price, Amanda McDougald Scott, Lyudmyla Tsykalova.Reply to Response to Motion due by 9/30/2021 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # 1 Exhibit A - Charleston Mask Enforcement, # 2 Exhibit B - Charleston Reopening Plan, # 3 Exhibit C - Richland 2 Reopening Plan, # 4 Exhibit D - Oconee Reopening Plan, # 5 Exhibit E - Oconee Mask Guidance, # 6 Exhibit F - Greenville Reopening Plan, # 7 Exhibit G - Children's Hospital COVID-19, # 8 Exhibit H - SCDOE Synopsis of Emergency Regulation, # 9 Exhibit I - Executive Order 2020-50, # 10 Exhibit J - SCDHEC Science on Mask Use)(Chaney, David) Modified to edit text on 9/23/2021 (cbru,). Modified to remove filer not listed on document on 9/28/2021 (cbru,). Supplement filed as entry 78 on 9/27/2021 (Entered: 09/23/2021)
09/24/2021	77	REPLY to Response to Motion re 71 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction Response filed by Alan Wilson. (Smith, James) (Entered: 09/24/2021)
09/27/2021	78	SUPPLEMENT by Able South Carolina, Samantha Boevers, Christine Copeland, Disability Rights South Carolina, Michelle Finney, Timicia Grant, Cathy Littleton, Emily Poetz, Heather Price, Amanda McDougald Scott, Lyudmyla Tsykalova to 16 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction, 76 Response in Opposition to Motion. *Notice of Supplemental Authority*. (Attachments: # 1 S.B. v. Lee, # 2 R.K. v. Lee)(Chaney, David) Modified to remove filer not listed on document, to link correct event to associated event, and to edit text on 9/28/2021 (cbru,). (Entered: 09/27/2021)
09/28/2021	79	**MEMORANDUM OPINION AND ORDER denying 71 Motion to Dismiss for Lack of Jurisdiction. Signed by Honorable Mary Geiger Lewis on 9/28/2021.(cbru,)** (Entered: 09/28/2021)
09/28/2021	80	**MEMORANDUM OPINION AND ORDER granting 16 Motion for TRO; granting 16 Motion for Preliminary Injunction. Signed by Honorable Mary Geiger Lewis on 9/28/2021.(cbru,)** (Entered: 09/28/2021)

PACER Service Center			
Transaction Receipt			
09/28/2021 18:04:58			
PACER Login:	graysonlambert:6756325:0	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	3:21-cv-02728-MGL
Billable Pages:	21	**Cost:**	2.10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT SOUTH CAROLINA
Columbia Division

DISABILITY RIGHTS SOUTH CAROLINA, ABLE SOUTH CAROLINA, AMANDA McDOUGALD SCOTT, individually and on behalf of P.S., a minor; MICHELLE FINNEY, individually and on behalf of M.F., a minor; LYUDMYLA TSYKALOVA, individually and on behalf of M.A., a minor; EMILY POETZ, individually and on behalf of L.P., a minor; SAMANTHA BOEVERS, individually and behalf of P.B., a minor; TAMICA GRANT, individually and on behalf of E.G. a minor; CHRISTINE COPELAND individually and on behalf of L.C. a minor; HEATHER PRICE individually and on behalf of H.P. a minor; and CATHY LITTLETON individually and on behalf of Q.L. a minor,

Plaintiffs,

v.

HENRY McMASTER, in his official capacity as Governor of South Carolina; ALAN WILSON, in his official capacity as Attorney General of South Carolina; MOLLY SPEARMAN, in her official capacity as State Superintendent of Education; GREENVILLE COUNTY SCHOOL BOARD; HORRY COUNTY SCHOOL BOARD; LEXINGTON COUNTY SCHOOL BOARD ONE; OCONEE COUNTY SCHOOL BOARD; DORCHESTER COUNTY SCHOOL BOARD TWO; CHARLESON COUNTY SCHOOL BOARD; and PICKENS COUNTY SCHOOL BOARD,

Defendants.

Case No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. As the school year begins and COVID-19 cases soar, local school districts face a dilemma: whether to comply with the state's Budget Proviso 1.108, which prohibits them from imposing mask mandates, or whether to meet their obligations under federal disability rights laws by protecting the health, safety, and dignity of their students with disabilities.

2. On June 21, 2021, in passing its general budget, the South Carolina legislature enacted Budget Proviso 1.108, entitled "SDE: Mask Mandate Prohibition." The Proviso, which went into effect on June 25, 2021, provides that "[n]o school district, or any of its schools, may use any funds appropriated or authorized pursuant to this act to require that its students and/or employees wear a facemask at any of its education facilities."

3. On July 6, 2021, Defendant Molly Spearman, State Superintendent of Education, directed each school board that, pursuant to Proviso 1.108, "school districts are *prohibited* from requiring students and employees to wear a facemask while in any of its educational facilities for the 2021-22 school year." Proviso 1.108 (emphasis added). This directive reversed the Department of Education's ("SCDOE") prior policy, and scorned the prevailing guidance from the United States Center for Disease Control ("CDC") and the South Carolina Department of Health and Environmental Control ("DHEC") recommending the use of face masks in indoor environments, including schools.

4. Since Proviso 1.108 was enacted, the number of children nationwide who have contracted COVID-19 has increased over fourteen-fold (1,437 percent).

5. Plaintiffs are students with disabilities, including certain underlying medical conditions, which increase their risk of contracting COVID-19 and/or increase their risk of

serious complications or death from a COVID-19 infection. These conditions include asthma, congenital myopathy, Renpenning Syndrome, Autism, and weakened immune systems—many of which have been identified by the CDC as risk factors for severe COVID-19 infections.

6. Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act ("Section 504" or "Rehabilitation Act") provide broad protections for individuals with disabilities. Both federal disability rights laws prohibit outright exclusion, denial of equal access, or unnecessary segregation for students with disabilities in public education. Both laws also prohibit methods of administration that defeat the fundamental goals of public schools, that is, to provide an education. Finally, both federal disability rights laws impose affirmative obligations on covered entities to proactively provide reasonable modifications or reasonable accommodations to ensure that individuals with disabilities have an equal opportunity to benefit from their public education.

7. School districts with students who have disabilities, including underlying medical conditions, that make them more likely to contract and/or become severely ill from a COVID-19 infection have a legal obligation to ensure that those children can attend school with the knowledge that the school district has followed recommended protocols to ensure their safety. Currently, the CDC's and DHEC's recommended protocol—as well as those of the American Academy of Pediatrics and the American Medical Association—include universal masking. By prohibiting any school from imposing a mask mandate, Proviso 1.108 interferes with that school's ability to comply with its obligations under federal disability rights laws and illegally forces parents of children with underlying conditions to choose between their child's education and their child's health and safety, in violation of the ADA and Section 504. Further, such a prohibition needlessly and unconscionably exposes South Carolina school children and

their families to a heightened risk of infection, hospitalization, and death. It is against this law—and its calamitous consequences—that Plaintiffs seek declaratory and injunctive relief.

PARTIES

8. Disability Rights South Carolina, Inc. ("DRSC") is a South Carolina nonprofit corporation with principal offices in Columbia, South Carolina. DRSC is South Carolina's Protection and Advocacy system ("P&A"), as that term is defined under the Developmental Disabilities Assistance and Bill of Rights Act ("DD Act"), 42 U.S.C. § 15041 *et seq.*, the Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI Act"), 42 U.S.C. § 10801 *et seq.*, and the Protection and Advocacy of Individual Rights Act ("PAIR Act"), 29 U.S.C. § 794e *et seq.* The DD Act authorizes P&A systems to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with disabilities. *See* 42 U.S.C. § 15043(a)(2)(A)(i). The DD Act further specifically states that a P&A system may bring suit on behalf of individuals with disabilities against a state or an agency or instrumentality of a state. DRSC seeks legal and equitable relief on behalf of people with disabilities by way of its associational standing. The interest DRSC seeks to protect through its participation in this action—to ensure that students are not excluded from public school due to disability—is germane to DRSC's purpose. Courts have recognized that P&A organizations represent the interests of individuals with disabilities and have standing to challenge discriminatory practices because they share characteristics with traditional membership advocacy organizations. Although individuals with disabilities certainly have standing to sue in their own right, and are in fact participating directly in this action, neither the claims asserted nor the relief requested requires individual plaintiffs to do so where their interests are represented by DRSC.

9. ABLE SOUTH CAROLINA ("Able SC") is a Center for Independent Living ("CIL") serving people with disabilities residing throughout South Carolina. Authorized by the Rehabilitation Act of 1973, as amended, CILs provide independent living services for people with disabilities based on the belief that all people can live with dignity, make their own choices, and participate fully in society. Able SC is a consumer-controlled, community-based, cross-disability nonprofit providing an array of independent living services to empower people with disabilities to live active, self-determined lives including advocacy, services, and support. Able SC has associational standing to represent the interests of the people it serves who are adversely affected by Budget Proviso 1.108.

10. AMANDA McDOUGALD SCOTT is an individual, *sui juris*, who resides in Greenville County, South Carolina. Ms. McDougald Scott is the parent of P.S., a disabled child. P.S. is diagnosed with asthma.

11. MICHELLE FINNEY is an individual, *sui juris*, who resides in Dorchester County, South Carolina. Ms. Finney is the parent of M.F., a disabled child. M.F. is diagnosed with Renpenning Syndrome.

12. LYUDMYLA TSYKALOVA is an individual, *sui juris*, who resides in Pickens County, South Carolina. Ms. Tsykalova is the parent of M.A., a disabled child. M.A. is diagnosed with asthma.

13. EMILY POETZ is an individual, *sui juris*, who resides in Pickens County, South Carolina. Ms. Poetz is the parent of L.P., a disabled child. L.P. has congenital myopathy.

14. SAMANTHA BOEVERS is an individual, *sui juris*, who resides in Charleston County, South Carolina. Ms. Boevers is the parent of P.B., a disabled child. P.B. is on the Autism spectrum and has been identified as a student with a disability.

15. TAMICA GRANT is an individual, *sui juris*, who resides in Greenville County, South Carolina. Ms. Grant is the parent of E.G., a disabled child. E.G. is on the Autism spectrum, has ADHD, and has been identified as a student with a disability.

16. CHRISTINE COPELAND is an individual, *sui juris*, who resides in Horry County, South Carolina. Ms. Copeland is the parent of L.C., a disabled child. L.C. is on the Autism spectrum, has severe anxiety, and has been identified as a student with a disability.

17. HEATHER PRICE is an individual, *sui juris*, who resides in Lexington County, South Carolina. Ms. Price is the parent of H.P., a disabled child. H.P. is on the Autism spectrum and has ADHD and has been identified as a student with a disability.

18. CATHY LITTLETON is an individual, *sui juris*, who resides in Oconee County, South Carolina. Ms. Littleton is the parent of Q.L., a disabled child. Q.L. is on the Autism spectrum, has global developmental delays, is nonverbal, has a history of respiratory system infection, and has been identified as a student with a disability.

19. Plaintiffs McDOUGALD SCOTT, FINNEY, TSYKALOVA, POETZ, GRANT, COPELAND, PRICE, and LITTLETON are referred to as the Individual Plaintiffs.

20. The Individual Plaintiffs are students who are "qualified individuals with disabilities" under the ADA and who are protected from discrimination by the ADA.

a. The Individual Plaintiffs have a physical or mental impairment that substantially limits one or more major life activities, or a record of such an impairment, 42 U.S.C. § 12102(2)(A), (B).

b. The Individual Plaintiffs meet the "essential eligibility requirements" for participation in the programs or activities provided by the public entity (e.g.,

they are the right age to be eligible for public education in the state), 42 U.S.C. § 12131(2).

21. The Defendant HENRY McMASTER is Governor of the State of South Carolina. Defendant McMaster signed the budget legislation containing Proviso 1.108 and is responsible under South Carolina law for ensuring "the laws be faithfully executed." S.C. CONST. art. IV, § 15. Prior to the passage of Proviso 1.108, Defendant McMaster enacted an Executive Order containing a similar prohibition on mask mandates; on information and belief, he encouraged the Legislature to enact Proviso 1.108, and he has publicly advocated for Proviso 1.108 to remain in effect and to be vigorously enforced. Defendant McMaster is sued in his official capacity as the Governor of the State of South Carolina. The State of South Carolina and the Office of the Governor are public entities within the meaning of the ADA, 28 C.F.R. § 35.104, and recipients of federal financial assistance within the meaning of the Rehabilitation Act, 29 U.S.C. § 794(a).

22. The Defendant ALAN WILSON is Attorney General of the State of South Carolina and is the head of the Office of Attorney General. Defendant Wilson is responsible under South Carolina law for enforcement of South Carolina's laws, including Proviso 1.108. In his official capacity, Defendant Wilson recently brought legal action against the City of Columbia over the City's noncompliance with Proviso 1.108. Defendant Wilson is sued in his official capacity as the Attorney General of South Carolina. The State of South Carolina and the Office of the Attorney General are public entities within the meaning of the ADA, 28 C.F.R. § 35.104, and recipients of federal financial assistance within the meaning of the Rehabilitation Act, 29 U.S.C. § 794(a).

23. The Defendant MOLLY SPEARMAN is Superintendent of the South Carolina

Department of Education (SCDOE) and is responsible for the acts and omissions of the SCDOE. Defendant Spearman is sued in her official capacity as the Superintendent of the South Carolina Department of Education. The State of South Carolina and the South Carolina Department of Education are public entities within the meaning of the ADA, 28 C.F.R. § 35.104, and recipients of federal financial assistance within the meaning of the Rehabilitation Act, 29 U.S.C. § 794(a).

24. DEFENDANTS McMASTER, WILSON, and SPEARMAN are collectively referred to as the DEFENDANT STATE OFFICIALS.

25. The Defendant, GREENVILLE COUNTY SCHOOL BOARD ("Board" or "District"), an indispensable but not adverse party, is a corporate and governmental agency duly empowered by the constitution and statutes of the state of South Carolina to administer, manage, and operate the Greenville County Public Schools. The Board receives state and federal funding for the education of children with disabilities. The Board meets the definition of a public entity under 42 U.S.C. § 12131.

26. The Defendant, HORRY COUNTY SCHOOL BOARD ("Board" or "District"), an indispensable but not adverse party, is a corporate and governmental agency duly empowered by the constitution and statutes of the state of South Carolina to administer, manage, and operate the Horry County Public Schools. The Board receives state and federal funding for the education of children with disabilities. The Board meets the definition of a public entity under 42 U.S.C. § 12131.

27. The Defendant, LEXINGTON COUNTY SCHOOL BOARD for District 1 ("Board" or "District"), an indispensable but not adverse party, is a corporate and governmental agency duly empowered by the constitution and statutes of the state of South Carolina to

administer, manage, and operate the Lexington County Public Schools. The Board receives state and federal funding for the education of children with disabilities. The Board meets the definition of a public entity under 42 U.S.C. § 12131.

28. The Defendant, OCONEE COUNTY SCHOOL BOARD ("Board" or "District"), an indispensable but not adverse party, is a corporate and governmental agency duly empowered by the constitution and statutes of the state of South Carolina to administer, manage, and operate the Oconee County Public Schools. The Board receives state and federal funding for the education of children with disabilities. The Board meets the definition of a public entity under 42 U.S.C. § 12131.

29. The Defendant, PICKENS COUNTY SCHOOL BOARD ("Board" or "District"), an indispensable but not adverse party, is a corporate and governmental agency duly empowered by the constitution and statutes of the state of South Carolina to administer, manage, and operate the Pickens County Public Schools. The Board receives state and federal funding for the education of children with disabilities. The Board meets the definition of a public entity under 42 U.S.C. § 12131.

30. The Defendant, CHARLESTON COUNTY SCHOOL BOARD ("Board" or "District"), an indispensable but not adverse party, is a corporate and governmental agency duly empowered by the constitution and statutes of the state of South Carolina to administer, manage, and operate the Charleston County Public Schools. The Board receives state and federal funding for the education of children with disabilities. The Board meets the definition of a public entity under 42 U.S.C. § 12131.

31. The Defendant, DORCHESTER COUNTY SCHOOL BOARD for District 2 ("Board" or "District"), an indispensable but not adverse party, is a corporate and governmental

agency duly empowered by the constitution and statutes of the state of South Carolina to administer, manage, and operate the Dorchester County Public Schools. The Board receives state and federal funding for the education of children with disabilities. The Board meets the definition of a public entity under 42 U.S.C. § 12131.

32. The School Board Defendants are necessary and indispensable parties, and in their absence, the children who attend school in their districts may not be able to obtain complete relief. Absent inclusion in this suit, the School Board Defendants may be left subject to a substantial risk of incurring inconsistent obligations because of their interests.

JURISDICTION AND VENUE

33. Jurisdiction for this action vests pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) based upon claims brought under the Americans with Disabilities Act of 1990; 29 U.S.C. § 794, for claims brought under Section 504 of the Rehabilitation Act of 1973.

34. Venue for this action lies pursuant to 28 U.S.C. § 1391(b) in that more than one Defendant and more than one Plaintiff reside in this judicial district, and a substantial part of the events or omissions giving rise to the claims occurred and continue to occur in this district.

35. Venue is proper in the Columbia division under Local Rule 3.01 because the defendants reside in this division, a substantial portion of the events or omissions giving rise to the claim occurred in this division, and the organizational Plaintiffs do business related to the events or omissions alleged in this division.

FACTS

THE CURRENT STATE OF THE COVID-19 PANDEMIC

36. The history of the COVID-19 pandemic is well-known, and an extensive body of evidence shows that COVID-19 is a highly communicable respiratory virus that spreads

through close contact.

37. Since the inception of the pandemic, more than 650,000 positive cases of COVID-19 in South Carolina have been recorded, more than 25,000 South Carolinians have been hospitalized, and more than 10,000 South Carolinians have died.[1] Cases peaked in South Carolina in January 2021 when over 40,000 new cases were reported in single week. The number of deaths, hospitalizations, and infections began declining in early 2021 once vaccines became available. By June 2021, the number of new COVID-19 cases reported per week in South Carolina had decreased to fewer than 1,100.

34. The medical landscape drastically changed with the arrival of the highly contagious and virulent Delta variant of COVID-19. The number of newly reported cases, hospitalizations, and deaths due to COVID-19 have all increased sharply. Last week, over 23,000 new cases were reported in South Carolina.

35. The newest data on the Delta variant is particularly troubling for students and school districts. For example, data shows children are infected with the Delta variant at much higher rates than was true with previous virus strains, especially those who are unvaccinated (including those 5 to 11 years old who are not yet eligible to receive a vaccine).

36. According to the American Academy of Pediatrics, "the Delta variant has created a new and pressing risk to children and adolescents across this country." Pediatric cases of COVID-19 have been "skyrocketing." For the week ending July 29, 2021, "nearly 72,000 new coronavirus cases were reported in kids—almost a fifth of all *total* known infections in the U.S., and a rough doubling of the previous week's stats." By the week of August 12, the number of new coronavirus cases in children jumped to over 121,000. As the American Academy of Pediatrics explained: "The

[1] https://scdhec.gov/covid19/south-carolina-county-level-data-covid-19

higher proportion of cases in this population means this age group could be contributing in driving continued spread of COVID-19. Sadly, over 350 children have died of COVID-19 since the start of [the] pandemic and millions of children have been negatively impacted by missed schooling, social isolation, and in too many cases, the death of parents and other caregivers."

37. The view close to home is particularly disturbing. Recent DHEC numbers show that South Carolina has the third highest proportion of pediatric COVID-19 cases in the United States, with children accounting for over 19% of all South Carolina COVID-19 cases.

COVID-19 POSES EXTREME RISKS TO STUDENTS WITH DISABILITIES

38. School-aged children with certain disabilities, including a range of underlying medical conditions, are at increased risk of contracting or developing a severe illness from COVID-19 as compared to other children. According to the CDC, "[c]urrent evidence suggests that children with medical complexity, with genetic, neurologic, metabolic conditions, or with congenital heart disease can be at increased risk for severe illness from COVID-19." And as with adults who face increased risks, "children with obesity, diabetes, asthma or chronic lung disease, sickle cell disease, or immunosuppression can also be at increased risk for severe illness from COVID-19."

39. These are not the only children at risk of grave harm. Individuals with intellectual disabilities are also at increased risk of contracting COVID-19 and of dying from COVID-19 infection. A recent study published in the New England Journal of Medicine—working with a data set of 64,414,495 patients across more than 500 U.S. healthcare systems—concluded that "intellectual disability was the strongest independent risk factor for presenting with a Covid-19 diagnosis and the strongest independent risk factor other than age for Covid-19 mortality." The study found individuals with intellectual disabilities were more likely to contract COVID-19; if

diagnosed with COVID-19, more likely to be admitted to the hospital; and more likely to die following admission.

40. The risks reflect the risks associated with intellectual disability itself, as well as comorbidities that in the study were overrepresented among those with intellectual disabilities. Notably, the odds of mortality among those with intellectual disabilities in the study were "significantly higher than other conditions such as congestive heart failure, kidney disease, and lung disease."

41. South Carolina school districts regularly serve students with these disabilities—moderate to severe asthma, chronic lung and heart conditions, cerebral palsy, Down syndrome, obesity, and weakened immune systems are common. For the 2020-2021 school year, 101,365 of 761,290 students enrolled in South Carolina public schools were identified as "special education" students, of whom 99,301 were placed inside regular classes for at least part of the day. As of the 2020-2021 survey, 5,858 students were identified has having an intellectual disability, 9,859 students were identified as having an autism spectrum disorder, 184 have traumatic brain injuries, 40,962 have a specific learning disability, and 16,087 are identified as "other health impaired."

42. The COVID-19 pandemic has dramatically affected students with disabilities, beginning with the closure of the public school system in the spring of 2020. Many students lost critical instruction and services, an issue that persisted into the 2020-21 school year.

43. The American Academy of Pediatrics has advised that "[r]emote-learning highlighted inequities in education, was detrimental to the educational attainment of students of all ages and exacerbated the mental health crisis among children and adolescents." Likewise, the

CDC concluded that "[s]tudents benefit from in-person learning, and safely returning to in-person instruction in the fall 2021 is a priority."

44. The detrimental impact on education from the COVID-19 pandemic has been especially alarming for students with disabilities. All students with disabilities who are eligible for special education, are aged three through twenty-one, and who reside in the state have the right to Free and Appropriate Public Education ("FAPE") consistent with the requirements of S.C. Code Regs. § 43-243(III)(C). Federal law further mandates that children with disabilities be taught in the least restrictive environment and, as much as possible, be maintained in the school and the classroom they would attend if they were not disabled.

45. As detailed by the U.S. Department of Education, COVID-19 has "significantly disrupted the education and related aids and services needed to support their academic progress and prevent regression." Students with disabilities have not only lost critical in-class instruction, but they have also lost services such as speech and occupational therapy as well as behavioral support and counseling. Many parents have reported regression. And there is evidence that the disruption in services and instruction "may be exacerbating longstanding disability-based disparities in academic achievement."

46. After signing the bill in April 2021 requiring all school districts in the state to offer full time in-person instruction, Governor McMaster said, "the best place for the children to be is in the classroom." This was echoed by Superintendent Spearman, who said "[e]very family must be given the option of sending their child to school five days a week face to face and the science shows that this can be done safely in every community." Students with disabilities must have the same options as other students.

47. The CDC unambiguously recommends "universal indoor masking by all

students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status." In announcing this recommendation, the CDC noted that "[w]hen teachers, staff, and students consistently and correctly wear a mask, they protect others as well as themselves" and that "protection against exposure remains essential in school settings." The American Academy of Pediatrics and the American Medical Association similarly recommend that schools adhere to universal masking policies.

48. The U.S. Department of Education's roadmap for returning students to school safely—with its first priority being the health and safety of students, staff and educators—fully adopted the CDC recommendation.

49. Faced with rising COVID-19 cases and the threat of the Delta variant, the South Carolina DHEC has similarly recommended "public indoor masking for everyone, regardless of vaccination status. This includes masking for teachers, students, parents and visitors in K-12 schools." Although noting that state law "prohibits the implementation of mask mandates in schools," SCDHEC Director of Public Health Brannon Traxler stated "the very concerning trends we are seeing nationally and here in South Carolina regarding increasing case rates … makes it necessary to return to recommending universal masking in public indoor settings."

50. Research supports the effectiveness of universal masking in schools. The ABC Science Collaborative, led by top physicians on the staff of Duke University, studied data from 100 school districts in North Carolina, and found that "[w]hen masking is in place, COVID-19 transmission in schools is low."[2] This finding strengthens CDC's claim that "when teachers, staff, and students consistently and correctly wear a mask, they protect others as well as themselves."[3]

[2] https://abcsciencecollaborative.org/author/elizabeth-mccamicduke-edu/

[3] https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html

THE RECENT RESPONSE OF SOUTH CAROLINA OFFICIALS TO COVID-19

51. Despite increased numbers of cases and deaths being reported in the state of South Carolina, and despite guidance from the U.S. Department of Education, the CDC, and public health experts, Governor McMaster and Attorney General Wilson have remained steadfast in their position that school districts should not impose mask mandates.

52. On March 13, 2020, Defendant McMaster declared a public health emergency. Governor McMaster repeatedly extended the order through 30 separate declarations until finally lifting the emergency order on June 7, 2021. At the time Governor McMaster lifted the state of emergency, South Carolina was reporting only approximately 100 new COVID-19 cases per day. Seventeen days later, Governor McMaster signed the budget bill containing Proviso 1.108.

53. In the months since Proviso 1.108 was passed, the number of children contracting COVID-19 has increased over fourteen-fold (1,437 percent). With the emergence of the Delta variant, COVID-19 infection rates, daily cases, and COVID-related hospitalizations have ballooned in South Carolina. As compared to when Proviso 1.108 was passed, the number of reported new cases twenty times higher; hospital intensive care units are full; and COVID-related deaths have again begun to climb. Specifically, in recent days, South Carolina has reported between 2,000 and 5,000 new cases per day. And in the last three weeks, South Carolina has reported over 10,000 new cases among South Carolina children. In South Carolina, across the few days schools have reopened, there have been almost 300 COVID-19 cases reported in schools. Pediatric intensive care units also report that they are full or near capacity.

54. Notwithstanding the reemergence of COVID-19, Governor McMaster has doubled down on the prohibition on mask mandate, recently tweeting “mandating masks is not the answer. Personal responsibility is.” On August 9, he reiterated “for the government to mask

children who have no choice . . . is the wrong thing to do. And we're not going to do it." And on August 20, he tweeted "to suggest that bureaucrats in Washington should tell parents that they must force their children to wear a mask in school against their wishes is a drastic error. I think it's wrong."

55. Attorney General Wilson has taken a similar position. On August 10, Attorney General Wilson wrote to the City of Columbia that a City Ordinance requiring all faculty, staff, visitors, and students in school buildings wear facemasks conflicted with Proviso 1.108 and should be rescinded or amended. Defendant Wilson has since filed suit in the South Carolina Supreme Court seeking to enjoin Columbia's City Ordinance.

56. In spite of national and local guidance urging precaution, Proviso 1.108 prohibits local school districts from even considering whether to implement the most basic and effective COVID-19 prevention strategy in school settings. The State Department of Education is continuing to abide by the July 6 directive that "school districts are prohibited from requiring students and employees to wear a facemask while in any of its educational facilities for the 2021-22 school year."

COVID-19 AS SCHOOLS REOPEN

57. Enforcement of Proviso 1.108 by State officials places all children and staff at risk. Children under twelve are ineligible to be vaccinated and many live with disabilities that place them at a higher risk for severe illnesses or death due to COVID-19. While children twelve and older can be vaccinated, many are not, and those who are vaccinated may still spread COVID-19, including to younger children and others who either cannot be or are not vaccinated.

58. The gravity of the situation is perhaps best illustrated by the state of affairs in Pickens County. School opened earlier in Pickens than in most of the state, placing it in the

unenviable position of testing maskless in-person learning.

59. Nine days after it reopened for the 2021-22 school year, the Pickens County School District announced that it was reverting to all-virtual classes after 142 students and 26 staff tested positive for COVID-19. As a result of those positive cases, 634 students (5 percent of the total student population) were forced into quarantine because of contact with infected individuals.

60. On August 17, 2021, in the wake of the Pickens County infection statistics, Defendant Superintendent Spearman called upon the State Legislature to lift Proviso 1.108.

61. On August 20, 2021, the South Carolina DHEC Board called upon the Governor to recall the South Carolina legislature to repeal Proviso 1.108.[4]

62. Disturbingly, COVID-19 infections in Dorchester County School District 2 have already eclipsed the numbers from Pickens County. After one week of school (August 16-20), the Dorchester County School District 2 is reporting 324 infected students and 42 infected staff. As of August 23, 2021, 771 students are in quarantined.[5] Three Dorchester County School District 2 staff members have already died from the virus this month.

63. Under the ADA and Rehabilitation Act, public-school districts must provide all children with disabilities an equal opportunity to benefit from a public education, which includes receiving their education in an integrated environment, without needless segregation. In short, children with disabilities are entitled to learn and interact with all other children, to receive the same education as all other children, and to be returned home as safe and healthy as possible.

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[4] Jeffrey Collins, *SC health board joins groups asking to end school mask ban*, Associated Press (Aug. 20, 2021), https://apnews.com/article/business-health-coronavirus-pandemic-a22ea100ce5b97a16680f55350a8c99a (last visited Aug. 21, 2021).

[5] https://www.ddtwo.org/covid (accessed Aug. 23, 2021).

64. The COVID-19 pandemic has not absolved South Carolina schools from the strictures of the ADA or Rehabilitation Act. Likewise, South Carolina officials do not have the authority to order school districts to violate their obligations under federal law.

65. By forbidding local school districts and public health authorities from having the freedom to respond to the ongoing COVID-19 crisis and to require masks for their students and staff, Proviso 1.108 has made it impossible for school districts to provide a safe learning environment to students with disabilities at risk of severe illness from COVID-19. Students with disabilities who are unable to safely return to brick-and-mortar schools because of continued health concerns are being excluded from the public school system in violation of the ADA and Rehabilitation Act.

66. There are no viable alternatives for students with disabilities who cannot safely return to school in-person due to Proviso 1.108. The Defendant State Officials' actions have put parents in the impossible situation of having to choose between the health and life of their child and educating their child. Thus, the Defendants' actions will have the perverse effect of either placing children with disabilities in imminent danger or unlawfully forcing those children out of the public school system.

67. In so ordering their school districts, the Defendant State Officials violated Title II of the ADA, Section 504 of the Rehabilitation Act, and the Supremacy Clause of the United States Constitution. By refusing to allow basic and effective protocols to protect students with disabilities from COVID-19 infections, South Carolina state officials have effectively excluded these students with disabilities from participation in the public education system, in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.130, have subjected these students to discrimination on the basis of their disabilities, in violation of 28 C.F.R. § 35.130(b)(3), and have employed

methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities, in violation of 28 C.F.R. § 35.130(b)(3). Furthermore, complying with Proviso 1.108 precludes school districts from making reasonable modifications for their students with disabilities, as required by 28 C.F.R. § 35.130(b)(7).

HARM TO THE NAMED PLAINTIFFS

68. Plaintiffs and other children with disabilities are at heightened risk for severe illness or death from COVID-19 and cannot attend public school without reasonable accommodation for their unique health situations. By this action, Plaintiffs ask this Court to enjoin Proviso 1.108 so that such accommodations can be made and needless suffering can be averted.

69. The Defendant State Officials have directly harmed each of the named Plaintiffs who now have to risk their health and safety in order to obtain desperately needed in-person instruction and services.

70. Amanda McDougald Scott and P.S. in Greenville County School District

a. P.S. is 5 years old and has asthma.

b. Because of his age, P.S. cannot be vaccinated.

c. P.S. is assigned to Blythe Elementary School, which is within Defendant Greenville County School District.

d. Because of his asthma, M.A. is at a heightened risk of serious illness due to COVID-19.

e. McDougald Scott was advised online that virtual learning at Blythe Elementary was full, or closed, for the 2021-22 school year.

f. McDougald Scott pulled P.S. out of public school and placed him at the Furman Child Development Center because of Blythe's inability to follow CDC and DHEC guidance regarding masking indoors.

g. The Furman program requires McDougald Scott to travel 30 minutes for pick-up and drop-off and required her family to incur a significant and unplanned financial burden.

h. P.S. would attend school at Blythe Elementary School if the school were allowed to require masking for students and staff around P.S.

71. Michelle Finney and M.F. in Dorchester County School District 2

a. M.F. is 16 years old and has a rare genetic disease called Renpenning Syndrome.

b. M.F.'s condition causes developmental delay, intellectual disability, and distinctive physical features.

c. M.F. attends Summerville High School in Defendant Dorchester County School District 2 and has an IEP.

d. Because of his condition, M.F. is at a heightened risk of serious illness due to COVID-19.

e. Dorchester County School District 2 has experienced dramatic COVID-19 transmission during the first week of in-person classes.

f. Summerville High School cannot require masks around M.F. because of Budget Proviso 1.108.

g. Because of the high rates of transmission and Summerville High School's inability to follow CDC and DHEC guidance regarding masking, Ms. Finney is temporarily keeping M.F. home from school.

h. If Budget Proviso 1.108 were removed and M.F.'s school began requiring masks for students and staff that were in contact with him, M.F. would be able to safely receive the services and education he needs and deserves.

72. Lyudmyla Tsykalova and M.A. in Pickens County School District

a. M.A. is 5 years old and has asthma.

b. Because of her age, M.A. cannot be vaccinated.

c. M.A. attends Clemson Elementary School, which is within Defendant Pickens County School District.

d. Because of her asthma, M.A. is at a heightened risk of serious illness due to COVID-19.

e. The only accommodation offered to L.P. for the 2021-22 school year is to participate in virtual learning while her peers attend school in person.

f. Mask mandates for M.A.'s classmates and teachers would reduce her risk considerably and allow her to attend classes in person.

73. Emily Poetz and L.P. in Pickens County School District

a. L.P. is 6 years old and has congenital myopathy.

b. Because of his age, L.P. cannot be vaccinated.

c. L.P. attends Clemson Elementary School, which is within Defendant Pickens County School District.

d. L.P. has an IEP, receives speech and occupational therapy, and qualifies for services under the Katie Beckett Program.

e. Because of L.P.'s disability, he has weak chest muscles and is particularly vulnerable to serious upper respiratory illnesses—including COVID-19.

f. The only accommodation offered to L.P. for the 2021-22 school year is to participate in virtual learning while his peers attend school in person.

g. Mask mandates for L.P.'s classmates and teachers would reduce his risk considerably and allow him to attend classes in person.

74. Samantha Boevers and P.B. in Charleston County School District

a. P.B. is an elementary school student with Autistic Spectrum Disorder.

b. P.B. attends Springfield Elementary School, which is within Defendant Charleston County School District.

c. P.B. has an IEP.

d. Because of P.B.'s disability, he has serious difficulty adhering to COVID-19 mitigation strategies, particularly practicing social distancing and hand washing.

e. P.B. has been previously hospitalized for basic illnesses—such as the flu—because of his inability to communicate his symptoms and comply with treatment regimes.

f. P.B.'s pediatrician has advised that he should only return to school in a fully masked environment.

75. Tamica Grant and E.G. in Greenville County School District

a. E.G. is 9 years old and is on the Autism spectrum and has ADHD.

b. E.G. attends a Greenville County public school and has been identified by GCPS as a student in need of exceptional student education services and has an IEP.

c. E.G.'s disability causes him to struggle with social distancing. He has lack of spatial awareness and seeks constant physical touch. This makes it impossible for him to stay six feet away from other children and staff.

d. Defendants' actions have forced E.G.'s mother to decide whether to return E.G. to public school and risk his life or leave the public school system.

76. Christine Copeland and L.C. in Horry County School District

a. L.C. is 11 years old and is on the Autism spectrum and has anxiety.

b. L.C. attends a Horry County public school and has been identified by HCPS as a student in need of exceptional student education services and has an IEP. As part of her IEP, she has support from a paraprofessional teacher for five and a half hours per day when she attends school.

c. L.C.'s disability causes her to become nervous or scared by things she does not expect; this causes her to be in a fight or flight mode.

77. Cathy Littleton and Q.L. in Oconee County School District

a. Q.L. is 5 years old and is on the Autism spectrum, Global Developmental Delays, is nonverbal, and has a history of RSV infection.

b. Q.L. is too young to be vaccinated.

c. Q.L. attends an Oconee County public school and has been identified by OCPS as a student in need of exceptional student education services and has an IEP.

d. Q.L.'s health conditions make it more likely he would be severely impacted if he contracts COVID-19. His physician has recommended that he not attend school due to his disability and rates of COVID-19 at this time.

e. Q.L.'s parents believe that it is too dangerous to return to brick-and mortar school without such precautions as following the recommended CDC guidelines such as mandatory masking and regular testing in schools.

f. Defendants' actions have forced Q.L.'s parents to decide whether to return Q.L.

to public school and risk his/her life or leave the public school system.

78. Heather Price and H. P. in Lexington County School District 1

a. H.P. is 15 years old and is on the Autism spectrum and has ADHD.

b. H.P. attends a Lexington County public school and has been identified by LCPS as a student in need of exceptional student education services and has a 504 plan.

c. H.P.'s disability includes mimicking peer behavior. Due to his disability, he has to be reminded about social distancing and washing his hands.

d. Although H.P. is fully vaccinated, his father is disabled and has Charcot-Marie-Tooth disease, which makes him high risk for COVID-19. In addition, H.P. has a four-year-old sibling who is too young to be vaccinated.

e. His parents believe that it is too dangerous to return to brick-and mortar school without such precautions as following the recommended CDC guidelines such as mandatory masking and regular testing in schools.

f. Defendants' actions have forced H.P.'s parents to decide whether to return H.P. to public school and risk his life and the lives of his family members or leave the public school system.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT

79. Plaintiffs repeat and reallege the allegations in previous paragraphs of this Complaint as if fully alleged herein.

80. The Defendants are public entities and are therefore subject to Title II of the ADA.

81. The ADA provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1) & (2).

82. Enactment of the ADA reflected deeply held American ideals that treasure the contributions that individuals can make when free from arbitrary, unjust, or outmoded societal attitudes and practices that prevent the realization of their full potential.

83. The ADA embodies a public policy committed to the removal of a broad range of impediments to the integration of people with disabilities into society and strengthening the federal government's role in enforcing the standards established by Congress.

84. The ADA requires that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

85. As a result of the Defendant State Official's implementation of Proviso 1.108 to deny these children the protection that they need to attend school in a safe environment, the Defendants have violated the regulations and provisions of the ADA as follows:

a. The Defendants are excluding Plaintiffs from the participation in public education (42 U.S.C. § 12132; 28 C.F.R. § 35.130);

b. The Defendants are failing or causing other Defendants to fail to make a reasonable modification under circumstances where it is required (28 C.F.R. § 35.130(b)(7);

c. The Defendants are failing or causing other Defendants to fail to make services, programs, and activities "readily accessible" to disabled individuals (28 C.F.R. § 35.150);

d. The Defendants are administering a policy that (1) has the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability and that has the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities, or (2) perpetuates the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State. 28 C.F.R. § 35.130 (b)(3)(i) & (iii); and

e. The Defendants are failing to permit a public entity to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. § 35.130(d). Relegating students into a separate classroom or remote learning "for their safety" would violate of this integration mandate.

86. The Defendant State Officials do not have the authority to circumvent the ADA and protections for students with disabilities through a state budget proviso.

87. Excluding children from the public-school classroom because of a disability or not placing a student in the least restrictive environment is exactly the type of discrimination and segregation the ADA and its amendments aim to prevent and specifically prohibit.

88. As public entities and instrumentalities of the state, the Defendant School Districts are prohibited from providing "a qualified individual with a disability with an aid,

benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others." 28 C.F.R. 35.130(b)(1)(iii).

COUNT TWO

VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973

89. Plaintiffs repeat and reallege the allegations in previous paragraphs of this Complaint as if fully alleged herein.

90. Plaintiffs are children with disabilities that substantially limit one or more major life activities and therefore are considered persons with a disability under Section 504 of the Rehabilitation Act, as amended. *See* 29 U.S.C. § 705(9)(B); 42 U.S.C. § 12102(1).

91. The Plaintiffs otherwise qualify under Section 504 of the Rehabilitation Act because they meet the essential eligibility requirements for public education and for the Defendants' services at all times material hereto.

92. The Defendants are recipients of federal financial assistance.

93. Defendants are obligated to provide a free appropriate public education to each qualified individual with a disability who is in the recipient's jurisdiction. 34 C.F.R. § 104.33.

94. Defendants' policies, practices, and procedures—particularly the actions and omissions described herein—violate the students' rights under Section 504 of the Rehabilitation Act by discriminating on the basis of disability.

95. As a result of the implementation of Proviso 1.108, Defendants have violated the regulations and provisions of Section 504 of the Rehabilitation Act and/or caused Defendant School Districts to violate the regulations and provisions as follows:

a. The Defendants are excluding, and/or causing Plaintiffs' School Districts to exclude, Plaintiffs from the participation in public education in violation of 29 U.S.C. § 794(a), 42 U.S.C. § 12132; and 34 C.F.R. § 104..4(a) and (b)(1)(i));

b. The Defendants are administering a policy that has the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability with the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities. 34 C.F.R. § 104.4 (b)(4).

c. The Defendants are failing to permit a public entity to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 34 C.F.R. § 104.4 (b)(2).

96. Defendants lack authority to enforce or implement laws that violate Section 504. Even in a pandemic, Defendants are required to adhere to the robust protections contained in the Rehabilitation Act.

97. Proviso 1.108, which functionally excludes many children with disabilities from the public classroom, cannot be enforced.

COUNT THREE

FEDERAL PREEMPTION UNDER THE AMERICAN RESCUE PLAN ACT OF 2021

98. Plaintiffs repeat and reallege the allegations in previous paragraphs of this Complaint as if fully alleged herein.

99. Federal law is the "supreme Law of the Land," and must prevail over any contrary provision of state law. U.S. CONST. art. VI, cl. 2; *Felder v. Casey*, 487 U.S. 131, 138 (1988) ("[A]ny state law, however clearly within a State's acknowledged power, which

interferes with or is contrary to federal law, must yield."). Under the doctrine of preemption, a state law is preempted by federal law when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Pac. Gas & Elec. Co. v. State Energy Res. Conserv. & Dev. Comm'n*, 461 U.S. 190, 204 (1983).

100. The United States Congress enacted the American Rescue Plan Act of 2021 ("ARPA") as a comprehensive legislative response to the COVID-19 pandemic. According to House Budget Committee Chairman John Yarmuth, the Act was enacted to "provide economic relief to nearly every American family and hard-working individual, get vaccines into the arms of millions of Americans, *and get our schools open safely*."[6]

101. To that end, ARPA allocated huge sums of money to state school districts. South Carolina school districts were allocated over $1.9 billion in Elementary and Secondary School Emergency Relief (ESSER) to prepare for a safe return to in-person schooling.[7] Section 2001(e)(2)(Q) of ARPA explicitly gives local school districts the authority to use these ARPA ESSER funds for "developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff." *Id.* § 2001(e)(2)(Q). As discussed above, the CDC's guidance specifically recommends universal indoor masking in all K-12 schools.

102. The interim guidance for ESSER adopted by the U.S. Department of Education

[6] https://budget.house.gov/news/press-releases/house-sends-yarmuth-led-american-rescue-plan-act-president-biden-s-desk (accessed Aug. 23, 2021).

[7] https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/ (accessed Aug. 23, 2021).

("USDOE") sheds further light on the intent and purpose of ARPA. In directing school districts how their ARPA funds must be used, USDOE advised that districts must explain: "the extent to which it has adopted policies, and a description of any such policies, on each of the following safety recommendations established by the CDC…", specifically including "universal and correct wearing of masks." *See* Am. Rescue Plan Act Elementary and Secondary School Emergency Relief Fund, 86 Fed. Reg. 21195, 21200 (April 22, 2021).

103. Although USDOE did not mandate that local school districts adopt CDC guidance, the department's interim guidance required each district "describe in its plan the extent to which it has adopted the key prevention and mitigation strategies identified in the guidance," which include both "[u]niversal and correct wearing of masks[.]" *Id.* Of particular relevance for Plaintiffs here, the interim guidance further directed local school districts to pay special attention to "those students disproportionately impacted by the COVID-19 pandemic, including . . . children with disabilities." *Id.*

104. As USDOE noted in its August 18, 2021 letter to Defendants McMaster and Spearman, South Carolina Budget Proviso 1.108 is squarely at odds with the purpose of ARPA and stands as an obstacle to the accomplishment and execution of ARPA's full purposes and objectives.[8] Rather than affording discretion to local school boards to develop and implement safety protocols as envisioned by ARPA, Budget Proviso 1.108 *prohibits* local school districts, including Defendant School Boards, from implementing precisely the type of safe return-to-school policies encouraged by ARPA. As explained by Secretary Cardona, Proviso 1.108 "restrict[s] the development of local health and safety policies and is at odds with the school

[8] https://oese.ed.gov/files/2021/08/21-006974-Letter-from-Secretary-Cardona-South-Carolina-final-signed.pdf (accessed Aug. 23, 2021).

district planning process embodied in the U.S. Department of Education's (Department's) interim final requirements."

105. In the face of its direct conflict with federal law, Proviso 1.108 must fall. It is preempted by the American Rescue Plan Act.

PRAYER FOR RELIEF

WHEREFORE, the PLAINTIFFS respectfully request this Court to:

1. Declare the actions of the Defendants violate the ADA;
2. Declare that Defendants have subjected the Plaintiffs to discrimination in violation of Section 504 of the Rehabilitation Act;
3. Declare that Budget Proviso 1.108, and Defendants' implementation thereof, is preempted by the American Rescue Plan Act;
4. Issue a temporary restraining order enjoining the Defendants from violating the ADA, Section 504 of the Rehabilitation Act, and the ARPA by prohibiting school districts from requiring masks for their students and staff;
5. Preliminarily and permanently enjoin the Defendants from violating the ADA, Section 504 of the Rehabilitation Act, and the ARPA by prohibiting school districts from requiring masks for their student and staff;
6. Award Plaintiffs' attorneys' fees, costs and expenses incurred in this matter; and
7. Provide any such further relief as the Court deems just and equitable.

Date: August 24, 2021

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*Motions to proceed *pro hac vice* forthcoming

Attorneys for the Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT SOUTH CAROLINA
COLUMBIA DIVISION

DISABILITY RIGHTS SOUTH CAROLINA, ABLE SOUTH CAROLINA, AMANDA McDOUGALD SCOTT, individually and on behalf of P.S., a minor; MICHELLE FINNEY, individually and on behalf of M.F., a minor; LYUDMYLA TSYKALOVA, individually and on behalf of M.A., a minor; EMILY POETZ, individually and on behalf of L.P., a minor; SAMANTHA BOEVERS, individually and behalf of P.B., a minor; TIMICIA GRANT, individually and on behalf of E.G. a minor; CHRISTINE COPELAND individually and on behalf of L.C. a minor; HEATHER PRICE individually and on behalf of H.P. a minor; and CATHY LITTLETON individually and on behalf of Q.L. a minor,

Plaintiffs,

v.

HENRY McMASTER, in his official capacity as Governor of South Carolina; ALAN WILSON, in his official capacity as Attorney General of South Carolina; MOLLY SPEARMAN, in her official capacity as State Superintendent of Education; GREENVILLE COUNTY SCHOOL BOARD; HORRY COUNTY SCHOOL BOARD; LEXINGTON COUNTY SCHOOL BOARD ONE; OCONEE COUNTY SCHOOL BOARD; DORCHESTER COUNTY SCHOOL BOARD TWO; CHARLESON COUNTY SCHOOL BOARD; and PICKENS COUNTY SCHOOL BOARD,

Defendants.

Case No. 3:21-cv-02728-MGL

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiffs Disability Rights South Carolina, Able South Carolina, Amanda McDougald Scott, individually and on behalf of P.S., a minor; Michelle Finney, individually and on behalf of M.F., a minor; Lyudmyla Tsykalova, individually and on behalf of M.A., a minor; Emily Poetz, individually and on behalf of L.P., a minor; Samantha Boevers, individually and behalf of P.B., a minor; Timicia Grant, individually and on behalf of E.G., a minor; Christine Copeland, individually and on behalf of L.C., a minor; Heather Price, individually and on behalf of H.P., a minor; and Cathy Littleton, individually and on behalf of Q.L., a minor (collectively, "Plaintiffs") hereby respectfully move for a temporary restraining order and preliminary injunction.

Plaintiffs seek injunctive relief to stop enforcement of Budget Proviso 1.108 insofar as it bars schools and localities from requiring masking in the schools. By prohibiting that basic public health measure, Defendants are preventing public entities statewide from complying with the Americans with Disabilities Act ("ADA") and the Rehabilitation Act. Defendants are illegally forcing South Carolina families who have children with disabilities to choose between their child's education and their child's health and safety, in violation of the ADA and Section 504 of the Rehabilitation Act. Further, the enforcement of Proviso 1.108 needlessly and unconscionably exposes South Carolina school children and their families to a heightened risk of infection, hospitalization, and death. It is against the calamitous consequences of Proviso 1.108's enforcement that Plaintiffs seek emergency injunctive relief.

Plaintiffs can demonstrate that they are likely to succeed on the merits because Defendants are discriminating against students with disabilities in violation of federal law; Plaintiffs are likely to suffer irreparable harm in the absence of preliminary relief; the balance of equities tips in Plaintiffs' favor; and an injunction is in the public interest.

This motion is supported by a memorandum of law which will be filed contemporaneously.

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*Motion to proceed *pro hac vice* forthcoming

Attorneys for the Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT SOUTH CAROLINA

DISABILITY RIGHTS SOUTH CAROLINA, ABLE SOUTH CAROLINA, LYUDMYLA TSYKALOVA, individually and on behalf of M.A., a minor; EMILY POETZ, individually and on behalf of L.P., a minor; TIMICIA GRANT, individually and on behalf of E.G. a minor, CHRISTINE COPELAND individually and on behalf of L.C. a minor, HEATHER PRICE individually and on behalf of H.P. a minor, and CATHY LITTLETON individually and on behalf of Q.L. a minor,

Plaintiffs,

v.

HENRY McMASTER, in his official capacity as Governor of South Carolina; ALAN WILSON, in his official capacity as Attorney General of South Carolina; MOLLY SPEARMAN, in her official capacity as State Superintendent of Education; GREENVILLE COUNTY SCHOOL BOARD; HORRY COUNTY SCHOOL BOARD; LEXINGTON COUNTY SCHOOL BOARD; OCONEE COUNTY SCHOOL BOARD; and PICKENS COUNTY SCHOOL BOARD

Defendants.

Case No. 3:21-cv-02728-MGL

Declaration of Dr. Robert Saul

I, Dr. Robert Saul, declare as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

Background

1. I am currently the President of the South Carolina Chapter of the American Academy of Pediatrics. I am recently retired; I have forty-five years of experience as a physician in the field of Pediatrics and Genetics.

2. I received my Bachelor of Arts from Colorado College, magna cum laude, in 1972 and my M.D., cum laude, from the University of Colorado School of Medicine in 1976. I completed my residency in Pediatrics at the Duke University Medical Center in 1979 and my fellowship in Genetics with the Department of Pediatrics at the Medical University of South Carolina (affiliation with the Greenwood Genetic Center) in 1981. I am a Fellow within the American Academy of Pediatrics, a Founding Fellow of the American College of Medical Genetics and Genomics, and a member of the American Medical Association, the South Carolina Chapter of the American Academy of Pediatrics, the South Carolina Medical Association, and the American Pediatric Society.

3. I was a practicing pediatrician in private practice for twenty-four years (1979-2003), during which time I served tenures as the Chair of the Department of Pediatrics, the Chair of the Department of Medical Genetics, and the President of the Medical Staff at the Self Regional Medical Center in Greenwood. I also held various roles at the Greenwood Genetic Center (1981-2013), including having served as the Executive Director, the Medical Director, the Director of Clinical Services, and the Training Program Director. More recently (2013-2020), I served as the Medical Director for General Pediatrics and the Senior Medical Director for

Pediatric Medicaid Services at the Children's Hospital, Prisma Health–Upstate. In addition, I was a Professor of Pediatrics at the University of South Carolina School of Medicine at Greenville. Most recently (2017-2020), I practiced at the Ferlauto Center for Complex Pediatric Care.

4. My scholarly work includes six research studies, over 100 articles and publications, and six books on the subjects of pediatric genetics, citizenship and community improvement, parenting, and developmental pediatrics. My scholarly work has a broad scope, ranging from scientific research to delineation of clinical syndromes to practical clinical applications.

5. In addition to my practice and my scholarly work, I have served on various government and nonprofit committees and boards dedicated to pediatric health. At the South Carolina Department of Health and Environmental Control, I served on the Children's Health Protection Advisory Committee for a total of fifteen years, including as the Chair for seven, and also on the Pediatric Task Force to Reduce Perinatal Mortality and the Needs Assessment Work Group for Children with Special Health Care Needs. In addition, I served on the Board of Trustees of South Carolina First Steps to School Readiness, the Board of Directors for the American College of Medical Genetics and Genomics, and the Executive Committee of the American Academy of Pediatrics (AAP) Section on Birth Defects and Genetics and the AAP's Committee on Genetics with terms of service as Chair of both. I was also the project co-director of the Genetics in Primary Cary Institute of the American Academy of Pediatrics and Chair of the Institutional Review Board-B for research studies for Prisma Health-Upstate (previously Greenville Health System) from 2016-2019.

6. I received the American Academy of Pediatrics 2018 David W. Smith Award for Excellence in Genetics and Birth Defects Education (presented by its Council on Genetics), in addition to numerous awards from the South Carolina Chapter of the American Academy of Pediatrics.

7. My CV is attached as Exhibit A.

8. I am familiar with the provision of the South Carolina budget recently passed known as Proviso 1.108 or the "Mask Mandate Prohibition." In my expert opinion, this provision will hurt the children of this state and their families by denying schools the ability to fashion policies for their districts that attend to the health needs of their students. If students face the prospect of going to school in areas of substantial or high risk of COVID-19 transmission, with no requirements of masks, they are forced either to attend school at risk to their health and that of their families or to stay out of school, also a risk to their well-being. I am particularly concerned for those students with disabilities that increase the risk of severe illness should they contract COVID-19.

9. I am not being compensated for my time reviewing materials and preparing this report.

I. Increased COVID-19 Transmission and Prevalence of the Delta Variant in South Carolina

10. The beginning of this school year coincides with a dramatic increase in COVID-19 transmission. As of August 12, only two counties were not experiencing "substantial" or "high" COVID-19 transmission rates. As of August 18, 2021, the seven-day rolling average of new daily cases has risen every day since June 21, 2021.[1] Furthermore, the test positivity rate, an

[1] *South Carolina coronavirus cases and deaths*, USAFacts, https://usafacts.org/visualizations/coronavirus-covid-19-spread-map/state/south-carolina (last visited Aug. 21, 2021).

indicator of increasing COVID-19 community spread,[2] has risen from less than 2% to over 17% in South Carolina over this same time period.[3] When compared to the rest of the United States, South Carolina is experiencing above average daily case rates per 100,000 residents and a faster rate of increase in COVID-19 cases; as of August 18, 2021, the average daily case count per 100,000 residents is 60% higher in South Carolina than the United States as a whole.[4]

11. The COVID-19 Delta variant is estimated to account for over 85% of all COVID-19 cases in South Carolina as of August 14, 2021.[5] This is relevant to the overall COVID-19 transmission landscape given that the Center for Disease Control and Prevention (CDC) estimates that the Delta variant is at least twice as transmissible as previous variants and that it could likely lead to more severe illness.[6]

II. The Impact of the Delta Variant for Children

12. Pediatric COVID-19 cases comprise an increasing share of overall COVID-19 cases both in the United States and in South Carolina. On August 16, 2021, the number of children hospitalized due to COVID-19 in the United States reached an all-time high exceeding 1,900.[7] Pediatric hospitalizations now account for 2.3% of all COVID-19-related hospitalizations, compared to less than 1% in May of 2020.[8] Similarly, pediatric COVID-19

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[2] *See, e.g., Positivity Rate Explained*, Barry-Eaton Dist. Health Dep't. (Oct. 2020), https://www.barrycatonhealth.org/sites/default/files/Positivity%20Rate%20Explained.pdf (last visited Aug. 21, 2021).
[3] Mayo Found. for Medical Educ. & Res., *South Carolina coronavirus map: What do the trends mean for you?*, Mayo Clinic, https://www.mayoclinic.org/coronavirus-covid-19/map/south-carolina (last visited Aug. 21, 2021).
[4] *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (Aug. 18, 2021 update), https://www.nytimes.com/interactive/2021/us/covid-cases.html (last visited Aug. 21, 2021).
[5] *CDC Covid Data Tracker: Variant Proportions*, Ctrs. for Disease Control & Prevention, https://covid.cdc.gov/covid-data-tracker/#variant-proportions (last visited Aug. 21, 2021).
[6] *Delta Variant: What We Know About the Science*, Ctrs. for Disease Control & Prevention (May 7, 2021 update), https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html.
[7] Carolyn Crist, *U.S. Reports Record COVID Hospitalizations of Children*, WebMD (Aug. 16, 2021), https://www.webmd.com/lung/news/20210816/u-s-reports-record-covid-hospitalizations-of-children (last visited Aug. 21, 2021).
[8] *Children and COVID-19: State Data Report: Version: 8/12/21*, Am. Acad. Pediatrics (Aug. 16, 2021 update), https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/ (last visited Aug. 21, 2021).

cases represented fewer than 5% of all cases in May of 2020, but now account for over 14% of total cases.[9]

13. In South Carolina, the threat to minors is even more acute. Based on available data from 48 states assembled by the American Academy of Pediatrics, South Carolina has the fourth highest cumulative case rate per 100,000 children in the United States, with over 9,500 recorded pediatric cases per 100,000 children.[10] Based on data from 49 states, South Carolina also has the third highest proportion of pediatric COVID-19 cases in the United States with children accounting for over 19% of all South Carolina COVID-19 cases.[11]

III. The Availability of Vaccines for Children and Overall Vaccination Rates in South Carolina

14. Children in South Carolina are vulnerable to the Delta variant given the unavailability of vaccines for children under the age of 12 and the low vaccination rate for children twelve to nineteen years old. None of the three available COVID-19 vaccines have been approved, for emergency use or otherwise, for children under the age of twelve.[12] In South Carolina, only about 25% of adolescents aged twelve to nineteen have received at least one dose of the vaccine.[13]

15. In addition, as with adults, some children cannot be vaccinated given underlying medical conditions.

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[9] *Id.* at 12, 15.
[10] *Id.* at 7.
[11] *Id.* at 25.
[12] *Covid-19 Vaccines for Children and Teens,* Ctrs. for Disease Control & Prevention (Aug. 17, 2021 update), https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/adolescents.html (last visited Aug. 21, 2021). On August 23, 2021, the Food and Drug Administration approved the Pfizer vaccine for individuals sixteen years of age and older, but did not approve the vaccine for individuals twelve and younger. *See FDA Approves First COVID-19 Vaccine*, Food & Drug Admin. (Aug. 23, 2021), https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine. The Pfizer vaccine continues to be available for individuals age twelve to fifteen under an emergency use authorization, which meets demanding but not equivalent scientific standards. *Id.*
[13] *COVID-19 Vaccination Dashboard,* S.C. Dep't. of Health & Envtl. Control, https://scdhec.gov/covid19/covid-19-vaccination-dashboard (last visited Aug. 21, 2021).

16. According to the CDC, unvaccinated people are much more likely to contract, transmit, and experience severe symptomatic illness from the Delta variant than their vaccinated counterparts.[14] In light of the data on pediatric vaccination rates and the unavailability of vaccines to the youngest school-aged children, children account for a disproportionate share of Americans to whom the Delta variant poses the greatest risk.

IV. Conditions That Can Put Children at Greater Risk of Severe Illness from COVID-19

17. As noted above, children are particularly vulnerable to COVID-19 as a result of vaccination rates within this population. Of greatest concern are those children who are not or cannot be vaccinated who have underlying medical conditions that increase their risk for severe illness as a result of COVID-19 infection. According to the CDC, "children with medical complexity, with genetic, neurologic, metabolic conditions, or with congenital heart disease," as well as "children with obesity, diabetes, asthma or chronic lung disease, sickle cell disease, or immunosuppression" may fall into this category.[15]

18. Most if not all of the children with these conditions are disabled within the meaning of the Americans with Disabilities Act (the ADA).[16] The ADA defines disability as "a physical or mental impairment that substantially limits one or more major life activities of such individual."[17] Major life activities for purposes of the Act "include but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working;" a major life activity "also includes the operation of a major bodily function, including

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[14] *Delta Variant: What We Know About the Science*, Ctrs. for Disease Control & Prevention (May 7, 2021 update), https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html

[15] *People with Certain Medical Conditions*, Ctrs. for Disease Control & Prevention (Aug. 20, 2021 update), https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html (last visited Aug. 21, 2021).

[16] 42 U.S.C. § 12101 *et seq.*

[17] 42 U.S.C. § 12102(1).

but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."[18] Conditions such as asthma, chronic lung disease, diabetes, sickle cell disease, and congenital heart disease by definition substantially limit a major bodily function.

19. These are not the only children at risk of grave harm. Individuals with intellectual disabilities are also at increased risk of contracting COVID-19 and of dying from COVID-19 infection. A recent study published in the New England Journal of Medicine—working with a data set of 64,414,495 patients across more than 500 U.S. healthcare systems, of which "127,003 were patients with intellectual disabilities and 64,287,492 were patients without intellectual disabilities"—concluded that "intellectual disability was the strongest independent risk factor for presenting with a Covid-19 diagnosis and the strongest independent risk factor other than age for Covid-19 mortality."[19] The study found individuals with intellectual disabilities were more likely to contract COVID; if diagnosed with COVID, more likely to be admitted to the hospital; and more likely to die following admission.[20] The risks reflect the risks associated with intellectual disability itself, as well as comorbidities that in the study were overrepresented among those with intellectual disabilities. Notably, the odds of mortality among those with intellectual disabilities in the study were "significantly higher than other conditions such as congestive heart failure, kidney disease, and lung disease."[21]

20. Doctors and medical researchers have raised concerns about the risks to children with Autism Spectrum Disorder (ASD) in schools where masks are not required at times of widespread COVID infection. Many children that I have cared for with ASD have comorbidities

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[18] 42 U.S.C. §§ 12102(2)(A)-(B).
[19] Jonathan Gleason *et al.*, *Commentary: The Devastating Impact of Covid-19 on Individuals with Intellectual Disabilities in the United States*, New Eng. J. Med. (Mar. 5, 2021), https://catalyst.nejm.org/doi/full/10.1056/CAT.21.0051.
[20] *Id.*
[21] *Id.*

that put them at increased risk for COVID-19, especially since many children with ASD can have a harder time adhering to social distancing.

21. During the pandemic in 2020, many of the families I cared for expressed serious concerns about their children (those with complex health conditions and those without health issues) being in school and being exposed to COVID-19. Their concerns are even greater with the start of the 2021-2022 school year and the Delta variant of COVID-19. Specifically, one family with an eleven-year-old daughter with a serious genetic condition (profound intellectual disability and seizures) is concerned about the risk to that child and their two typically developed children from other children (unmasked) at school. Another family with a daughter with a different genetic condition that required assisted ventilation (tracheostomy tube and ventilator) and feeding tube has made substantial progress, but now the family worries about her ability to pursue her special education. They worry too whether her typical siblings will be safe and transmit COVID-19 from possible exposure at school. A mother of extremely premature twins (now four years of age) noted that they were born at twenty-four weeks and sustained multiple health consequences (respiratory primarily). She is now very concerned about their possible exposure in the school setting given their significant vulnerability to such a severe respiratory virus. In my expert opinion, these parents are rightly concerned about sending their children to school unless schools take preventive steps.

22. Finally, children may also be at risk of developing what has come to be known as long COVID, where symptoms remain months after an initial COVID diagnosis. While further study is essential to know the scope of long COVID in children, with current estimates varying

significantly, medical researchers have raised concerns about the long-term impact of COVID on young people, even among the asymptomatic.[22]

V. CDC and State Department of Health Recommendations on Masking in Schools and the Efficacy of Masking for Reducing COVID-19 Transmission

23. The CDC recommends "universal indoor masking for all students, staff, teachers, and visitors to K-12 schools, regardless of vaccination status."[23] Underlying the CDC guidance are concerns about "the highly transmissible nature of this variant," the ineligibility of children under twelve for the vaccine, and low levels of vaccination among youth ages twelve to seventeen, all factors present in our state at this time.[24]

24. Leading medical organizations, including the American Academy of Pediatrics and the American Medical Association, similarly recommend universal masking as part of school openings.[25]

25. The South Carolina DHEC too "strongly recommends mask use for all people when indoors in school settings."[26] On August 20, 2021, the South Carolina DHEC voted unanimously to request that the South Carolina legislature reconvene in a special session to "provide local authority for mask mandates," and remove the budget provision that would ban school districts from mandating masks.[27]

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[22] Dyani Lewis, *Long COVID and Kids: Scientists Race to Find Answers*, 595 Nature 482 (2021).
[23] *Guidance for Covid-19 Prevention in K-12 Schools*, Ctrs. for Disease Control & Prevention (Aug. 5, 2021 update), https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html (last visited Aug. 21, 2021).
[24] *Id.*
[25] *See, e.g.*, *American Academy of Pediatrics Updates Recommendations for Opening Schools in Fall 2021*, Am. Acad. Pediatrics (July 19, 2021), https://www.aap.org/en/news-room/news-releases/aap/2021/american-academy-of-pediatrics-updates-recommendations-for-opening-schools-in-fall-2021/.
[26] *DHEC Recommends Vaccinations, Mask Use, and Other COVID-19 Protocols in School Guidance for K-12 2021-2022 Academic Year*, S.C. Dep't. of Health & Envtl. Control (July 29, 2021), https://scdhec.gov/news-releases/dhec-recommends-vaccinations-mask-use-other-covid-19-protocols-school-guidance-k-12 (last visited Aug. 21, 2021).
[27] Jeffrey Collins, *SC health board joins groups asking to end school mask ban*, Associated Press (Aug. 20, 2021), https://apnews.com/article/business-health-coronavirus-pandemic-a22ea100ce5b97a16680f55350a8c99a (last visited Aug. 21, 2021).

26. Recent studies have confirmed that wearing masks is one of the most powerful tools to thwart the transmission of COVID-19 in indoor settings, such as schools. Researchers at Duke University conducted a study on COVID-19 transmission within schools, some of which were in counties bordering South Carolina, following "Plan A" which "provided full, in-person instruction, masking, and minimal physical distancing."[28] Analysis conducted by Duke University researchers using data from North Carolina K-12 schools —data that included more than 1,280,000 students and 160,000 staff—found that "there is very limited within-school transmission of COVID-19 in schools participating in Plan A," leading the researchers to conclude that "wearing masks is an effective strategy to prevent in-school COVID-19 transmission."[29]

27. This study confirms what the CDC and other studies have reported: The CDC has stated, "Experimental and epidemiological data support community masking to reduce the spread" of the Delta variant.[30] A recent literature review concluded that "nonmedical masks have been effective in reducing transmission of respiratory viruses; and places and time periods where mask usage is required or widespread have shown substantially lower community transmission."[31]

28. Masking is also critical for the health of those who, for reasons of disability, cannot mask. Those include people who struggle to take a mask off and on, whether because of

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[28] *The ABCs of North Carolina's Plan A*, ABC Science Collaborative (July 1, 2021), https://abcsciencecollaborative.org/the-abcs-of-north-carolinas-plan-a/ (last visited Aug. 21, 2021).

[29] Letter from Danny Benjamin & Kanecia Zimmerman to Joint Legislative Education Oversight Committee et al. (June 30, 2021), https://abcsciencecollaborative.org/wp-content/uploads/2021/06/ABCs-Final-Report-June-2021.06-esig-DB-KZ-6-29-21.pdf (last visited Aug. 21, 2021).

[30] *Science Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2*, Ctrs. for Disease Control & Prevention (May 7, 2021 update), https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html#anchor_1619456988446 (last visited Aug. 21, 2021).

[31] Jeremy Howard *et. al.*, *An Evidence Review of Face Masks against COVID-19*, 118 PNAS 1, 1-12 (2021). *See also* Yafang Cheng, *et al.*, *Face Masks Effectively Limit the Probability of SARS-CoV-2 Transmission*, 372 Science 1439, 1439-1443 (2021).

motor skills or cognitive issues; people with sensory processing disorders; and people with facial deformities incompatible with a mask, among others.[32]

29. As noted above, families that I worked with and all of the children not vaccinated are at great risk for a COVID-19 infection. Given the rise in pediatric infections (and adult infections) due to the Delta variant of COVID-19, in my expert opinion, the only safe course at this time is universal masking at school and school-related functions until our public health officials declare a safe level of population-wide vaccination. As a pediatrician, I am concerned about all children but particularly worried about those children with complex medical conditions and/or disabilities since the latter group could more likely sustain severe illness or even death. The risk of death is low overall, but certainly elevated for the vulnerable group. Any severe illness or death is unacceptable for a preventable disease.

VI. The Necessity of Allowing South Carolina Schools to Set Their Own Mask Policies

30. South Carolina's Mask Mandate Prohibition denies school districts the ability to require masks to protect their students and staff. In communities where COVID-19 is prevalent, parents with children with conditions that can make them vulnerable to severe illness in particular will face a terrible dilemma of whether to risk their children's health and even life, or to keep the children out of school. That is not a decision they should be forced to make, when we have the option of masks to protect the safety of those in the school.

31. My concern is greatest for these children, but it does not stop there. No child should risk serious illness if we can prevent it.

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[32] Doron Dorfman & Mical Raz, *Mask Exemptions During the COVID-19 Pandemic—A New Frontier for Clinicians*, JAMA Health F. Insights (July 10, 2020), https://jamanetwork.com/journals/jama-health-forum/fullarticle/2768376?resultClick=1.

32. And it's not just the children. Children who catch the virus at school will bring it home, risking their families' health and security. This is particularly concerning given the state's low vaccination rates and high rates of comorbidities in the adult population.

33. In my opinion, the state cannot in good conscience let this policy stand given the threat it poses to children and their families.

I, Dr. Robert Saul, do affirm that this Declaration is true and correct.

Robert Saul, MD

Dr. Robert Saul

Dated: August 25, 2021

NAME:	Robert Anthony Saul
ADDRESS: (Home):	108 Wimbledon Court Greenwood, SC 29646 864-980-8372 (M) Email—robertsaul@me.com
(Work):	Prisma Health-Upstate Children's Hospital (retired) Email—robert.saul@prismahealth.org
DATE OF BIRTH:	March 17, 1950
PLACE OF BIRTH:	Chicago, Illinois
MARRIAGE:	Molly Ann McClure, October 31, 1970 (Separated 1986, Divorced 1987) Jan LeRoy Hemminger, February 6, 1988
CHILDREN:	Bradley Conor Saul, (B.D. 6/9/78) Benjamin Robert Saul, (B.D. 9/23/90)
EDUCATION:	High School - Palmer High School Colorado Springs, Colorado - 1968 College - Duke University, Durham, NC 1968-1970 Colorado College, Colorado Springs, CO 1970-1972 Degree - B.A., magna cum laude Medical School - University of Colorado School of Medicine - 1972-1976 Degree - M.D., cum laude

APPOINTMENTS, POSITIONS:

First Year Resident in Pediatrics – Duke University Medical Center, Durham, NC, 1976-1977

Second Year Resident in Pediatrics – Duke University Medical Center, Durham, NC, 1977-1978

Third Year Resident in Pediatrics – Duke University Medical Center, Durham, NC, 1978-1979

Fellow, Genetics - Department of Pediatrics, Medical University of South Carolina (Greenwood Genetic Center), 1979-1981

Staff Geneticist - Greenwood Genetic Center, 1981-1985

Associate Director - Greenwood Genetic Center, 1985-1989

Director - Greenwood Genetic Center, 1989-1994

Executive Director - Greenwood Genetic Center, 1994-1997

Medical Director - Chief Operating Officer - Greenwood Genetic Center, 1997 – 1998

Director of Clinical Services – Greenwood Genetic Center, 2012 - 2013

Senior Clinical Geneticist – Greenwood Genetic Center, 1998 - 2013

Training Program Director – Greenwood Genetic Center, 1989 – 2013

Professor of Pediatrics, University of South Carolina School of Medicine-Greenville, April 1, 2013 – 2020; Professor (Emeritus) 2021 - present

Medical Director, General Pediatrics – Children's Hospital, Greenville Health System, 2013 – 2019 (name change to Prisma Health-Upstate 2017)

Senior Medical Director, Pediatric Medicaid Services – Children's Hospital, Greenville Health System, 2013 – 2019 (name change to Prisma Health-Upstate 2017)

Department of Pediatrics CME coordinator—Greenville Health System, 2013 – 2019

Clinical practice, Ferlauto Center for Complex Pediatric Care, 2017 – 2020.

Private Practice, Pediatrics – Greenwood Children's Clinic, 1979-1997; Greenwood Community Children's Center, 1997-2003.

Chairman, Department of Pediatrics, Self Memorial Hospital, 1981, 1993

Chairman, Department of Medical Genetics, Self Memorial Hospital, 1986-1996; Self Regional Health Care, (2004-present)

Secretary, Department of Medical Genetics, Self Memorial Hospital, 1997

Secretary-Treasurer, Medical Staff, Self Memorial Hospital, 1997

President-elect, Medical Staff, Self Memorial Hospital, 1998

President, Medical Staff, Self Memorial Hospital, 1999

Chair, Physician Advocacy and Assistance Committee, 2001-2012 (Self Regional)

Chair, Credentials Committee, 2002-2005 (Self Regional)

Member, Board Committee on Quality, (Self Regional), 2006-2010

Clinical Assistant Professor of Family Medicine (Greenwood), Medical University of South Carolina, 1982 [inactive]

Clinical Professor of Pediatrics, University of South Carolina School of Medicine-Columbia, 1984 [inactive]

Chairperson, Subcommittee "Children Who Are Victims of Alcohol and Drug Abuse: Infant Mortality and Handicapping Conditions" Children's Coordinating Cabinet, State of South Carolina, 1985

Member, Children's Health Advisory Committee, SC Department of Health and Environmental Control, 1986-1989; 1992-2004; Chairperson, 1997-2004.

Member, Perinatal Delegation (People to People, Citizen Ambassador Program), People's Republic of China, May 1986

NIH Special Study Section, Review for Program Project Grant, Pittsburgh, PA, April 1989

Member, Pediatric Task Force to Reduce Perinatal Mortality, South Carolina, Department of Health and Environmental Control, 1989-1993

Member, Needs Assessment Work Group--Children with Special Health Care Needs, South Carolina Department of Health and Environmental Control, 1992-1995

Board of Trustees, South Carolina First Steps to School Readiness, 1999-2003 (Chair, Applications/Grants Committee)

Managing Editor, Pediatric Genetics section, Emedicine, online textbook, 2000-2001

Member, South Carolina Medical Association Maternal, Infant, and Child Health Committee, 2004-2008

American College of Medical Genetics and Genomics, Board of Directors (effective Mar 2007-2013)

Editor-in- Chief, M M d (newsletter of the American College of Medical Genetics and Genomics), 2010 - 2013

Executive Committee, American Academy of Pediatrics Section on Birth Defects and Genetics, 1997-2011 (Chair, Programs—1999-2003; Chairperson, 2003-2007; Subcommittee chair, Selection of the David W. Smith Award for Excellence in the Genetics and Birth Defects Education, 2010-2012)

Committee on Genetics, American Academy of Pediatrics, 07/2007-06/2015 (Chair, 2011-2015)

NCC (National Coordinating Council) State Newborn Screening Program and Provider Collaboration to Accomplish the Goals of the Newborn Screening Saves Lives Act (funded by HRSA MCHB/GSB and NICHD), 2009-2010

Joint NCC/RC (National Coordinating Council/Regional Center) LTFU (Long term follow up) & NBSTRN (Newborn Screening Translational Research Network) Clinical Centers Workgroup, 2009-2011

AAP Quality Improvement Innovation Network (QuIIN) for newborn screening, 10/09 – 2/11

South Carolina Diversity Leadership Initiative graduate (scholarship recipient), Riley Institute at Furman University, Upstate Class X, Fall 2010 (Riley Fellow)

AAP Education in Quality Improvement in Pediatric Practice (eQIPP) for newborn screening, 1/11—early 2012

Genetics in Primary Care Institute (GPCI); Project Co-Director (HRSA-funded grant to the AAP; onset July 2011; 3 years [2011-2014], over $1.5 M total)

Member of the Strategic Planning Group for the AAP Board of Directors on the Epigenetics Strategic Planning Initiative (effective April 2012 to 2015)—Epigenetics Leadership Group

AAP Liaison to the American College of Obstetrics and Gynecology Committee on Genetics (effective April 2012 – June 2015)

AAP Liaison to Inter-Society Coordinating Committee for Practitioner Education in Genomics (effective 2013-2014 and sponsored by the National Human Genome Research Initiative)

Chair, Family History Tool for Pediatric Providers Advisory Group; Genetics in Primary Care Institute (2012 – 2013)

Chair, Residency Education Initiative Working Group; Genetics in Primary Care Institute (May 2013 – 2014)

Member of the AAP Working Group for "Down Syndrome Healthcare Guidelines for Parents"—2013

Member, SCAAP Executive Committee, Education subcommittee, 2013 – 2019; Chair, 2016 SCAAP Annual Meeting

Member, AAP National Conference and Exhibition Planning Group, 2013 - 2019

Chair, Early Identification, Management and Treatment of Global/Motor Delay initiative (Fragile X Syndrome Expert Panel—project of the American Academy of Pediatrics and the Centers for Disease Control)—2014 – 2018

Principal Investigator—Insights on Evaluation of Children with Developmental Disability – a component of the early identification and treatment of Fragile X syndrome (FXS) needs assessment project. AAP Study ID# 15 SA 01. Approved July 2015, concluded 2016.

Principal Investigator--Insights on Evaluation of Children with Developmental Disabilities-a component of the early identification and treatment of Fragile X Syndrome (FSX) needs assessment project [Project DIG-IT]. Phase 2" (IRB Study # 15 SA 02). Approved 2016, to conclude in 2017. [This project is funded through a cooperative agreement between the American Academy of Pediatrics and from the Centers for Disease Control and Prevention (Grant Number: 5 NU38 OT000167)].

CME coordinator, Department of Pediatrics, GHS, 2013 – 2019 (includes service on the GHS CME committee)

University of South Carolina School of Medicine – Greenville Admissions Committee, August 2015 – 2019

Greenville Health System Institutional Review Board B, September 2015 – 2019; Chair effective 1/1/16

Invited Program Chair for the organizing committee for an inaugural meeting in June 2016 for the Association for Comprehensive Care in Rare Diseases (Optimizing Primary Care for

Patients with Rare Diseases), Las Vegas, NV (meeting postponed); website established - http://www.rareopportunities.com/CME

American Academy of Pediatrics liaison to Secretary's Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC), Department of Health and Human Services (US government)—August 2016 to July 2017.

American Academy of Pediatrics liaison, American Academy of Allergy, Asthma & Immunology (AAAI), Vaccines and Medications in Pregnancy Surveillance System (VAMPSS) Independent Advisory Committee, appointment in November 2016 for a 2 year term until 2018 (and extended until 2020).

Vice President, South Carolina Chapter of the American Academy of Pediatrics, July 2018 – July 2020.

President, South Carolina Chapter of the American Academy of Pediatrics, August 2020 – present

HOSPITAL AFFILIATIONS:

Self Regional Health Care (Self Memorial Hospital prior to 11/2001) 1979-2013 (Inactive)

Prisma Health-Upstate (formerly Greenville Memorial Hospital) – through 2020; retired

Shriners Hospital for Children (Teaching) [Inactive]

Mary Black Hospital (Spartanburg -Consulting) [Inactive]

Spartanburg Regional Healthcare System [Inactive]

McLeod Regional Medical Center (Florence, SC [Associate Consultant]) [Inactive]

PROFESSIONAL SOCIETIES:

Fellow, American Academy of Pediatrics (Member, Council on Genetics)

Founding Fellow, American College of Medical Genetics and Genomics

American Society of Human Genetics (inactive)

American Medical Association

American College of Physician Executives (inactive)

South Carolina Perinatal Association (inactive)

South Carolina Chapter, American Academy of Pediatrics

South Carolina Medical Association

Greenwood County Medical Society (discontinued 2013)

Greenville County Medical Society (started 2013)

American Pediatric Society (effective 1/1/16)

HONORS:

Alpha Omega Alpha Honor Medical Society -1975

Emanuel Friedman Award – 1976 (Outstanding Performance for the Art of Medicine in Pediatrics)

Maternal and Child Health Day--Special Recognition Award Dec. 11, 1996 (for exemplary service to mothers and children in South Carolina) South Carolina Dept. of Health and Environmental Control, Bureau of Maternal and Child Health

CATCH (Community Access to Children's Health) Recognition Award—Jan. 2001, SC CATCH meeting

Phi Beta Kappa – 2012; honorary membership in the Gamma Chapter (Furman University) of South Carolina, induction 4/3/12

Special Achievement Award, July 2012, American Academy of Pediatrics and the South Carolina Chapter of the AAP—"for distinguished service and dedication to the mission and goals of the Academy, for his many contributions to the chapter and to the AAP Committee on Genetics"

Special Recognition, March 2013, Self Regional Healthcare Family Medicine Residency Program—"for years of teaching excellence in the areas of Pediatrics and Medical Genetics, with much gratitude by the Faculty and Residents"

Visiting Professor, Lehigh Valley Health Network, Department of Pediatrics, March 26-27, 2013—Genetics

Cited at the 2014 AAP Annual Leadership Forum (March 2014) as leading the American Academy of Pediatrics Committee on Genetics (COG) for two commendations—Innovation (publication of the M d d r r AAP manual); Communication and Collaboration

Invited lecturer at the15th Annual Meinhard Robinow Lectureship in Pediatrics (Pediatric Grand Rounds, April 24, 2014; University of Virginia School of Medicine, Department of Pediatrics)—annual endowed lectureship in the field of pediatrics, sustaining Dr. Robinow's enduring legacy as a gifted teacher and physician.

M d d r r (an AAP Policy Manual and edited by Robert A. Saul, MD) received an honorable mention in the American Medical Writers Association Medical Book Awards for 2014

Invited presenter to the pediatric residents, Sanford Health, Sioux Falls, SD, November 20, 2014

Invited keynote speaker/lecturer at the 7th Annual Denny Sanford Pediatric Symposium, Sanford Health, Sioux Falls, SD, November 21, 2014

Invited speaker at the 2015 Institute for Child Success Research Symposium, Greenville, SC, October 16, 2015.

Invited speaker at the NORD (National Organization for Rare Diseases) 2015 Rare Diseases and Orphan Products Breakthrough Summit, Arlington, VA, October 21, 2015.

Active membership, American Pediatric Society (APS), effective 1/1/16

Invited speaker for the inaugural O. Marion Burton, MD Lecture at the O. Marion Burton, MD CATCH meeting, Charleston, SC, January 22, 2016.

Invited Program Chair, RD1°: Optimizing Primary Care for Patients with Rare Diseases a continuing medical education (CME) event presented by the Association for Comprehensive Care in Rare Diseases (ACCORD), June 9-10, 2016. [meeting postponed—content to be posted online]; website established – http://www.rareopportunities.com/CME

Special Achievement Award, January 2017, American Academy of Pediatrics and the South Carolina Chapter of the AAP—"for distinguished service and dedication to the mission and goals of the Academy, a very active member of the chapter, recently completed his term as Chair of the Section on Genetics and Birth Defects. He has published a highly rated and acclaimed book entitled 'My Children's Children: Raising Young Citizens in the age of Columbine.' Dr. Saul has been active in the chapter for years. He has recently become director of The Center for Pediatric Medicine Greenville Health System. He is the 2015-2016 Continuing Medical Education (CME) Chair for the chapter."

Awardee, American Academy of Pediatrics 2018 David W. Smith Award for Excellence in Genetics and Birth Defects Education (presented by the Council on Genetics)

Awardee, Paul V. Catalana, MD Exemplary Character Award, 2018 (awarded by the pediatric residents yearly to a faculty member)

LICENSURE:

Diplomate, National Board of Medical Examiners - 1977

North Carolina - 1978, (#22623--inactive)

South Carolina - 1978, (#8983)

American Board of Pediatrics, 1981 (#25887)

Drug Enforcement Administration, DEA #AS8702474 – 1981

American Board of Medical Genetics, 1982, Clinical Genetics (#1432)

COMMUNITY AFFILIATIONS:

Emerald Center - Steering committee for Emerald Center Golf Classic

First Presbyterian Church - Deacon 1992-1994, Elder 1995-1998, 2005- 2007; Health Cabinet 1998-2000, Outreach Committee 1996-2000

Noah's Ark Program, Chairperson, 1996-1997

Greenwood Rotary Club - 1993-2012

Life-Long Learning Steering Committee, Greenwood Chamber of Commerce –1995- 1996

Greenwood County Wellness Celebration, 1995-1999 (Co-chairperson)

Greenwood Chamber of Commerce, Board of Directors, 1996 – 2003 (Chair, WorkForce Development Initiative 1999 – 2001); Chamber President, 2002

Greenwood Community Children's Center, Steering Committee, 1996; Board of Directors (Chairperson), 1996-2000; Senior Consultant, 2000-2001.

Community Outreach Committee, Board of Directors, Self Memorial Hospital, 1998-2000.

Board of Trustees, South Carolina First Steps to School Readiness, 1999-2003

Chair, Grant/Applications Committee, Board of Trustees, South Carolina First Steps, 1999-2003

Chairperson, Children's Rehabilitative Services Medical Advisory Committee, DHEC, 1997-2004

Cambridge Academy, Board of Trustees, 2001- 2006

Greenwood Fifty School Facilities, Inc., Secretary-Treasurer, 2006-2009, Chair, 2009-2013 (Capital Improvements Board)

Lander University Board of Visitors, 2007-2009

Website, http://mychildrenschildren.com

Greenwood Touchdown Club, President, 2008- 2012

Children's Hospital, Greenville Health System, Development Council, 2013 – 2019

JOURNAL REVIEWER (episodic)

American Journal of Medical Genetics
BMC Medical Genomics
Early Human Development
GeneReviews
Genetics in Medicine
Journal of Pediatrics

Pediatrics
Pediatrics in Review
Molecular Genetics and Metabolism

RESEARCH STUDIES:

Novartis Pharmaceuticals**:** A randomized, double-blind, placebo-controlled, parallel group study to evaluate AFQ056 in adult patients with Fragile X Syndrome (CAFQ056A2212)-active; Role: Sub-investigator (2011-2012)

Novartis Pharmaceuticals: An open-label study to evaluate the long-term safety, tolerability and efficacy of AFQ056 in adult patients with Fragile X Syndrome (CAFQ056B2279)-active; Role: Sub-investigator (2011-2012)

Novartis Pharmaceuticals: A randomized, double-blind, placebo-controlled, parallel group study to evaluate the efficacy and safety of AFQ056 in adolescent patients with Fragile X Syndrome (CAFQ056B2214)-active; Role: Sub-investigator (2011-2012)

Genetics in Primary Care Institute: Residency Education Initiative Study. AAP IRB-approved study submitted to the Association of Pediatric Residency Program Directors, 2013; Role: Principal investigator (2013)

Principal Investigator—Insights on Evaluation of Children with Developmental Disability – a component of the early identification and treatment of Fragile X syndrome (FXS) needs assessment project. AAP Study ID# 15 SA 01. Approved July 2015

Principal Investigator--Insights on Evaluation of Children with Developmental Disabilities-a component of the early identification and treatment of Fragile X Syndrome (FSX) needs assessment project. Phase 2" (IRB Study # 15 SA 02).

PUBLICATIONS for Robert A. Saul, MD:

Articles and publications

1. **Saul RA**, Vernon M, Roe C and Osofsky S: Rhabdomyolysis in a patient with nonoliguric renal failure: Similarities to the toxic-shock syndrome. South Med J 73:261, 1980.

2. **Saul RA**, Riley S, Jorgenson R, Rogers JF, Young R and Hickson E: Amniocentesis and prenatal diagnosis in South Carolina: A collaborative report for the years 1976 to 1979. J So Car Med Assn 76:387-390, 1980.

3. **Saul RA**, Osofsky SG: Myositis with Staphylococcal infections (Letter). J Pediatr 97:701, 1980.

4. Potts WE, Riley S and **Saul RA**: Transport media for solid tissue. Karyogram 7(3):37, 1981.

5. **Saul RA**, Lee WH, and Stevenson RE: Caffey Disease Revisited: Further evidence for autosomal dominant inheritance with incomplete penetrance. Am J Dis Child 136:56, 1982

6. **Saul RA**, Stevenson RE, and Bley R: Mental retardation in the Bannayan syndrome. Pediatrics 69:642, 1982.

7. **Saul RA** (editor): Proceedings of the Greenwood Genetic Center, Vol 1, 1982.

8. **Saul RA**, Stevenson RE, Simensen RJ, Wilkes G, Alexander W and Taylor HA: Fragile X syndrome in South Carolina. J So Car Med Assn, 78:275-277, 1982.

9. **Saul RA**, Sturner RA, and Burger PC: Hyperplasia of the myenteric plexus: Its association with early infantile megacolon and neurofibromatosis. Am J Dis Child 136:852-854, 1982.

10. **Saul RA** (editor): Proceedings of the Greenwood Genetic Center, Vol 2, 1983.

11. Potts WE, **Saul RA**, Riley SE, Stevenson RE and Taylor HA: Transport media for tissue specimens: A comparative study, Am J Med Genet 15:507-510, 1983.

12. **Saul RA** (editor): Proceedings of the Greenwood Genetic Center, Vol 3, 1984.

13. **Saul RA** (editor): Proceedings of the Greenwood Genetic Center, Vol 4, 1985.

14. **Saul RA**: Noonan syndrome in a patient with hyperplasia of the myenteric plexuses and neurofibromatosis, Am J Med Genet 21:491, 1985.

15. **Saul RA** (editor): Proceedings of the Greenwood Genetic Center, Vol 5, 1986.

16. **Saul RA**: Idiopathic Cortical Hyperostosis in Current Pediatric Therapy - 12th edition, Gellis SS, Kagan BM, Eds., WB Saunders, Philadelphia, 1986, pp. 422-423.

17. **Saul RA** (editor): Proceedings of the Greenwood Genetic Center, Vol 6, 1987.

18. **Saul RA** (editor): Proceedings of the Greenwood Genetic Center, Vol 7, 1988.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT SOUTH CAROLINA
C D

DISABILITY RIGHTS SOUTH CAROLINA, ABLE SOUTH CAROLINA, AMANDA McDOUGALD SCOTT, individually and on behalf of P.S., a minor; MICHELLE FINNEY, individually and on behalf of M.F., a minor; LYUDMYLA TSYKALOVA, individually and on behalf of M.A., a minor; EMILY POETZ, individually and on behalf of L.P., a minor; SAMANTHA BOEVERS, individually and behalf of P.B., a minor; TAMICA GRANT, individually and on behalf of E.G. a minor; CHRISTINE COPELAND individually and on behalf of L.C. a minor; HEATHER PRICE individually and on behalf of H.P. a minor; and CATHY LITTLETON individually and on behalf of Q.L. a minor,

Plaintiffs,

v.

HENRY McMASTER, in his official capacity as Governor of South Carolina; ALAN WILSON, in his official capacity as Attorney General of South Carolina; MOLLY SPEARMAN, in her official capacity as State Superintendent of Education; GREENVILLE COUNTY SCHOOL BOARD; HORRY COUNTY SCHOOL BOARD; LEXINGTON COUNTY SCHOOL BOARD ONE; OCONEE COUNTY SCHOOL BOARD; DORCHESTER COUNTY SCHOOL BOARD TWO; CHARLESON COUNTY SCHOOL BOARD; and PICKENS COUNTY SCHOOL BOARD,

Defendants.

Case No. 3:21-cv-02728-MGL

DECLARATION OF ALLEN CHANEY IN SUPPORT OF PLAINTIFFS MOTIONS FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

DECLARATION OF ALLEN CHANEY

I, Allen Chaney, declare as follows:

1. I am an attorney with the American Civil Liberties Union of South Carolina, counsel for Plaintiffs in the above-captioned action. I make this declaration upon my personal knowledge, and in support of Plaintiffs' Motions for Temporary Restraining Order and Preliminary Injunction.

2. Attached hereto as **E** **A** is a true and correct copy of the Petition for Original Jurisdiction and Expedited Consideration filed in *State of South Carolina v. City of Columbia*, No. 2021-000889 (S.C. Aug. 19, 2021), available at https: www.scag.gov media htkhncht petition-for-original-jurisdiction-02682523xd2c78.pdf.

3. Attached hereto as **E** **B** is a true and correct copy of an informational flyer titled "Asthma in South Carolina" by the Division of Data Analytics - Bureau of Population Health Data Analytics and Informatics, dated June 2021, available at http: scdhec.gov sites default files Library CR-011418.pdf.

4. Attached hereto as **E** **C** is a true and correct copy of an article titled "Upstate South Carolina school district moves to virtual learning due to COVID" by WLTX, published on the News 19 website on August 13, 2021, available at https: www.wltx.com article news health coronavirus pickens-county-sc-schools-virtual-covid-19 101-892316d3-417a-431c-ab79-fa22ce480394.

5. Attached hereto as **E** **D** is a true and correct copy of a report titled "Active Enrollment in South Carolina Public School Districts by Grade: 2021-2021 180 Day Headcount, PK Grade 12" by the South Carolina Department of Education, available at https: www.ed.sc.gov data other student-counts active-student-headcounts .

6. Attached hereto as **E** **E** is a true and correct copy of the 2020-2021 Child Count Data Report titled "Ages 5 to 21 - State Demographic Summary" by the South Carolina Department of Education, available at https: ed.sc.gov districts-schools special-education-

services data-and-technology-d-t data-collection-and-reporting sc-data-collection-history idea-child-count-data 2020-2021-child-count-data .

7. Attached hereto as **E** **F** is a true and correct copy of Proviso 1.108 titled "SDE: Mask Mandate Prohibition," ratified by the General Assembly on June 21, 2021, available at https: www.scstatehouse.gov sess124_2021-2022 appropriations2021 tap1b.pdf.

8. Attached hereto as **E** **G** is a true and correct copy of a State of South Carolina Department of Education Memorandum to District Superintendents entitled "Proviso 1.108 Guidance and Face Coverings on School Buses Update" by Molly M. Spearman, State Superintendent of Education, dated July 6, 2021, available at https: ed.sc.gov newsroom school-district-memoranda-archive proviso-1-108-guidance-and-face-coverings-on-school-buses-update proviso-1-108-guidance-and-face-coverings-on-school-buses-update-memo .

9. Attached hereto as **E** **H** is a true and correct copy of a webpage titled "South Carolina County-Level Data for COVID-19" by the South Carolina Department of Health and Environmental Control, dated August 22, 2021, available at https: scdhec.gov covid19 south-carolina-county-level-data-covid-19.

10. Attached hereto as **E** **I** is a true and correct copy of an article titled "Covid Cases Among Children Jumped 84 Last Week Here Are The States Where Kid Hospitalizations Are Increasing" by Jemima McEvoy, published on the Forbes website on August 4, 2021, available at https: www.forbes.com sites jemimamcevoy 2021 08 04 covid-cases-among-children-jumped-84-last-week-here-are-the-states-where-hospitalizations-are-increasing sh 74974a8f3be9.

11. Attached hereto as **E** **J** is a true and correct copy of a report titled "Children and COVID-19: State Data Report" by the American Academy of Pediatrics and the Children's Hospital Association, dated July 29, 2021, available at https: ed.sc.gov districts-schools special-education-services data-and-technology-d-t data-collection-and-reporting sc-data-collection-history idea-child-count-data 2020-2021-child-count-data .

12. Attached hereto as **E** **K** is a true and correct copy of an article titled "As COVID cases rise, Gov. McMaster says closing schools and mandating masks is not the answer, personal responsibility is'" by Tim Renaud, published by Nexstar Media Inc. on the Count on News 2 website on July 27, 2021, available at https: www.counton2.com news south-carolina-news as-covid-cases-rise-gov-mcmaster-says-closing-schools-and-mandating-masks-is-not-the-answer-personal-responsibility-is .

13. Attached hereto as **E** **L** is a true and correct copy of a July 27, 2021 post on Twitter by Governor Henry McMaster, available at https: twitter.com henrymcmaster status 1420111066630082568.

14. Attached hereto as **E** **M** is a true and correct copy of an article titled "Gov. McMaster encourages vaccinations, acknowledges Delta variant concerns but rejects school mask mandates" by WBTV Web Staff, published by WBTV WIS on the WBTV On Your Side website on August 9, 2021, available at https: www.wbtv.com 2021 08 09 gov-henry-mcmaster-speak-covid-19-south-carolina .

15. Attached hereto as **E** **N** is a true and correct copy of the Complaint filed in *State of South Carolina v. City of Columbia*, No. 2021-000889 (S.C. Aug. 19, 2021), available at https: www.scag.gov media cwzbknzp complaint-02682537xd2c78.pdf.

16. Attached hereto as **E** **O** is a true and correct copy of a webpage titled "COVID-19 Testing Data Projections" by the South Carolina Department of Health and Environmental Control, dated August 25, 2021, available at https: scdhec.gov covid19 sc-testing-data-projections-covid-19.

17. Attached hereto as **E** **P** is a true and correct copy of a letter dated August 18, 2021 from Miguel A. Cardona, Secretary of Education to Governor Henry McMaster and Molly M. Spearman, State Superintendent of Education, available at https: oese.ed.gov files 2021 08 21-006974-Letter-from-Secretary-Cardona-South-Carolina-final-signed.pdf.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct, and that this declaration was executed on August 26, 2021 in Greenville South Carolina.

By: D. Allen Chaney Jr.
Allen Chaney

EXHIBIT A

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

State of South Carolina, ex rel Alan Wilson, Attorney General. . . . . Petitioner,

v.

City of Columbia. . . . . Respondent.

PETITION FOR ORIGINAL JURISDICTION AND EXPEDITED CONSIDERATION

The State of South Carolina ex rel Attorney General Alan Wilson (State) respectfully requests that the South Carolina Supreme Court authorize the bringing of the attached suit within its original jurisdiction pursuant to Rule 245, SCACR, S.C. Code Ann §14-3-310 and S.C. Const. art. V §5. A proposed complaint is attached along with other exhibits. The Petition and proposed complaint assert that the City of Columbia has ordinances imposing mask requirements on schools that are prohibited by a proviso adopted by the General Assembly in the annual Appropriations Act and otherwise exceed the authority of the City. The State respectfully requests that this Court take jurisdiction of this case, direct a response to the proposed complaint, and give this matter expedited consideration.

I

INTRODUCTION AND SUMMARY

We understand and respect the concerns that citizens and governments have about the spread of Covid 19 and its variants. This case is not about what policies are best for dealing with the virus. We bring this Petition not to choose sides in debates over health precautions. Instead, we ask this Court to resolve a dispute over the controlling effect of a legislative proviso regarding mask requirements so that all jurisdictions will be informed about what law governs. Act No. 94, Part 1B, §1.108, 2021 S.C. Acts. In bringing this action, we agree with the words of the Court in the recent *Creswick* opinion, that appropriation provisos must be construed "as . . . written." *Creswick* v. *University of South Carolina and Wilson*, Op. No. 28053 (Adv. Sh. No. 28 at 32, 38 n. 4 (August 17, 2021)). Like this Court's holding, our bringing this action "is not an approval or disapproval of a mandate, nor is it an approval or disapproval of an attempt by the General Assembly to prohibit a mandate." *Creswick*, n. 4. The rule of law must prevail.

This Court has observed that "[w]ithout a legislature and the exercise of the power to appropriate funds . . . anarchy and chaos would pervade society. There would not be a republican form of government." *Segars v. Parrott*, 54 S.C. 1, 31 S.E. 677, 699 (1898). Thus, the legislative power is sacrosanct and must be preserved. The fundamental question in this case is whether political subdivisions, such as the City of Columbia, as well as various school districts, must abide by the will of the General Assembly – the supreme legislative power in this State – when it places conditions upon

its appropriations that mask mandates may not be imposed in schools as required by Proviso 1.108.

Under the Constitution and laws of this State, "the General Assembly is the sole entity, with the power to appropriate funds including federal funds." By example, as to this sweeping appropriations power, when the Legislature mandated in 2009, as part of its appropriations authority, that the Governor must apply for federal funds, and he failed to comply, this Court ordered that he must do so by issuing a mandamus against him. *Edwards v. State*, 383 S.C. 82, 91, 678 S.E.2d 412, 417 (2009). Therefore, as this Court has emphasized, [t]he power of the Legislature over matters of appropriations is plenary. . . ." *Cox v. Bates*, 237 S.C. 198, 214, 116 S.E.2d 828, 834 (1960).

So too here. In this case, it is not the Governor who refuses to abide by a legislative mandate in the Appropriations Act, but various political subdivisions of the State, such as the City of Columbia. When the General Assembly attaches conditions to its appropriations to school districts, forbidding mask mandates, neither the city, nor a county, nor the school districts themselves, no more than the Governor, may commandeer the power of the General Assembly by disregarding the appropriations proviso in question. A legislative directive, such as Proviso 1.108, which is "reasonably and inherently" related to spending revenue appropriated by the General Assembly, must be followed and cannot be circumvented. Thus, this Court's relief is required here.

This Petition presents simple legal questions about the failure of the City of Columbia to adhere to a clear legislative directive about mask usage. Contrary to the

terms of the Appropriations Act proviso set forth below prohibiting schools and school districts from imposing mask mandates and otherwise exceeding its municipal powers, the City of Columbia has passed ordinances imposing mask requirements on public schools in the City. Exhibits, pp. 1 & 3. These ordinances have already been followed by a similarly invalid Richland County ordinance (Exhibits, p. 5 (description from website)) and even a school district, Richland One, has violated the mask proviso by requiring that students and staff wear masks (Exhibits, p. 7). Similar requirements are likely to follow from other jurisdictions absent a ruling from this Court.

Although local governments certainly have an interest in community safety, their ordinances must conform to State law in doing so. These ordinances and directives do not. While cities, such as Columbia, have strong Home Rule powers – and we respect those powers – this case is not about Home Rule. The Legislature is the ultimate lawmaker. Its laws must be followed.

Proviso 1.108 of the provisos for the South Carolina Department of Education directs as follows:

> (SDE: Mask Mandate Prohibition) No school district, or any of its schools, may use any funds appropriated or authorized pursuant to this act to require that its students and/or employees wear a facemask at any of its education facilities. This prohibition extends to the announcement or enforcement of any such policy.

Despite the clear language of this Proviso, the City proceeded to adopt contrary ordinances. City of Columbia Ordinance 2021-069 (attached Exhibits, p. 1), ratifies the Mayor's Declaration of Emergency by Ordinance 2021-068 (Exhibits, p. 3) and provides in part, as follows.

> facial coverings shall be required by all faculty, staff, children over the age of two (2), and visitors, in all buildings at public and private schools or daycares whose purpose is to educate and/or care for children between the ages of two (2) and fourteen (14) to slow the spread of the novel Coronavirus and the disease COVID- 19 within the City limits.

The General Assembly took note of the City's violation of the proviso. On August 6, 2021, the Honorable Harvey Peeler, Jr., President of the Senate, and the Honorable Jay Lucas, Speaker of the House, wrote the Attorney General on August 6, 2021, stating, in part, as follows:

> We believe Proviso 1.108 is clear and unambiguous. It prohibits face-covering mandates in public schools no matter where in the state they are located. Further, there is nothing about this proviso that indicates local government has authority to amend, augment or even ignore the policy set forth by the State. We also believe that any directive properly enacted by the General Assembly serves as the general law of the State of South Carolina.
>
> The actions taken by Columbia City Council at the request and direction of Mayor Benjamin are in clear and deliberate violation of the plain meaning of the proviso.
>
> We would respectfully request that your office review the action of the City of Columbia and if you believe it necessary, take appropriate action on behalf of the State of South Carolina and the statewide policy adopted by Proviso 1.108.

Exhibits, p. 8.

11. The Attorney General wrote the Honorable Stephen K. Benjamin, Mayor of Columbia, and City Council members on August 11 stating, in part, as follows:

> It is the opinion of my office that these ordinances [2021-068 and 2021-069] arc in conflict with state law and should either be rescinded or amended. Otherwise, the city will be subject to appropriate legal actions to enjoin their enforcement. Encouragement of facemask wearing by city officials and even requirements for facemasks in city buildings and other facilities would not be in violation or the proviso. Also, parents, students, and school employees may

choose to wear facemasks anywhere at any time.

> My office has previously opined that budget provisos have the full force and effect of state law throughout the fiscal year for which a budget is adopted. . .
>
> While the proviso [1.108] does not mention municipalities. it is clear from both a plain reading of its language and from the intent expressed by legislative leaders that the General Assembly does not believe that school students or employees should be subject to facemasks mandates. While we appreciate the efforts of city leaders around the state to protect their populace from the spread of the COVID-19 virus and variants of it, these efforts must conform to state law.

Exhibits p. 9.

The City responded to the Attorney General on August 11, 2021 stating, in part, as follows:

> In the matter at hand, the issue is whether a Proviso that acts as a "Mask Mandate Prohibition" for schools and school districts, is germane to fiscal issues, raising and spending taxes, which is the sole purpose of the appropriations act? The clear answer, using the sound logic of our Supreme Court is that it is not. A mask mandate prohibition is clearly not a matter that is germane to fiscal issues which is the only issue allowed to be taken up in the general appropriations act and therefore it is unconstitutional and unenforceable.

Exhibits, p. 11.

Although we recognize that the City is acting out of genuine concern about the spread of the Covid-19 virus and its variants, it cannot do so contrary to the law of this State. The Proviso is quite clear that masks are not to be mandated by government for the schools of this State. As this Court has advised, "where an ordinance permits that which a statute prohibits, the ordinance is void." *State v. Solomon*, 245 S.C. 550, 141 S.E.2d 818, 831 (1965). Here, the City's Ordinances are precluded by the Proviso and respectfully, must be declared invalid for this reason and the others discussed below.

Therefore, we respectfully request that this Court grant original jurisdiction so that controlling State law may be upheld and that other governmental bodies will be informed that the Proviso is controlling.

II

AUTHORITY OF THE COURT TO ASSUME ORIGINAL JURISDICTION

Under Rule 245, SCACR, the Court may assume original jurisdiction "if the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised...." *See also* S.C. Const. art. V, §§ 5 and 20 and §14-3-310 (1976); *Key v. Currie*, 305 S.C. 115, 406 S.E. 2d 356, 357 (1991). Certainly, the public interest is involved here when, as discussed above, the City of Columbia has adopted an ordinance squarely contrary to State law.

This Court has exercised its authority in the original jurisdiction in several recent cases involving challenges to local ordinances or actions. *Adams v. McMaster*, 432 S.C. 225, 231, 851 S.E.2d 703, 706 (2020) (declaratory judgment action challenging the constitutionality of Governor's allocation of federal emergency education funding); *Mitchell v. City of Greenville*, 411 S.C. 632, 633, 770 S.E.2d 391, 391 (2015) (challenge to municipal election ordinance); *State v. Cty. of Florence*, 406 S.C. 169, 171, 749 S.E.2d 516, 517 (2013) (challenge to proposed county tax referendum.); *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 694 S.E.2d 213 (2010) (challenge to helmet ordinance); *O'Brien v. S.C. ORBIT*, 380 S.C. 38, 46, 668 S.E.2d 396, 400 (2008) (challenge to City decision to

invest in equity securities). This Court has also granted original jurisdiction to challenges to State legislation. *See, eg, Doe v. State*, 421 S.C. 490, 808 S.E.2d 807 (2017) (challenge to definitions of "household member" in the Domestic Violence Reform Act and the Protection from Domestic Abuse Act); *S.C. Pub. Interest Found. v. Lucas*, 416 S.C. 269, 270, 786 S.E.2d 124, 125 (2016) (challenge to Appropriations Act proviso); *Bodman v. State*, 403 S.C. 60, 742 S.E.2d 363 (2013) (challenge to exemptions and caps placed on the state's sales tax).

This case falls squarely within the Court's authority to take original jurisdiction when the public interest is involved. Local ordinances are challenged because they are in conflict with State legislation. Adherence to the rule of law is clearly and profoundly in the public interest. This Court should grant this Petition for these reasons and the others discussed below.

III

REASONS FOR TAKING ORIGINAL JURISDICTION IN THIS CASE

As discussed below, this case involves a simple, but significant question of the City's authority to adopt an ordinance that is directly contrary to a legislative proviso and will have an immediate impact on thousands of school children and personnel. This case may be concluded by rulings on legal issues without the necessity of this Court's making factual findings. Considering the fact that the Supreme Court is likely to decide ultimately the merits of this case, the exigencies of time, judicial economy and fairness warrant the

Court's taking original jurisdiction of this case rather than allowing the case to proceed first in the Circuit Court. Moreover, an Opinion of this Court will be informative to all governmental bodies that have adopted or are considering adopting mask requirements for the schools.

IV

GROUNDS FOR JUDGMENT FOR THE STATE

A

The Ordinances Violate Proviso 1.108

As set forth above, the Proviso prohibits school districts from using any funds "appropriated or authorized by the Appropriations Act to require that its students and/or employees wear a facemask at any of its education facilities [and] [t]his prohibition extends to the announcement or enforcement of any such policy." In its Opinion this week in *Creswick* this Court stated that "Proviso 1.108 clearly evinces the General Assembly's intent to prohibit the use of state funds to require any mask mandate in public K-12 schools." *Id.* at 36. This statement by the Court is strong evidence of the proviso's meaning and the General Assembly's intent underlying it.

Although the City ordinances state that the City will provide the masks, the enforcement responsibilities will fall on the districts and their State funded personnel which will necessarily involve use of appropriated funds. School personnel will have to monitor and enforce mask compliance including dealing with students and staff who are

resistant to wearing masks. Therefore, the ordinances essentially direct the school districts to violate State law by making them use State funded resources to enforce a City mask requirement contrary to Proviso 1.108. In short, the City's funding the masks cannot circumvent the Legislature's clear intent. Proviso 1.108 and the Ordinances are therefore in conflict, and Proviso 1.108 preempts them and prevails. Well-settled authority supports this conclusion. As this Court has written,

> The government of a municipality is created by the laws of the State of South Carolina, and the creature cannot be greater than its creator, and the laws of a municipality to be good must not be inconsistent with the laws of the State."

McAbee v. S. Ry. Co., 166 S.C. 166, 164 S.E. 444, 444 (1932)

> Local governments derive their police powers from the state. S.C.Const. art. VIII, §§ 7, 9. The state has granted local governments broad powers to enact ordinances "respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities." S.C. Code Ann. § 5-7-30 (1976). This is in recognition that more stringent regulation often is needed in cities than in the state as a whole. *Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E.2d 735 (1943). However, the grant of power is given to local governments with the proviso that the local law not conflict with state law. *City of Charleston v. Jenkins*, 243 S.C. 205, 133 S.E.2d 242 (1963). A city ordinance conflicts with state law when its conditions, *157 express or implied, are inconsistent or irreconcilable with the state law. *Town of Hilton Head v. Fine Liquors, Ltd.*, 302 S.C. 550, 553-54, 397 S.E.2d 662, 664 (1990) (quoting *McAbee v. Southern Rwy. Co.*, 166 S.C. 166, 169-70, 164 S.E. 444, 445 (1932)). Where there is a conflict between a state statute and a city ordinance, the ordinance is void. *State v. Solomon*, 245 S.C. 550, 141 S.E.2d 818 (1965).

City of N. Charleston v. Harper, 306 S.C. 153, 156–57, 410 S.E.2d 569, 571 (1991)

> Conflict preemption occurs when the ordinance hinders the accomplishment of the statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible. *See Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 530, 476 S.E.2d 477, 480 (1996) ("To determine whether the ordinance has been preempted by Federal or State law, we must determine whether there is a conflict between the ordinance and the statutes and whether the

> ordinance creates any obstacle to the fulfillment of Federal or State objectives."); *192 Coin–Operated Video Game Machines*, 338 S.C. at 186, 525 S.E.2d at 877 (describing federal law conflict preemption); 56 Am.Jur.2d Municipal Corporations 392 ("[i]mplied conflict preemption occurs when an ordinance prohibits an act permitted by a statute, or permits an act prohibited by a statute"); 5 McQuillin Municipal Corporations § 15.18.

S.C. State Ports Auth. v. Jasper Cty., 368 S.C. 388, 400–01, 629 S.E.2d 624, 630 (2006).

The conflict here is express and the Proviso preempts the ordinances because "compliance with both is impossible." *Ports Authority, supra.* The Ordinances cannot "make legal that which the State statute declared unlawful." *State v. Solomon*, 245 S.C. 550, 574–75, 141 S.E.2d 818, 831 (1965). Even if the conflict were not deemed to be express, the ordinances frustrate the purposes of the Proviso, and are therefore, preempted. 5 *McQuillin Mun. Corp*. § 15:19 (3d ed.)("even when a local ordinance does not expressly conflict with a State statute, it will be preempted when it frustrates the statute's purpose.").

Moreover, in our view, the City through its Ordinances, seeks to "encroach upon the Legislature's power to appropriate funds. *State ex rel. Condon v. Hodges*, 349 S.C. 232, 245, 562 S.E.2d 623, 630 (2002). The City cannot commandeer the General Assembly's appropriations power. As this Court underscored in *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 313-14, 295 S.E.2d 633, 637 (1982), "[t]he General Assembly has, beyond question, the duty and authority to appropriate money as necessary for the operation of the agencies of government and has the right to specify the conditions under which the appropriated monies shall be spent." (emphasis added). Here, it has specified those conditions by prohibiting mask mandates in the schools. That is a policy decision which the legislative branch must make, and the executive branch, via the Attorney

General, must enforce. Thus, while the City may "make policy determinations when properly delegated such power by the legislature, absent such a delegation, policymaking [by the City or a school district] is an intrusion upon the legislative power." *Hampton v. Haley*, 403 S.C. 395, 403-04, 743 S.E.2d 258, 262 (2013). Such intrusion is clear in this case.

B

The City Lacks Authority to Side-Step the Ordinance Under S.C. Const. art. XVII, §17

As noted above, the City contends that it does not have to comply with the Proviso alleging that it violates the "one subject" clause of the Appropriations Act. S.C. Const. art. III, §17. The Proviso does not violate the Constitution, but the City is not a judicial body to determine whether State legislation is constitutional. It must comply with the Proviso unless a Court declares it invalid. *S.C. Dep't of Soc. Servs. v. Michelle G.*, 407 S.C. 499, 506, 757 S.E.2d 388, 392 (2014)("'all statutes are presumed constitutional and, if possible, will be construed to render them valid.'). '[A] legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt.'").

Proviso 1.108 does not violate art. III, §17 as "it reasonably and inherently relates to the raising and spending of tax monies." *Town of Hilton Head Island v. Morris*, 324 S.C. 30, 35, 484 S.E.2d 104, 107 (1997). It is among the Department of Education's budget provisos and is expressly tied to funding ("no school district . . . may use any funds

appropriated or authorized pursuant to this act to require that its students and/or employees wear a facemask.) Fact finding is unnecessary for this Court to take judicial notice that expenditure of public funds will necessarily be involved in a school district's enforcement of the City Ordinances. *See, Caldwell v. McMillan*, 224 S.C. 150, 77 S.E.2d 798 (1953) (statute allowing highway department to lease space in its administrative offices for a restaurant sufficient under Article III, § 17 since it "increases the efficiency of the State's business" by making meals available to state employees), quoted in *Keyserling v. Beasley*, 322 S.C. 83, 86–89, 470 S.E.2d 100, 102–03 (1996). *Keyserling* held that provisions creating a new "Low–Level Radioactive Waste Compact Negotiating Committee" and repealing the Southeastern Compact were germane to the Appropriations Act because they would impact revenue. Similarly, enforcement of a mask mandate in schools within the City of Columbia will necessarily impact the expenditure of State funds even if the City provides the masks. Although the Court is to apply a liberal construction "so as to uphold the Act if practicable" and "[d]oubtful or close cases are to be resolved in favor of upholding an Act's validity" (*Keyserling*), such construction is not necessary as to Proviso 1.108. The terms of the Proviso are quite clear, as this Court recognized in *Creswick*, and overwhelmingly demonstrate the legislature's intent that schools funded with State appropriations must not impose or implement mask mandates. Proviso 1.108 is germane to the Appropriations Act. This Court has, time after time, upheld the General Assembly's power to appropriate funds and attach strings to those appropriations. However, in this case the City of Columbia has taken scissors to those strings and cut

them to pieces.

C

The City Ordinances Otherwise Exceed Municipal Powers

Apart from Proviso 1.108, the above ordinances exceed the authority of the City of Columbia under State law and conflict with the authority of school districts as well as the General Assembly. *See, eg.*, S.C. Code Ann. §59-19-90 (general powers and duties of school trustees); *Moye v. Caughman*, 265 S.C. 140, 143, 217 S.E.2d 36, 37 (1975)("public education is not the duty of the counties, but of the General Assembly."); The recitations in the whereas clauses in the City's ordinances give it no authority to impose mask requirements on the schools within its boundaries. *See also*, *Sandlands C & D, LLC v. Cty. of Horry*, 394 S.C. 451, 461, 716 S.E.2d 280, 285 (2011).[1]

REQUEST FOR EXPEDITED CONSIDERATION

Because of the need for clarity as to conflicting mask provisions as schools are reopening, we respectfully request that this Court expedite consideration of this case. Discovery should not be necessary, and the case may be decided based upon filings by the parties and any briefing requested by the Court.

CONCLUSION

Again, we bring this action, not to assume policy positions, or to take sides in

---

1"We note that the mere mention of police power rhetoric as part of the preamble to an ordinance does not guarantee that a local governmental action is a valid exercise of such powers. *See, e.g., Henderson v. City of Greenwood*, 172 S.C. 16, 24, 172 S.E. 689, 691 (S.C.1934) ("The mere statement in the preamble of an ordinance that is passed under the police power does not give a municipality carte blanche to pass an unreasonable ordinance or one opposed to the Constitution or laws of the state.") (citations omitted)." *Id.*

debates over health measures. We instead ask that this Court resolve which law controls in this State, the legislative proviso or local ordinances to the contrary. As this Court has noted, in *Condon v. Hodges, supra*, it is the Attorney General's role to bring to the Court's attention violations of the Constitution and the rule of law. 349 S.C. at 241, 562 S.E.2d at 628. Accordingly, the State of South Carolina respectfully requests that this Court order the following relief:

1. Grant this Petition and expedite consideration of this case.

2. Grant the relief requested in the Complaint which is to declare the referenced Ordinances void.

Respectfully submitted,

ALAN WILSON
Attorney General

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Solicitor General
S.C. Bar No. 1373

s/ J. EMORY SMITH, JR.
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ATTORNEYS FOR THE
STATE EX REL WILSON

August 19, 2021

EXHIBIT B

Managing Your Asthma

For people with asthma, understanding asthma management and treatment options will help you take control of your asthma.

Steps to help keep your asthma under control:[9]

1. Make your medical visits more productive.
2. Create an asthma management plan.
3. Assess and monitor your control.
4. Understand your medication.
5. Reduce asthma triggers.
6. Learn asthma self-management skills.

Find more information on asthma via the following resources:

www.cdc.gov/asthma

www.lung.org/asthma

What Causes Asthma?

No one knows exactly what causes asthma. Asthma tends to run in families and may be inherited, and environmental factors may also play a key role. Scientists continue to explore what causes asthma, but we do know that these factors play an important role in the development of asthma.[9]

Allergies | Genetics | Environment | Respiratory Infection

Asthma Triggers

The most common asthma triggers include:

Tobacco Smoke | Dust Mites | Outdoor Air Pollution | Cockroaches | Pets

Produced by:
Division of Data Analytics - Bureau of Population Health Data Analytics and Informatics

References and data sources:

1 CDC Asthma https://www.cdc.gov/asthma/
2 CDC The Economic Burden of Asthma in the US, 2008-2013 *Annals of the American Thoracic Society*, 2018.
3 CDC Most Recent Asthma Data https://www.cdc.gov/asthma/most_recent_data.htm
4 SC DHEC CHAS, 2016
5 SC DHEC BRFSS, 2019
6 SC DHEC Vital Statistics
7 CDC YRBSS
8 SC RFA Inpatient Discharges and Emergency Department Visits
9 American Lung Association https://www.lung.org/lung-health-and-diseases/lung-disease-lookup/asthma/living-with-asthma/managing-asthma/

CR-011418 6/21

Asthma in South Carolina

Asthma is a chronic disease that affects your lungs. It causes repeated episodes of wheezing, breathlessness, chest tightness, and nighttime or early morning coughing. Asthma cannot be cured, but it can be controlled and managed with adequate access to medical care, medications, trigger avoidance, and self-management.[1]

3,524 people died of asthma in 2019.[3]

Asthma in the U.S.

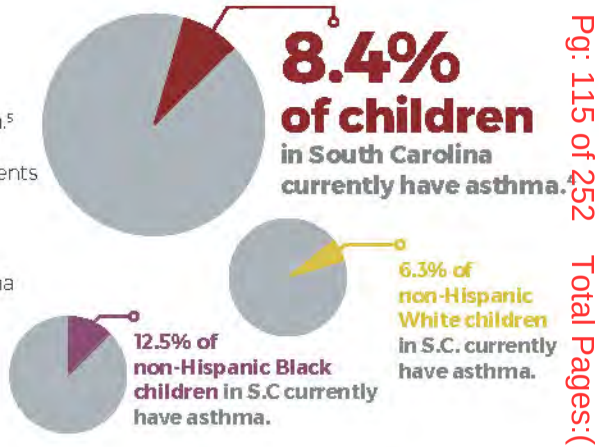
Asthma continues to be a serious public health problem in the United States.

5.1 million children + 19.9 million adults in the United States are estimated to have asthma.[3]

Asthma costs the United States an estimated **$80 billion** each year.[2]

Asthma in South Carolina

- **In adults, 9.4% currently have asthma.**[5] More females (12.1%) than males (6.4%) currently have asthma, and more residents with less than high school graduation (17.7%) than college graduates (6.7%) currently have asthma.
- **50 South Carolinians died** from asthma in 2019.[6]
- In 2019, **26.9% of South Carolina high school students** reported ever having asthma.[7]



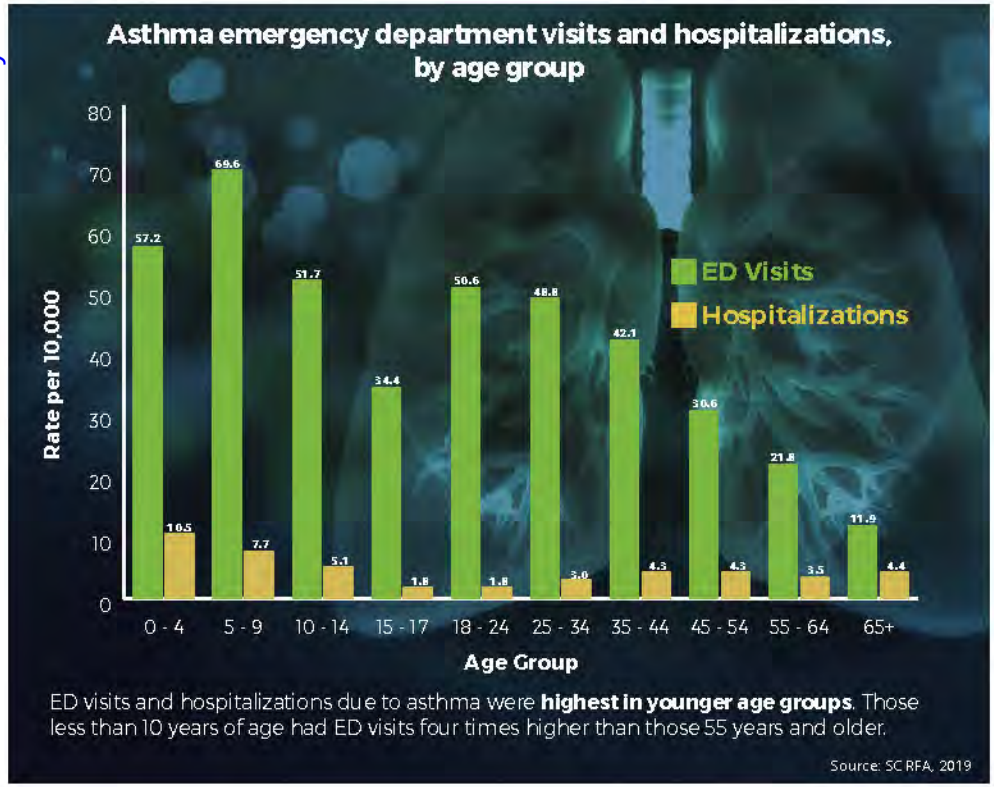
Uncontrolled Asthma is a Common Reason People Seek Medical Attention

In 2019, there were **19,010 emergency department (ED) visits** and **2,225 hospitalizations** for asthma.[8]

The rate of ED visits and hospitalizations were **higher for females than males** and **five times higher for black residents than white residents.**

In 2019, ED charges for asthma were more than **$67 million**

In 2019, hospitalization charges were more than **$60 million**



ED visits and hospitalizations due to asthma were **highest in younger age groups**. Those less than 10 years of age had ED visits four times higher than those 55 years and older.

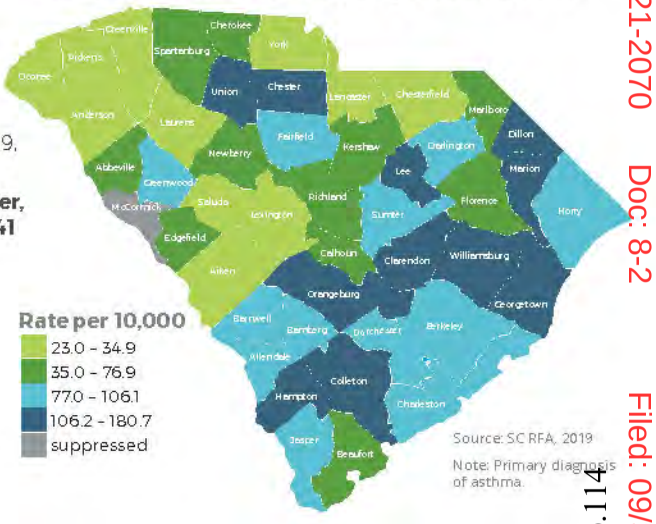
Source: SC RFA, 2019

Asthma Among Children

Children suffer the most from asthma in South Carolina.

- **Asthma was the second leading cause of children's hospitalizations** in fiscal year 2019, surpassed by acute bronchiolitis.
- In 2019, among those **17 and under, there were 6,152 ED visits and 941 hospitalizations** for asthma.
- ED charges were more than $16 million for asthma among children and hospitalization charges were more than $12 million in 2019.
- The counties along the I-95 corridor had the highest rates of hospitalizations and ED visits among children in 2019.

Asthma Hospitalizations and Emergency Department Visits Among Children 0–17



Source: SC RFA, 2019

Note: Primary diagnosis of asthma

Asthma Hospitalizations and Emergency Department Visits Among Children, by Month of Admission

Source: SC RFA, 2019

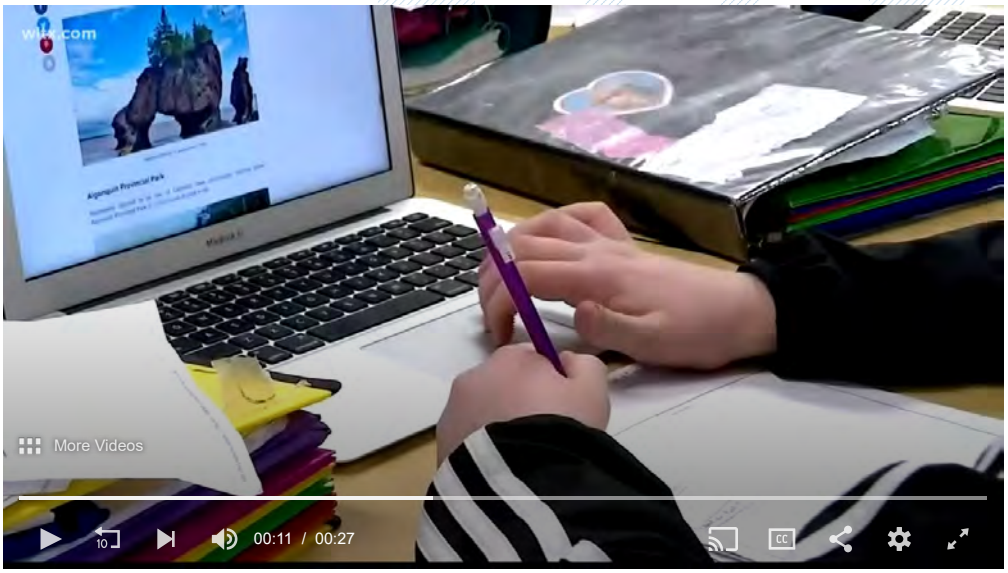
In South Carolina, asthma hospital admissions follow seasonal patterns. More children are hospitalized for asthma in the spring and fall, and fewer are hospitalized in the summer. A major contributor to the fall increase in asthma hospitalizations is thought to be increasing rates of respiratory infections associated with children going back to school. Other possible contributing factors include pollen and mold.

EXHIBIT C

CORONAVIRUS

Upstate South Carolina school district moves to virtual learning due to COVID

Pickens County made the decision during an emergency session.



Author: **WLTX**
Published: **7:04 PM EDT August 13, 2021**
Updated: **11:22 PM EDT August 13, 2021**

PICKENS COUNTY, S.C. — The Pickens County School District in South Carolina has moved back to virtual learning, after experiencing an outbreak of COVID-19 cases.

The district held an emergency session Friday where they announced a plan to shift temporarily to learning remote.

WSPA-TV reported that as of Friday afternoon, 142 students in the district had tested positive for COVID-19 and 26 employees had. Another 634 students were in quarantine, which was

about five percent of the student body.

RELATED: 'I've never been more concerned': Top SC disease expert says about COVID-19 in the state

The school board said 11 of the employees who tested positive had been vaccinated.

RELATED: How Midlands school districts will handle if students get sick with COVID

Most districts have rules which allow them to go back to virtual temporarily if the number of cases gets too high. The district has been back in school since August 3.

Currently a state budget proviso prevents districts statewide from passing school mask mandates. But in Columbia, the city council passed an emergency ordinance calling for masks to be required at elementary and middle schools in the district.

RELATED: Columbia tells SC Attorney General city's school mask mandate is legal

EXHIBIT D

ACTIVE* ENROLLMENT IN SOUTH CAROLINA PUBLIC SCHOOL DISTRICTS BY GRADE
2020–2021 180-Day Headcount
PK – GRADE 12
SOURCE: 180th Day Extraction, July, 2021(QDC4)
*Active Enrollment includes students who are active and funded: PowerSchool: Enterdate and Exitdate reflect active enrollment as of the 180th day, Entercode is not "eei" and Included in State Reporting = "Y".

District ID	District	Total # Actively Enrolled Students	Grade Level													
			PK	K5	1	2	3	4	5	6	7	8	9	10	11	12
0160	Abbeville 60	**2,926**	95	217	216	234	211	213	248	222	233	239	221	212	195	170
0201	Aiken 01	**22,477**	628	1,582	1,756	1,595	1,695	1,652	1,684	1,669	1,808	1,889	1,911	1,782	1,375	1,451
0301	Allendale 01	**1,071**	70	65	96	66	68	82	75	71	88	95	100	62	57	76
0401	Anderson 01	**10,187**	276	762	739	696	733	742	761	819	827	875	815	772	684	686
0402	Anderson 02	**3,385**	94	218	229	246	226	207	274	283	271	298	295	254	241	249
0403	Anderson 03	**2,536**	116	174	170	191	182	198	206	226	188	216	200	189	136	144
0404	Anderson 04	**2,714**	80	185	209	211	188	182	185	210	226	227	230	191	183	207
0405	Anderson 05	**12,672**	422	859	926	990	979	968	928	995	1,039	1,001	1,101	945	733	786
0501	Bamberg 01	**1,182**	30	82	82	87	85	94	88	94	106	91	92	101	70	80
0502	Bamberg 02	**640**	18	30	54	58	40	64	52	45	41	64	59	41	39	35
0619	Barnwell 19	**551**	16	37	42	52	37	47	35	39	36	49	46	40	38	37
0629	Barnwell 29	**770**	17	54	65	56	55	57	56	57	62	68	59	61	45	58
0645	Barnwell 45	**2,021**	69	141	163	153	197	137	131	145	173	170	148	150	114	130
0701	Beaufort 01	**21,071**	756	1,446	1,455	1,467	1,524	1,593	1,615	1,601	1,674	1,664	1,902	1,643	1,404	1,327
0801	Berkeley 01	**36,304**	1,303	2,498	2,746	2,740	2,674	2,648	2,803	2,936	3,036	2,880	2,795	2,598	2,459	2,188
0901	Calhoun 01	**1,580**	86	110	113	104	113	119	112	136	142	133	107	107	99	99
1001	Charleston 01	**48,176**	2,068	3,656	3,738	3,721	3,735	3,727	3,662	3,784	3,648	3,742	3,841	3,223	2,844	2,787
1101	Cherokee 01	**7,778**	382	517	540	516	569	567	536	657	631	654	672	587	473	477
1201	Chester 01	**4,796**	144	344	344	362	346	365	381	394	402	409	391	322	302	290
1301	Chesterfield 01	**6,824**	202	460	524	470	519	520	526	537	527	594	609	516	388	432
1401	Clarendon 01	**670**	27	40	40	45	45	51	46	51	67	54	55	50	57	42
1402	Clarendon 02	**2,604**	87	170	179	168	186	203	165	210	193	227	221	230	169	196
1403	Clarendon 03	**1,239**	28	92	75	78	95	87	84	85	107	111	96	104	96	101
1501	Colleton 01	**5,075**	219	349	379	381	358	388	363	429	428	434	479	316	267	285
1601	Darlington 01	**9,206**	226	603	646	676	630	660	713	739	745	799	830	747	587	605
1703	Dillon 03	**1,499**	55	103	121	103	109	111	111	115	110	126	118	113	95	109
1704	Dillon 04	**3,862**	131	271	261	331	268	269	273	314	334	317	319	316	239	219
1802	Dorchester 02	**24,473**	515	1,605	1,755	1,724	1,725	1,746	1,846	2,026	2,076	2,103	2,093	1,947	1,650	1,662
1804	Dorchester 04	**2,093**	77	134	160	134	152	154	154	164	180	186	166	136	139	157
1901	Edgefield 01	**3,194**	126	250	255	240	246	260	247	290	268	261	214	195	156	186
2001	Fairfield 01	**2,400**	183	156	155	161	174	171	177	172	170	174	216	201	161	129
2101	Florence 01	**14,988**	342	1,050	1,071	1,055	1,169	1,144	1,147	1,203	1,253	1,222	1,268	1,168	967	929
2102	Florence 02	**1,091**	43	70	86	68	81	80	65	95	94	100	80	69	85	75
2103	Florence 03	**3,230**	148	260	255	234	230	278	216	251	268	264	257	221	176	172
2104	Florence 04	**672**	30	50	53	45	51	54	44	50	60	75	58	48	17	37
2105	Florence 05	**1,174**	17	92	89	93	79	106	84	100	99	99	91	84	73	68
2201	Georgetown 01	**8,366**	225	470	610	602	589	648	623	643	719	720	679	678	605	555
2301	Greenville 01	**73,724**	1,506	4,933	5,497	5,450	5,589	5,737	5,702	5,948	6,176	6,176	6,057	5,541	4,804	4,608
2450	Greenwood 50	**8,539**	265	642	658	589	679	634	623	727	717	739	665	603	513	485
2451	Greenwood 51	**910**	48	70	58	69	79	62	72	66	62	82	64	58	59	61
2452	Greenwood 52	**1,485**	49	91	92	107	110	120	104	104	129	140	121	125	88	105
2501	Hampton 01	**1,936**	101	156	129	131	142	142	146	176	142	139	156	127	122	127
2502	Hampton 02	**628**	25	54	36	47	46	42	48	47	60	57	61	41	21	43
2601	Horry 01	**43,984**	1,282	2,880	3,103	3,051	3,362	3,291	3,408	3,613	3,669	3,726	3,705	3,307	2,914	2,673
2701	Jasper 01	**2,679**	144	227	222	216	208	232	201	200	192	181	205	200	113	138
2801	Kershaw 01	**10,653**	370	690	739	741	804	795	807	858	930	910	918	806	640	645
2901	Lancaster 01	**13,942**	216	1,085	1,125	1,070	1,056	1,084	1,076	1,146	1,175	1,111	1,113	1,066	849	770
3055	Laurens 55	**5,265**	217	394	363	379	381	383	406	440	454	444	453	372	311	268
3056	Laurens 56	**2,786**	112	182	173	192	185	223	248	223	207	209	253	222	172	185
3101	Lee 01	**1,549**	44	97	113	89	108	97	128	112	114	140	139	126	120	122
3201	Lexington 01	**26,960**	714	1,787	1,912	2,032	1,983	1,963	2,095	2,142	2,134	2,177	2,350	2,073	1,842	1,756
3202	Lexington 02	**8,525**	296	562	632	632	657	608	672	727	726	727	775	552	466	493
3203	Lexington 03	**2,035**	84	137	172	120	180	159	155	166	157	168	146	132	128	131
3204	Lexington 04	**3,300**	184	219	237	264	243	267	261	241	253	258	270	245	166	192
3205	Lexington 05	**16,827**	405	1,082	1,097	1,135	1,139	1,265	1,262	1,273	1,293	1,458	1,461	1,389	1,312	1,256

3301	McCormick 01	**666**	21	42	56	33	34	48	53	46	84	50	57	55	40	47
3410	Marion 10	**4,087**	105	323	300	309	291	306	316	330	323	347	330	303	249	255
3501	Marlboro 01	**3,615**	94	259	311	255	248	262	265	337	336	307	315	241	188	197
3601	Newberry 01	**5,705**	207	413	426	502	411	418	450	411	475	446	416	448	327	355
3701	Oconee 01	**10,105**	415	736	746	762	736	783	789	760	784	785	776	789	655	589
3809	Orangeburg	**11,680**	397	764	777	840	846	883	886	982	977	943	1,049	878	685	773
3901	Pickens 01	**15,685**	551	1,147	1,133	1,125	1,191	1,147	1,107	1,086	1,298	1,244	1,326	1,264	1,027	1,039
4001	Richland 01	**22,097**	765	1,630	1,709	1,656	1,688	1,656	1,655	1,678	1,803	1,711	1,905	1,521	1,362	1,358
4002	Richland 02	**27,929**	765	1,826	1,919	1,915	2,034	2,083	2,088	2,197	2,319	2,412	2,449	2,168	1,872	1,882
4101	Saluda 01	**2,295**	94	201	202	178	193	169	178	185	156	186	170	153	117	113
4201	Spartanburg 01	**5,018**	196	326	376	327	357	369	334	383	424	425	431	389	358	323
4202	Spartanburg 02	**10,482**	384	776	730	788	791	733	764	832	799	868	888	776	668	685
4203	Spartanburg 03	**2,616**	101	166	163	189	169	189	173	251	195	203	225	199	188	205
4204	Spartanburg 04	**2,750**	146	169	190	193	219	194	214	226	210	213	229	197	173	177
4205	Spartanburg 05	**9,153**	241	663	698	715	701	712	656	748	740	729	704	672	586	588
4206	Spartanburg 06	**11,281**	361	752	729	726	744	774	842	930	946	967	955	933	797	825
4207	Spartanburg 07	**6,974**	211	484	523	547	534	537	516	578	563	530	585	478	444	444
4301	Sumter 01	**15,447**	485	1,113	1,212	1,170	1,134	1,148	1,157	1,232	1,227	1,256	1,260	1,245	846	962
4401	Union 01	**3,740**	161	255	298	266	285	284	308	297	290	301	337	216	233	209
4501	Williamsburg 01	**3,147**	92	223	198	213	220	201	240	255	272	261	246	268	220	238
4601	York 01	**4,834**	176	338	337	346	364	364	353	393	373	375	423	394	313	285
4602	York 02	**8,325**	266	577	599	634	589	625	647	634	703	658	698	618	545	532
4603	York 03	**16,458**	393	1,088	1,220	1,205	1,287	1,248	1,268	1,336	1,364	1,337	1,355	1,196	1,138	1,023
4604	York 04	**16,930**	141	1,181	1,279	1,313	1,297	1,362	1,377	1,378	1,359	1,393	1,395	1,265	1,146	1,044
4701	SC Public Charter School District	**15,434**	195	1,053	1,097	1,099	1,063	1,066	1,117	1,381	1,225	1,126	1,359	1,290	1,239	1,124
4801	Charter Institute at Erskine	**22,248**	49	1,442	1,370	1,370	1,379	1,426	1,435	1,717	1,788	1,975	2,315	2,243	1,849	1,890
5205	John de la Howe	**30**	0	0	0	0	0	0	0	0	0	0	0	11	19	0
5207	SC School for the Deaf and the Blind	**176**	9	7	5	10	4	10	12	11	13	12	19	16	19	29
5208	Department of Juvenile Justice	**406**	0	0	0	0	0	0	2	6	12	62	188	101	31	4
5209	Department of Corrections	**275**	0	0	0	0	0	0	0	0	0	0	147	77	39	12
5364	Governor's School for the Arts and Humani	**226**	0	0	0	0	0	0	0	0	0	0	0	12	102	112
5395	Governor's School for Science and Mathem	**252**	0	0	0	0	0	0	0	0	0	0	0	0	122	130
Statewide Total		**761,290**	22,434	52,444	55,358	55,153	56,123	56,693	57,332	60,666	61,977	62,594	64,298	57,820	49,655	48,743
Statewide Percentage			2.95%	6.89%	7.27%	7.24%	7.37%	7.45%	7.53%	7.97%	8.14%	8.22%	8.45%	7.60%	6.52%	6.40%

EXHIBIT E

Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina Demographic Summary

Special Education Child Count: 101,365

Gender	N	%
Female	34,239	33.78%
Male	67,126	66.22%

Ethnicity or Race	N	%
American Indian	347	0.34%
Asian	757	0.75%
Black or African American	39,498	38.97%
Hispanic	9,980	9.85%
Pacific Islander or Hawaiian	101	0.10%
Two or more races	4,992	4.92%
White	45,690	45.07%

Age	N	%
5	3,930	3.88%
6	6,183	6.10%
7	7,130	7.03%
8	7,922	7.82%
9	8,767	8.65%
10	8,542	8.43%
11	8,564	8.45%
12	8,507	8.39%
13	8,437	8.32%
14	8,034	7.93%
15	7,580	7.48%
16	7,116	7.02%
17	6,130	6.05%
18	3,162	3.12%
19	883	0.87%
20	427	0.42%
21	51	0.05%

Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina Demographic Summary

Limited English Proficiency	N	%
No	94,077	92.81%
Yes	7,288	7.19%

Primary Disability	N	%
Autism Spectrum Disorder	9,859	9.73%
Deaf and Hard of Hearing	904	0.89%
Deaf-Blindness	24	0.02%
Developmental Delay	7,082	6.99%
Emotional Disability	2,098	2.07%
Intellectual Disability	5,858	5.78%
Multiple Disabilities	1,474	1.45%
Orthopedic Impairment	353	0.35%
Other Health Impairment	16,087	15.87%
Specific Learning Disability	40,962	40.41%
Speech or Language Impairment	16,086	15.87%
Traumatic Brain Injury	184	0.18%
Visual Impairment	394	0.39%

Least Restrictive Environment	N	%
Ages 5-21 - Correctional Facilities	171	0.17%
Ages 5-21 - Homebound/Hospital	559	0.55%
Ages 5-21 - Inside Regular Class and activities 40-79% of the day	18,919	18.66%
Ages 5-21 - Inside Regular Class and activities 80% or more of the day	64,837	63.96%
Ages 5-21 - Inside Regular Class and activities less than 40% of the day	15,545	15.34%
Ages 5-21 - Parentally Placed In Private Schools	686	0.68%
Ages 5-21 - Residential Facility	193	0.19%
Ages 5-21 - Separate School	455	0.45%

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Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina Demographic Summary

	Gender			
	Female		Male	
Primary Disability	N	Column %	N	Column %
Autism Spectrum Disorder	1,751	5.11%	8,108	12.08%
Deaf and Hard of Hearing	425	1.24%	479	0.71%
Deaf-Blindness	*	*	15	0.02%
Developmental Delay	2,013	5.88%	5,069	7.55%
Emotional Disability	473	1.38%	1,625	2.42%
Intellectual Disability	2,445	7.14%	3,413	5.08%
Multiple Disabilities	499	1.46%	975	1.45%
Orthopedic Impairment	147	0.43%	206	0.31%
Other Health Impairment	4,965	14.50%	11,122	16.57%
Specific Learning Disability	15,807	46.17%	25,155	37.47%
Speech or Language Impairment	5,458	15.94%	10,628	15.83%
Traumatic Brain Injury	67	0.20%	117	0.17%
Visual Impairment	180	0.53%	214	0.32%

	Ethnicity or Race													
	American Indian		Asian		Black or African American		Hispanic		Pacific Islander or Hawaiian		Two or more races		White	
Primary Disability	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %
Autism Spectrum Disorder	28	8.07%	196	25.89%	3,281	8.31%	889	8.91%	13	12.87%	490	9.82%	4,962	10.86%
Deaf and Hard of Hearing	*	*	25	3.30%	311	0.79%	131	1.31%	*	*	34	0.68%	400	0.88%
Deaf-Blindness	*	*	*	*	*	*	*	*	*	*	*	*	16	0.04%
Developmental Delay	19	5.48%	76	10.04%	2,927	7.41%	837	8.39%	*	*	366	7.33%	2,853	6.24%
Emotional Disability	*	*	*	*	988	2.50%	113	1.13%	*	*	143	2.86%	842	1.84%
Intellectual Disability	17	4.90%	46	6.08%	3,272	8.28%	463	4.64%	*	*	233	4.67%	1,824	3.99%
Multiple Disabilities	*	*	12	1.59%	423	1.07%	152	1.52%	*	*	74	1.48%	809	1.77%
Orthopedic Impairment	*	*	11	1.45%	118	0.30%	40	0.40%	*	*	*	*	175	0.38%

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Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina
Demographic Summary

	Ethnicity or Race													
	American Indian		Asian		Black or African American		Hispanic		Pacific Islander or Hawaiian		Two or more races		White	
Primary Disability	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %
Other Health Impairment	55	15.85%	60	7.93%	6,314	15.99%	1,007	10.09%	12	11.88%	865	17.33%	7,774	17.01%
Specific Learning Disability	162	46.69%	156	20.61%	17,186	43.51%	4,745	47.55%	44	43.56%	1,877	37.60%	16,792	36.75%
Speech or Language Impairment	58	16.71%	162	21.40%	4,465	11.30%	1,551	15.54%	17	16.83%	871	17.45%	8,962	19.61%
Traumatic Brain Injury	*	*	*	*	68	0.17%	20	0.20%	*	*	12	0.24%	81	0.18%
Visual Impairment	*	*	*	*	138	0.35%	31	0.31%	*	*	20	0.40%	200	0.44%

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Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina
Demographic Summary

	Age (as of the Child Count date)											
	5		6		7		8		9		10	
Primary Disability	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %
Autism Spectrum Disorder	517	13.16%	714	11.55%	711	9.97%	800	10.10%	807	9.20%	824	9.65%
Deaf and Hard of Hearing	41	1.04%	50	0.81%	63	0.88%	73	0.92%	74	0.84%	73	0.85%
Deaf-Blindness	*	*	*	*	*	*	*	*	*	*	*	*
Developmental Delay	1,349	34.33%	1,801	29.13%	1,745	24.47%	1,362	17.19%	825	9.41%	*	*
Emotional Disability	*	*	*	*	43	0.60%	70	0.88%	121	1.38%	181	2.12%
Intellectual Disability	*	*	53	0.86%	95	1.33%	185	2.34%	309	3.52%	470	5.50%
Multiple Disabilities	31	0.79%	35	0.57%	57	0.80%	71	0.90%	98	1.12%	114	1.33%
Orthopedic Impairment	14	0.36%	22	0.36%	24	0.34%	31	0.39%	20	0.23%	23	0.27%
Other Health Impairment	75	1.91%	180	2.91%	465	6.52%	798	10.07%	1,211	13.81%	1,485	17.38%
Specific Learning Disability	*	*	88	1.42%	685	9.61%	1,847	23.31%	3,149	35.92%	4,070	47.65%
Speech or Language Impairment	1,869	47.56%	3,209	51.90%	3,202	44.91%	2,645	33.39%	2,120	24.18%	1,260	14.75%
Traumatic Brain Injury	*	*	*	*	*	*	*	*	*	*	14	0.16%
Visual Impairment	18	0.46%	17	0.27%	30	0.42%	33	0.42%	25	0.29%	27	0.32%

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Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina
Demographic Summary

	Age (as of the Child Count date)											
	11		12		13		14		15		16	
Primary Disability	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %
Autism Spectrum Disorder	821	9.59%	775	9.11%	780	9.24%	677	8.43%	649	8.56%	628	8.83%
Deaf and Hard of Hearing	69	0.81%	91	1.07%	71	0.84%	73	0.91%	62	0.82%	72	1.01%
Deaf-Blindness	*	*	*	*	*	*	*	*	*	*	*	*
Developmental Delay	*	*	*	*	*	*	*	*	*	*	*	*
Emotional Disability	183	2.14%	227	2.67%	239	2.83%	249	3.10%	227	2.99%	241	3.39%
Intellectual Disability	526	6.14%	561	6.59%	594	7.04%	594	7.39%	598	7.89%	572	8.04%
Multiple Disabilities	149	1.74%	141	1.66%	160	1.90%	120	1.49%	116	1.53%	111	1.56%
Orthopedic Impairment	31	0.36%	24	0.28%	29	0.34%	31	0.39%	21	0.28%	24	0.34%
Other Health Impairment	1,654	19.31%	1,655	19.45%	1,661	19.69%	1,691	21.05%	1,618	21.35%	1,464	20.57%
Specific Learning Disability	4,343	50.71%	4,531	53.26%	4,589	54.39%	4,415	54.95%	4,153	54.79%	3,888	54.64%
Speech or Language Impairment	731	8.54%	455	5.35%	260	3.08%	133	1.66%	89	1.17%	64	0.90%
Traumatic Brain Injury	21	0.25%	18	0.21%	17	0.20%	14	0.17%	14	0.18%	21	0.30%
Visual Impairment	34	0.40%	28	0.33%	36	0.43%	37	0.46%	31	0.41%	29	0.41%

Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina
Demographic Summary

	Age (as of the Child Count date)									
	17		18		19		20		21	
Primary Disability	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %
Autism Spectrum Disorder	566	9.23%	329	10.40%	153	17.33%	97	22.72%	11	21.57%
Deaf and Hard of Hearing	49	0.80%	23	0.73%	12	1.36%	*	*	*	*
Deaf-Blindness	*	*	*	*	*	*	*	*	*	*
Developmental Delay	*	*	*	*	*	*	*	*	*	*
Emotional Disability	190	3.10%	77	2.44%	24	2.72%	13	3.04%	*	*
Intellectual Disability	493	8.04%	412	13.03%	220	24.92%	152	35.60%	16	31.37%
Multiple Disabilities	83	1.35%	81	2.56%	58	6.57%	39	9.13%	*	*
Orthopedic Impairment	23	0.38%	20	0.63%	13	1.47%	*	*	*	*
Other Health Impairment	1,348	21.99%	603	19.07%	124	14.04%	50	11.71%	*	*
Specific Learning Disability	3,310	54.00%	1,574	49.78%	257	29.11%	54	12.65%	*	*
Speech or Language Impairment	32	0.52%	13	0.41%	*	*	*	*	*	*
Traumatic Brain Injury	17	0.28%	14	0.44%	*	*	*	*	*	*
Visual Impairment	17	0.28%	13	0.41%	11	1.25%	*	*	*	*

	Limited English Proficiency			
	No		Yes	
Primary Disability	N	Column %	N	Column %
Autism Spectrum Disorder	9,279	9.86%	580	7.96%
Deaf and Hard of Hearing	794	0.84%	110	1.51%
Deaf-Blindness	24	0.03%	*	*
Developmental Delay	6,442	6.85%	640	8.78%
Emotional Disability	2,059	2.19%	39	0.54%
Intellectual Disability	5,483	5.83%	375	5.15%
Multiple Disabilities	1,361	1.45%	113	1.55%
Orthopedic Impairment	312	0.33%	41	0.56%
Other Health Impairment	15,541	16.52%	546	7.49%
Specific Learning Disability	37,299	39.65%	3,663	50.26%

10:44 Thursday, July 8, 2021

Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina Demographic Summary

	Limited English Proficiency			
	No		Yes	
Primary Disability	N	Column %	N	Column %
Speech or Language Impairment	14,940	15.88%	1,146	15.72%
Traumatic Brain Injury	171	0.18%	13	0.18%
Visual Impairment	372	0.40%	22	0.30%

	Gender			
	Female		Male	
Least Restrictive Environment	N	Column %	N	Column %
Ages 5-21 - Correctional Facilities	*	*	163	0.24%
Ages 5-21 - Homebound/Hospital	174	0.51%	385	0.57%
Ages 5-21 - Inside Regular Class and activities 40-79% of the day	6,112	17.85%	12,807	19.08%
Ages 5-21 - Inside Regular Class and activities 80% or more of the day	22,797	66.58%	42,040	62.63%
Ages 5-21 - Inside Regular Class and activities less than 40% of the day	4,661	13.61%	10,884	16.21%
Ages 5-21 - Parentally Placed In Private Schools	238	0.70%	448	0.67%
Ages 5-21 - Residential Facility	67	0.20%	126	0.19%
Ages 5-21 - Separate School	182	0.53%	273	0.41%

10:44 Thursday, July 8, 2021

Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina Demographic Summary

	Ethnicity or Race							
	American Indian		Asian		Black or African American		Hispanic	
Least Restrictive Environment	N	Column %	N	Column %	N	Column %	N	Column %
Ages 5-21 - Correctional Facilities	*	*	*	*	136	0.34%	*	*
Ages 5-21 - Homebound/Hospital	*	*	*	*	205	0.52%	46	0.46%
Ages 5-21 - Inside Regular Class and activities 40-79% of the day	58	16.71%	105	13.87%	8,813	22.31%	1,950	19.54%
Ages 5-21 - Inside Regular Class and activities 80% or more of the day	243	70.03%	436	57.60%	23,145	58.60%	6,327	63.40%
Ages 5-21 - Inside Regular Class and activities less than 40% of the day	45	12.97%	185	24.44%	6,918	17.51%	1,570	15.73%
Ages 5-21 - Parentally Placed In Private Schools	*	*	*	*	37	0.09%	23	0.23%
Ages 5-21 - Residential Facility	*	*	*	*	79	0.20%	12	0.12%
Ages 5-21 - Separate School	*	*	13	1.72%	165	0.42%	49	0.49%

	Ethnicity or Race					
	Pacific Islander or Hawaiian		Two or more races		White	
Least Restrictive Environment	N	Column %	N	Column %	N	Column %
Ages 5-21 - Correctional Facilities	*	*	*	*	28	0.06%
Ages 5-21 - Homebound/Hospital	*	*	30	0.60%	271	0.59%
Ages 5-21 - Inside Regular Class and activities 40-79% of the day	18	17.82%	906	18.15%	7,069	15.47%
Ages 5-21 - Inside Regular Class and activities 80% or more of the day	60	59.41%	3,285	65.81%	31,341	68.59%
Ages 5-21 - Inside Regular Class and activities less than 40% of the day	18	17.82%	739	14.80%	6,070	13.29%
Ages 5-21 - Parentally Placed In Private Schools	*	*	*	*	607	1.33%
Ages 5-21 - Residential Facility	*	*	*	*	94	0.21%
Ages 5-21 - Separate School	*	*	17	0.34%	210	0.46%

Data Notes

These data are reflective of students with disabilities, ages 5 (in Kindergarten) to 21, in special education and related services through Individualized Education Programs under the coverage of the Individuals with Disabilities Education Act, 2004. These counts would not include children with disabilities who do not have IEPs. The designation of * indicates that the values were 10 or less. Consequently, the data have been suppressed to comply with the Family Educational Rights and Privacy Act (FERPA) and with the SC Department of Education's policy on public reporting of small cell sizes. Numbers and/or percentages may not add up to statewide totals or 100% as a result. The Child Count date for the 2020-2021 school year was Tuesday, October 27, 2020.

Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina
Demographic Summary

	Age (as of the Child Count date)											
	5		6		7		8		9		10	
Least Restrictive Environment	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %
Ages 5-21 - Correctional Facilities	*	*	*	*	*	*	*	*	*	*	*	*
Ages 5-21 - Homebound/Hospital	*	*	20	0.32%	23	0.32%	18	0.23%	38	0.43%	31	0.36%
Ages 5-21 - Inside Regular Class and activities 40-79% of the day	162	4.12%	460	7.44%	789	11.07%	1,104	13.94%	1,392	15.88%	1,492	17.47%
Ages 5-21 - Inside Regular Class and activities 80% or more of the day	2,792	71.04%	4,552	73.62%	5,173	72.55%	5,551	70.07%	6,030	68.78%	5,797	67.86%
Ages 5-21 - Inside Regular Class and activities less than 40% of the day	936	23.82%	998	16.14%	997	13.98%	1,126	14.21%	1,201	13.70%	1,148	13.44%
Ages 5-21 - Parentally Placed In Private Schools	*	*	126	2.04%	123	1.73%	106	1.34%	89	1.02%	52	0.61%
Ages 5-21 - Residential Facility	*	*	*	*	*	*	*	*	*	*	*	*
Ages 5-21 - Separate School	31	0.79%	26	0.42%	25	0.35%	15	0.19%	13	0.15%	18	0.21%

Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina
Demographic Summary

	Age (as of the Child Count date)											
	11		12		13		14		15		16	
Least Restrictive Environment	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %
Ages 5-21 - Correctional Facilities	*	*	*	*	*	*	*	*	22	0.29%	47	0.66%
Ages 5-21 - Homebound/Hospital	30	0.35%	39	0.46%	54	0.64%	57	0.71%	57	0.75%	64	0.90%
Ages 5-21 - Inside Regular Class and activities 40-79% of the day	1,535	17.92%	1,581	18.58%	1,574	18.66%	1,812	22.55%	2,143	28.27%	2,121	29.81%
Ages 5-21 - Inside Regular Class and activities 80% or more of the day	5,654	66.02%	5,584	65.64%	5,526	65.50%	4,968	61.84%	4,152	54.78%	3,756	52.78%
Ages 5-21 - Inside Regular Class and activities less than 40% of the day	1,261	14.72%	1,234	14.51%	1,201	14.23%	1,109	13.80%	1,127	14.87%	1,050	14.76%
Ages 5-21 - Parentally Placed In Private Schools	51	0.60%	31	0.36%	31	0.37%	24	0.30%	16	0.21%	15	0.21%
Ages 5-21 - Residential Facility	*	*	15	0.18%	18	0.21%	26	0.32%	29	0.38%	28	0.39%
Ages 5-21 - Separate School	24	0.28%	22	0.26%	30	0.36%	29	0.36%	34	0.45%	35	0.49%

Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina Demographic Summary

	Age (as of the Child Count date)									
	17		18		19		20		21	
Least Restrictive Environment	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %
Ages 5-21 - Correctional Facilities	31	0.51%	16	0.51%	13	1.47%	25	5.85%	*	*
Ages 5-21 - Homebound/Hospital	55	0.90%	44	1.39%	14	1.59%	*	*	*	*
Ages 5-21 - Inside Regular Class and activities 40-79% of the day	1,696	27.67%	843	26.66%	169	19.14%	42	9.84%	*	*
Ages 5-21 - Inside Regular Class and activities 80% or more of the day	3,397	55.42%	1,560	49.34%	270	30.58%	66	15.46%	*	*
Ages 5-21 - Inside Regular Class and activities less than 40% of the day	889	14.50%	640	20.24%	358	40.54%	246	57.61%	24	47.06%
Ages 5-21 - Parentally Placed In Private Schools	*	*	*	*	*	*	*	*	*	*
Ages 5-21 - Residential Facility	18	0.29%	14	0.44%	16	1.81%	*	*	*	*
Ages 5-21 - Separate School	35	0.57%	38	1.20%	42	4.76%	29	6.79%	*	*

	Limited English Proficiency			
	No		Yes	
Least Restrictive Environment	N	Column %	N	Column %
Ages 5-21 - Correctional Facilities	171	0.18%	*	*
Ages 5-21 - Homebound/Hospital	532	0.57%	27	0.37%
Ages 5-21 - Inside Regular Class and activities 40-79% of the day	17,415	18.51%	1,504	20.64%
Ages 5-21 - Inside Regular Class and activities 80% or more of the day	60,317	64.11%	4,520	62.02%
Ages 5-21 - Inside Regular Class and activities less than 40% of the day	14,372	15.28%	1,173	16.09%
Ages 5-21 - Parentally Placed In Private Schools	671	0.71%	15	0.21%
Ages 5-21 - Residential Facility	186	0.20%	*	*
Ages 5-21 - Separate School	413	0.44%	42	0.58%

Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina Demographic Summary

	Primary Disability							
	Autism Spectrum Disorder		Deaf and Hard of Hearing		Deaf-Blindness		Developmental Delay	
Least Restrictive Environment	N	Column %	N	Column %	N	Column %	N	Column %
Ages 5-21 - Correctional Facilities	*	*	*	*	*	*	*	*
Ages 5-21 - Homebound/Hospital	67	0.68%	*	*	*	*	16	0.23%
Ages 5-21 - Inside Regular Class and activities 40-79% of the day	1,876	19.03%	179	19.80%	*	*	1,368	19.32%
Ages 5-21 - Inside Regular Class and activities 80% or more of the day	3,638	36.90%	536	59.29%	*	*	3,788	53.49%
Ages 5-21 - Inside Regular Class and activities less than 40% of the day	4,131	41.90%	115	12.72%	*	*	1,849	26.11%
Ages 5-21 - Parentally Placed In Private Schools	37	0.38%	*	*	*	*	32	0.45%
Ages 5-21 - Residential Facility	30	0.30%	35	3.87%	*	*	*	*
Ages 5-21 - Separate School	80	0.81%	33	3.65%	*	*	28	0.40%

Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina
Demographic Summary

	Primary Disability									
	Emotional Disability		Intellectual Disability		Multiple Disabilities		Orthopedic Impairment		Other Health Impairment	
Least Restrictive Environment	N	Column %	N	Column %	N	Column %	N	Column %	N	Column %
Ages 5-21 - Correctional Facilities	36	1.72%	*	*	*	*	*	*	61	0.38%
Ages 5-21 - Homebound/Hospital	49	2.34%	72	1.23%	111	7.53%	*	*	135	0.84%
Ages 5-21 - Inside Regular Class and activities 40-79% of the day	512	24.40%	1,458	24.89%	176	11.94%	70	19.83%	3,970	24.68%
Ages 5-21 - Inside Regular Class and activities 80% or more of the day	927	44.18%	570	9.73%	244	16.55%	149	42.21%	9,935	61.76%
Ages 5-21 - Inside Regular Class and activities less than 40% of the day	522	24.88%	3,675	62.73%	796	54.00%	122	34.56%	1,855	11.53%
Ages 5-21 - Parentally Placed In Private Schools	*	*	*	*	*	*	*	*	53	0.33%
Ages 5-21 - Residential Facility	18	0.86%	*	*	18	1.22%	*	*	37	0.23%
Ages 5-21 - Separate School	32	1.53%	58	0.99%	124	8.41%	*	*	41	0.25%

Children with Disabilities, School Age [Ages 5 (in Kindergarten) - 21], South Carolina
Demographic Summary

	Primary Disability							
	Specific Learning Disability		Speech or Language Impairment		Traumatic Brain Injury		Visual Impairment	
Least Restrictive Environment	N	Column %	N	Column %	N	Column %	N	Column %
Ages 5-21 - Correctional Facilities	62	0.15%	*	*	*	*	*	*
Ages 5-21 - Homebound/Hospital	78	0.19%	*	*	*	*	*	*
Ages 5-21 - Inside Regular Class and activities 40-79% of the day	9,009	21.99%	213	1.32%	39	21.20%	44	11.17%
Ages 5-21 - Inside Regular Class and activities 80% or more of the day	29,594	72.25%	15,145	94.15%	72	39.13%	233	59.14%
Ages 5-21 - Inside Regular Class and activities less than 40% of the day	2,080	5.08%	283	1.76%	66	35.87%	42	10.66%
Ages 5-21 - Parentally Placed In Private Schools	112	0.27%	432	2.69%	*	*	*	*
Ages 5-21 - Residential Facility	*	*	*	*	*	*	34	8.63%
Ages 5-21 - Separate School	17	0.04%	*	*	*	*	32	8.12%

EXHIBIT F

historical concepts or issues related to the impacts of historical or past discriminatory policies.

1.106. (SDE: Retired Teacher Salary Negotiation) With funds appropriated for State Aid to Classrooms, when hiring retired teachers for the 2021-22 school year, school districts uniformly may negotiate salaries below the school district salary schedule.

1.107. DELETED

1.108. (SDE: Mask Mandate Prohibition) No school district, or any of its schools, may use any funds appropriated or authorized pursuant to this act to require that its students and/or employees wear a facemask at any of its education facilities. This prohibition extends to the announcement or enforcement of any such policy.

SECTION 1A - H630 - DEPARTMENT OF EDUCATION-EIA

1A.1. (SDE-EIA: Prohibition on Appropriation Transfers) The amounts appropriated herein for aid to subdivisions or allocations to school districts shall not be transferred or reduced and must be expended in accordance with the intent of the appropriation. However, transfers are authorized from allocations to school districts or special line items with projected year-end excess appropriations above requirements, to allocations to school districts or special line items with projected deficits in appropriations.

1A.2. (SDE-EIA: African-American History) Funds provided for the development of the African-American History curricula may be carried forward into the current fiscal year. Funds that are currently a salary line item will be reallocated for the development of instructional materials and programs and the implementation of professional learning opportunities that promote African American history and culture. For the current fiscal year, not less than seventy percent of the funds carried forwarded must be expended for the development of additional instructional materials by nonprofit organizations, school districts, or institutions of higher education selected through a grant process by the Department of Education.

1A.3. (SDE-EIA: Teacher Evaluations, Implementation/Education Oversight) The Department of Education is directed to oversee the evaluation of teachers at the School for the Deaf and the Blind and the Department of Juvenile Justice under the ADEPT model.

1A.4. (SDE-EIA: Teacher Salaries/State Agencies) Each state agency which does not contain a school district but has instructional

EXHIBIT G

MEMORANDUM

TO: District Superintendents

FROM: Molly M. Spearman
State Superintendent of Education

DATE: July 6, 2021

RE: Proviso 1.108 Guidance and Face Coverings on School Buses Update

The purpose of this memo is to provide guidance related to Proviso 1.108 (SDE: Mask Mandate Prohibition) and update the face coverings on school buses requirement. Proviso 1.108 was adopted by the General Assembly in the 2021-22 Appropriations Bill and reads as follows:

1.108. (SDE: Mask Mandate Prohibition): No school district, or any of its schools, may use any funds appropriated or authorized pursuant to this act to require that its students and/or employees wear a facemask at any of its education facilities. This prohibition extends to the announcement or enforcement of any such policy.

The South Carolina Department of Education (SCDE) interprets the above language to mean that school districts are prohibited from requiring students and employees to wear a facemask while in any of its educational facilities for the 2021-22 school year. Educational facilities include all property owned and operated by the individual district.

The SCDE has previously enforced the Center for Disease Control and Prevention's January 29, 2021, order that requires the use of face coverings by people on public transportation conveyances and hubs, which includes school buses. Effective immediately, the SCDE will exercise its enforcement discretion granted within this order and will no longer enforce the face covering requirement on state owned school buses. The use of face coverings by students and staff on school buses and within school facilities remains a recommendation of state and federal public health officials and Proviso 1.108 does not prevent districts from encouraging the wearing of face coverings in these settings.

However, districts may not create or enforce any policy, which would require the wearing of face coverings. Should a district decide to act contrary to this law, state funding may be withheld.

Please contact Katie Nilges at knilges@ed.sc.gov with any questions.

EXHIBIT H

Full Menu COVID-19 Environment Health Vital Records Maps & Apps

dhec

Home > Coronavirus Disease 2019 (COVID-19) > Current Page

South Carolina County-Level Data for COVID-19

DHEC provides COVID-19 data and vaccine updates Monday through Friday at 1 p.m.

Please view the users' manual available here to help navigate through the dashboard and better understand the data as presented. It's important to note that the data within the dashboard is provisional and subject to change as we learn new information.

We appreciate your feedback. Please take this short survey to provide your thoughts on the new County-Level Dashboard. We will consider this input for potential future updates to this display of county-specific COVID-19 data.

HOME | TESTING | CASES | HOSPITALIZATION | DEATHS

COVID-19 in South Carolina
As of 11:59 PM on 9/22/2021

Tests	Cases	Hospitalizations	Deaths
9,224,806	699,197	25,605	10,324

Two Week Cumulative Incidence Rate

The Two Week Cumulative Incidence Rate is the sum of new cases in the past two weeks (8/8/2021 - 8/22/2021) per 100,000 people. The rate describes recent incidence of COVID-19 infection to capture the potential burden of currently ill people who may require healthcare.

Select a county to display county-specific information
Click the county again to return to the full statewide view.

COVID-19 Cases per Day

7-Day Moving Average of reported COVID-19 Cases, by Public Health Region

Recovery Estimate South Carolina

94.8%

We appreciate your feedback. Please take this short survey to provide your thoughts on the new County-Level Dashboard. We will consider this input for potential future updates to this display of county-specific COVID-19 data.

dhec
S.C. Department of Health and Environmental Control

Back to Top

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EXHIBIT I

BREAKING | Aug 4, 2021, 02:35pm EDT | 172,064 views

Covid Cases Among Children Jumped 84% Last Week—Here Are The States Where Kid Hospitalizations Are Increasing

Jemima McEvoy Forbes Staff
Business
I'm a British-born reporter covering breaking news for Forbes.

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TOPLINE The number of children contracting Covid-19 has increased fivefold since the end of June, with a "substantial" 84% jump in the last week alone, according to a new report from the American Academy of Pediatrics, which comes as numerous states report upticks in child hospitalizations amid the ongoing delta surge.

Charles Muro, age 13, is inoculated by Nurse Karen Pagliaro at Hartford Healthcares mass ... [+] AFP VIA GETTY IMAGES

KEY FACTS

- The pediatricians group said Tuesday it recorded almost 72,000 new cases of Covid-19 among children from July 22-29, up from 39,000 the week prior and a sum that comprises 19% of all cases reported nationally over that period.

- As cases among children continue on an upward trend that dates back to early July, a growing number of states are sounding the alarm about the number of children being hospitalized, with many citing a corresponding spike in cases of respiratory syncytial virus (RSV), a contagious seasonal flu that is more common in the wintertime.

- Child hospitalizations have risen in at least eight states, either state-wide or in major pediatric facilities, according to a mix of state and federal data, and local reports.

- Florida currently leads the nation in kids hospitalized for Covid-19, with 32 pediatric hospitalizations per day between July 24 and 30 (a rate of 0.76 children hospitalized per 100,000 residents), Centers for Disease Control and Prevention (CDC) data shared with *The Tampa Bay-Times* shows.

- However, officials from major childrens' hospitals in Arkansas, Indiana, Louisiana, Missouri, South Carolina and Texas say their facilities are quickly filling with sick children too, either from Covid-19 too or the mix of the two surging respiratory infections.

- Alabama, which reported a new record of 34 children hospitalized amid the Covid-19 pandemic last week, now has 38 children hospitalized, according to the *Associated Press*.

SURPRISING FACT

Major children's hospitals in Alabama, Arkansas, Louisiana and Florida—states that have been battling a broader increase in hospitalizations—all said last week they had more children in their care than at any other point in the pandemic.

KEY BACKGROUND

As there is no regularly updated, comprehensive data on child Covid-19 cases available, it's unclear whether the rise in hospitalizations is occuring nationwide. The last report from the Centers for Disease Control and Prevention (CDC), in early June, found hospitalization rates among children peaked at 2.1 per 100,000 in January. Meanwhile, the American Academy of Pediatrics (which acknowledges it is missing data from some states) reports the number of hospitalizations has remained steady throughout the pandemic, with children accounting for between 1.3% and 3.5% of hospitalizations, depending on the state. Overall, the risk of death and hospitalization among children who contract Covid-19 remains low. Just over 520 children have died from Covid-19 since the start of the pandemic (0.08% of the U.S.'s 612,000 total deaths) and only around 0.01% recorded cases result in death. However, the CDC highlights it is still possible for children to suffer from severe disease as it "occurs in all age groups."

TANGENT

Experts have floated numerous explanations for why child hospitalizations appear to be on the rise, with many pointing to the trend of younger people making up a larger proportion of new cases. Children under 12 are also unable to get the vaccine. Meanwhile, inoculations are severely lagging among teenagers and young adults for whom the shot is available.

WHAT TO WATCH FOR

Whether the combination of surging Covid-19 and RSV cases may overwhelm hospital pediatric units. After steadily increasing since early June, cases of RSV saw a larger spike over the past month according to CDC data, prompting concern from some public health experts.

CRUCIAL QUOTE

Dr. Heather Haq, a pediatrician at Texas Children's Hospital in Houston, recently detailed in a series of Twitter posts how "the surge upon surge" is impacting her facility. "After many months of zero or few pediatric Covid cases, we are seeing infants, children and teens with Covid pouring back into the hospital, more and more each day," Haq wrote, explaining the hospital also has "winter-level patient volumes of acutely ill infants/toddlers with RSV." "I worry that we will run out of beds and staff," she said.

FURTHER READING

"Hospitals In Southern U.S. Report Record Numbers Of Children Hospitalized Amid Delta Surge—Though Deaths Still Extremely Rare" (Forbes)

"Florida Shatters Record For Covid Hospitalization—Again—As DeSantis Downplays Crisis" (Forbes)

"In addition to Covid, more children are getting a respiratory virus more commonly seen in winter" (The New York Times)

Full coverage and live updates on the Coronavirus

Follow me on Twitter. Send me a secure tip.

Jemima McEvoy

Follow

I'm a British-born reporter covering breaking news for Forbes.

EXHIBIT J

Children and COVID-19: State Data Report

A joint report from the American Academy of Pediatrics and the Children's Hospital Association

Summary of publicly reported data from 49 states, NYC, DC, PR, and GU

Version: 7/29/21

** Note: The numbers in this report represent cumulative counts since states began reporting. The data are based on how public agencies collect, categorize and post information. All data reported by state/local health departments are preliminary and subject to change and reporting may change over time. Notably, in the summer of 2021, some states have revised cases counts previously reported, begun reporting less frequently, or dropped metrics previously reported. For example, the Nebraska COVID-19 dashboard is no longer available as of June 30, 2021. Readers should consider these factors. States may have additional information on their web sites.*

CHILDREN'S HOSPITAL ASSOCIATION

American Academy of Pediatrics
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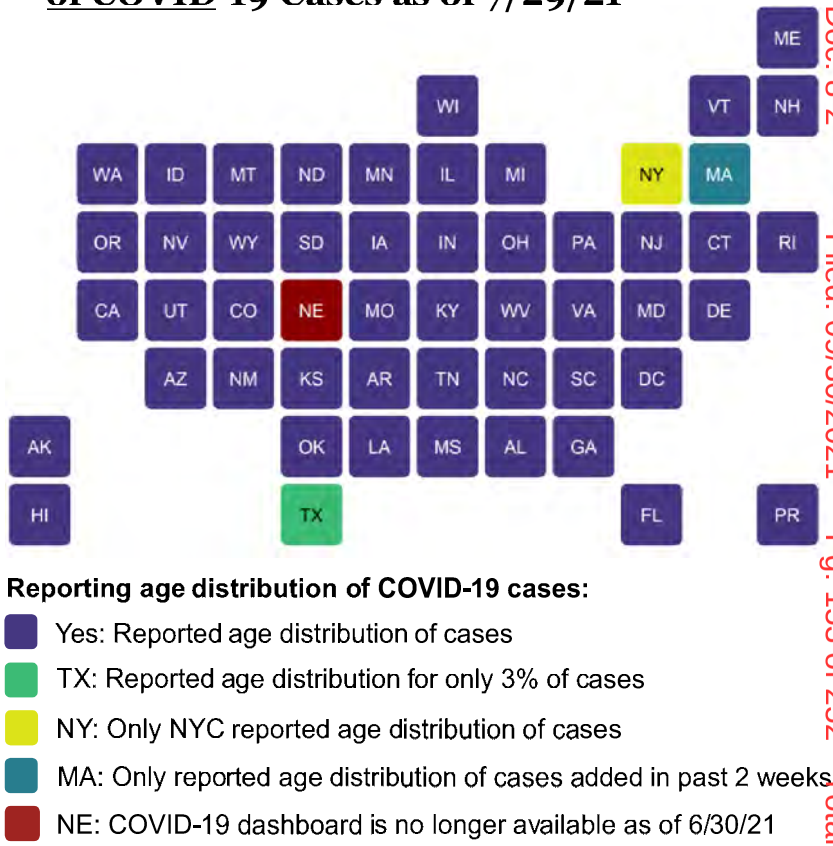
COVID-19: Available Data for Children

- State-level reports are the best publicly available data on COVID-19 cases in children
- Starting in June 2021, some states reported less frequently and dropped metrics previously reported as overall cases decreased
- This report summarizes what was available on 7/29/21
- **49 states, NYC, DC, Puerto Rico and Guam** provided age distributions of reported COVID-19 cases
  - 11 states provided age distribution of testing
  - 23 states and NYC provided age distribution of hospitalizations
  - 43 states, NYC, PR and Guam provided age distribution of deaths

App. 153

Fig 1A: States Reporting Age Distribution of COVID-19 Cases as of 7/29/21



See detail in Appendix: Data from 49 states, NYC, DC, PR, and GU
Analysis by American Academy of Pediatrics and Children's Hospital Association
All data reported by state/local health departments are preliminary and subject to change

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Children and COVID-19: Data Limitations

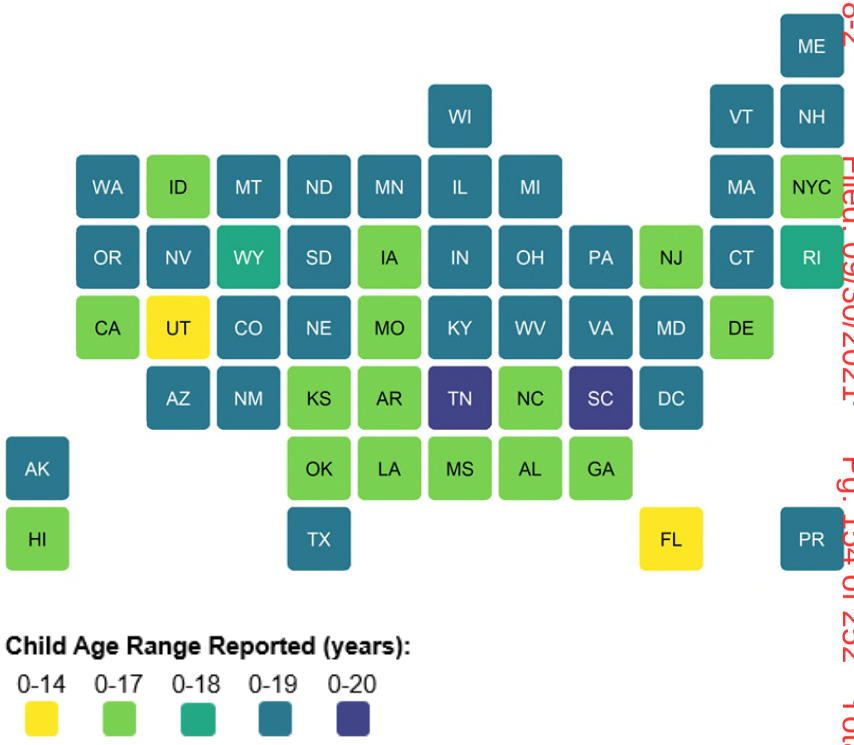
General Limitations

- Format, content, and metrics of reported COVID-19 data differed substantially by state
- Definition of "child": Age ranges reported for children varied by state (0-14, 0-17, 0-18, 0-19, and 0-20 years; see Fig 1B)
- Unknown: Number of children infected but not tested and confirmed

State-Level Changes

- TX: Age distribution reported for only 3% of confirmed cases (80,313/2,621,979), resulting in an undercount of child cases; TX is excluded from some figures
- NY: Did not provide age distribution for state-wide cases (NYC only)
- AL: As of 8/13/20, changed definition of child case from 0-24 to 0-17 years; as of 9/17/20, provided age distribution for confirmed cases only
- HI: As of 8/27/20, changed definition of child case from 0-19 to 0-17 years
- MA: As of 9/3/20, revised definition of probable case, leading to a reduction in total case count, and changed reporting from total child cases to cases added in last two weeks
- RI: As of 9/10/20, changed definition of child case from 0-19 to 0-18 years
- MO: As of 10/1/20, changed definition of child cases from 0-19 to 0-17 years
- PR: As of 3/11/21, due to a change in data available, a calculation was required to obtain confirmed and probable child case totals, leading to a reduction in total child case count
- AK: On 6/17/21, did not report child hospitalizations or child deaths
- FL: As of 6/24/21, stopped reporting child hospitalizations
- NE: As of 6/30/21, COVID-19 dashboard is no longer available; NE child cases, hospitalizations, and deaths through 6/24/21
- IA: As of 7/15/21, stopped updating child testing data

Fig 1B: Child Age Ranges of COVID-19 Cases Reported by States as of 7/29/21



See detail in Appendix: Data from 49 states, NYC, DC, PR, and GU; Analysis by American Academy of Pediatrics and Children's Hospital Association; All data reported by state/local health departments are preliminary and subject to change

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Children and COVID-19: 7/29/21
Summary of State-Level Data Provided in this Report

Detail and links to state/local data sources provided in Appendix

Cumulative Number of Child COVID-19 Cases*

- 4,198,296 total child COVID-19 cases reported, and children represented 14.3% (4,198,296/29,402,405) of all cases
- Overall rate: 5,578 cases per 100,000 children in the population

Change in Child COVID-19 Cases*

- 71,726 child COVID-19 cases were reported the past week from 7/22/21-7/29/21 (4,126,570 to 4,198,296) and children represented 19.0% (71,726/378,497) of the weekly reported cases
- Over two weeks, 7/15/21-7/29/21, there was a 3% increase in the cumulated number of child COVID-19 cases (110,380 cases added (4,087,916 to 4,198,296)

Testing (11 states reported)*^

- Among states reporting, children made up between 11.0%-19.9% of total cumulated state tests, and between 4.8%-17.5% of children tested were tested positive

Hospitalizations (23 states and NYC reported)*

- Among states reporting, children ranged from 1.3%-3.5% of their total cumulated hospitalizations, and 0.1%-1.9% of all their child COVID-19 cases resulted in hospitalization

Mortality (43 states, NYC, PR and GU reported)*

- Among states reporting, children were 0.00%-0.26% of all COVID-19 deaths, and 7 states reported zero child deaths
- In states reporting, 0.00%-0.03% of all child COVID-19 cases resulted in death

See detail in Appendix: Data from 49 states, NYC, DC, PR, and GU; Analysis by American Academy of Pediatrics and Children's Hospital Association

** Note: The numbers in this summary represent cumulative counts since states began reporting. In this summary and full report, the data are based on how public agencies collect, categorize and post information. All data reported by state/local health departments are preliminary and subject to change and reporting may change over time. Notably, in the summer of 2021, some states have revised cases counts previously reported, begun reporting less frequently, or dropped metrics previously reported. For example, the Nebraska COVID-19 dashboard is no longer available as of June 30, 2021. Readers should consider these factors. States may have additional information on their web sites.*

^ On 7/15/21, IA stopped updating child testing data; IA cumulative tests through 7/8/21

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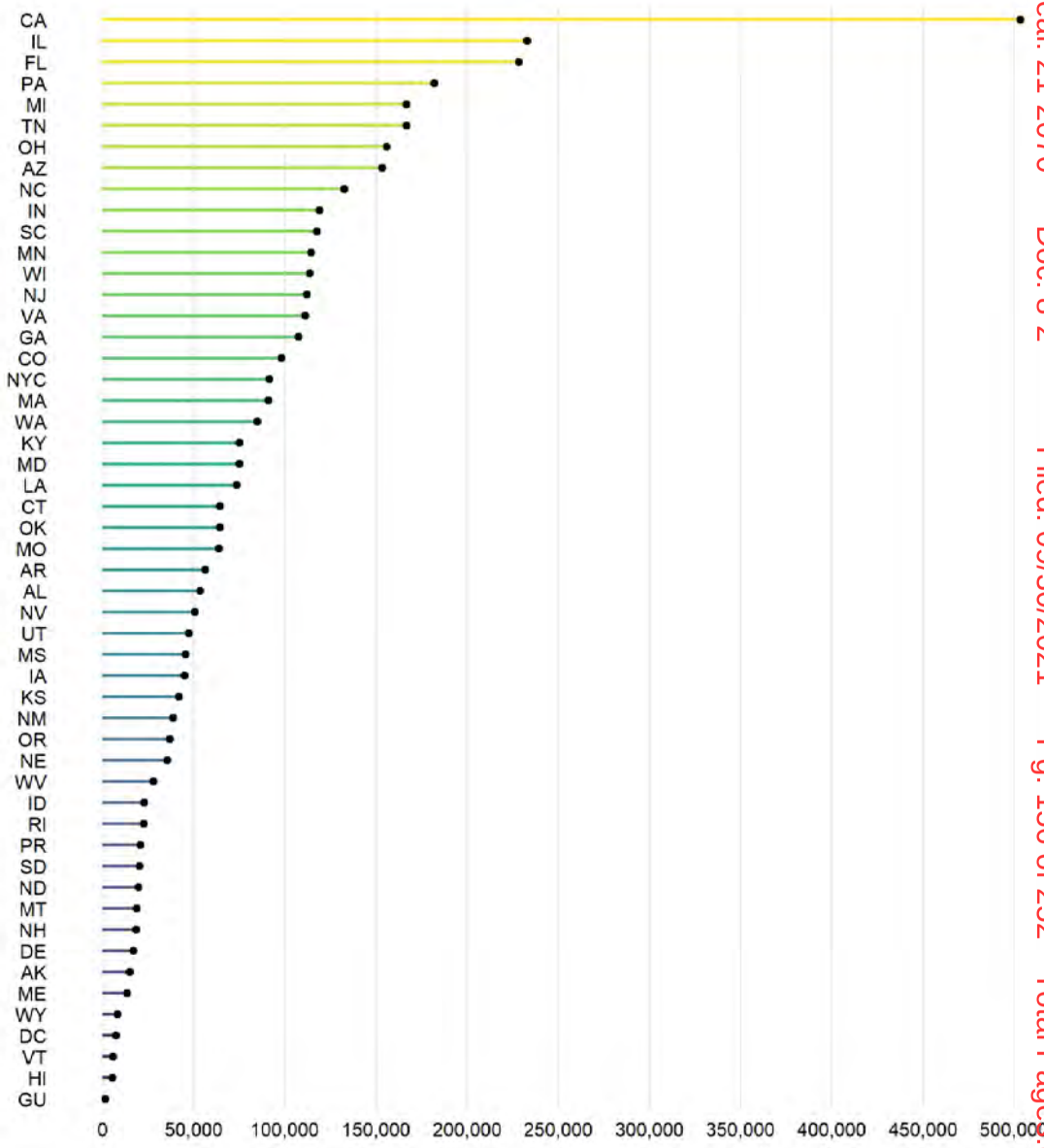
Fig 2. Cumulative Number of Child COVID-19 Cases: 7/29/21

- 4,198,296 total child COVID-19 cases (cumulative)
- Eighteen states reported 100,000+ child cases
- Four states reported fewer than 10,000 child cases



See detail in Appendix: Data from 48 states, NYC, DC, PR, and GU (TX excluded from figure)
All data reported by state/local health departments are preliminary and subject to change
Analysis by American Academy of Pediatrics and Children's Hospital Association
As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative cases through 6/24/21

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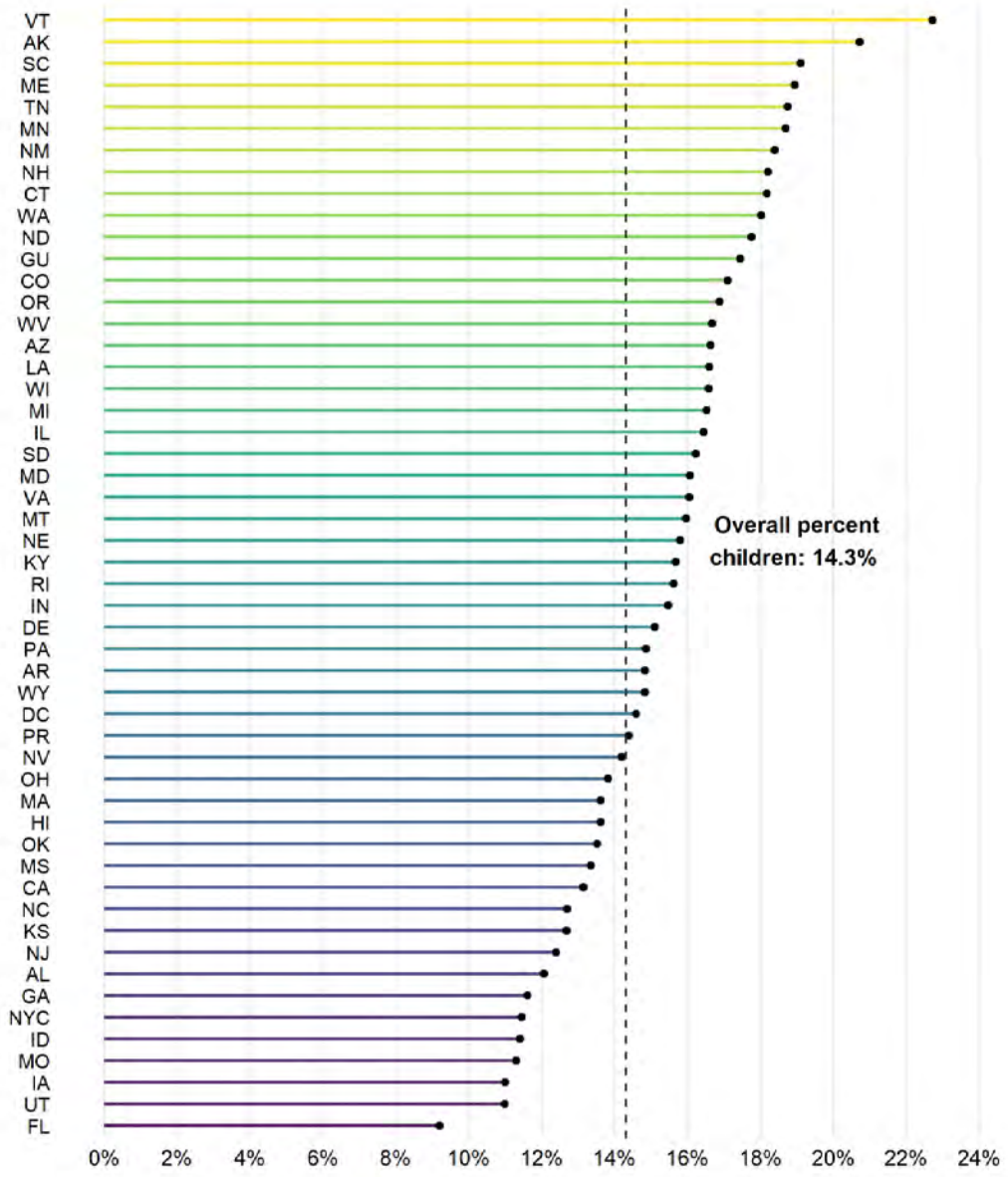
Fig 3. Percent of Cumulative COVID-19 Cases that were Children: 7/29/21

- Children represented 14.3% (4,198,296/29,402,405) of all available cases
- Ten states reported 18% or more of cumulated cases were children



See detail in Appendix: Data from 48 states, NYC, DC, PR, and GU (TX excluded from figure)
All data reported by state/local health departments are preliminary and subject to change
Analysis by American Academy of Pediatrics and Children's Hospital Association
As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative cases through 6/24/21

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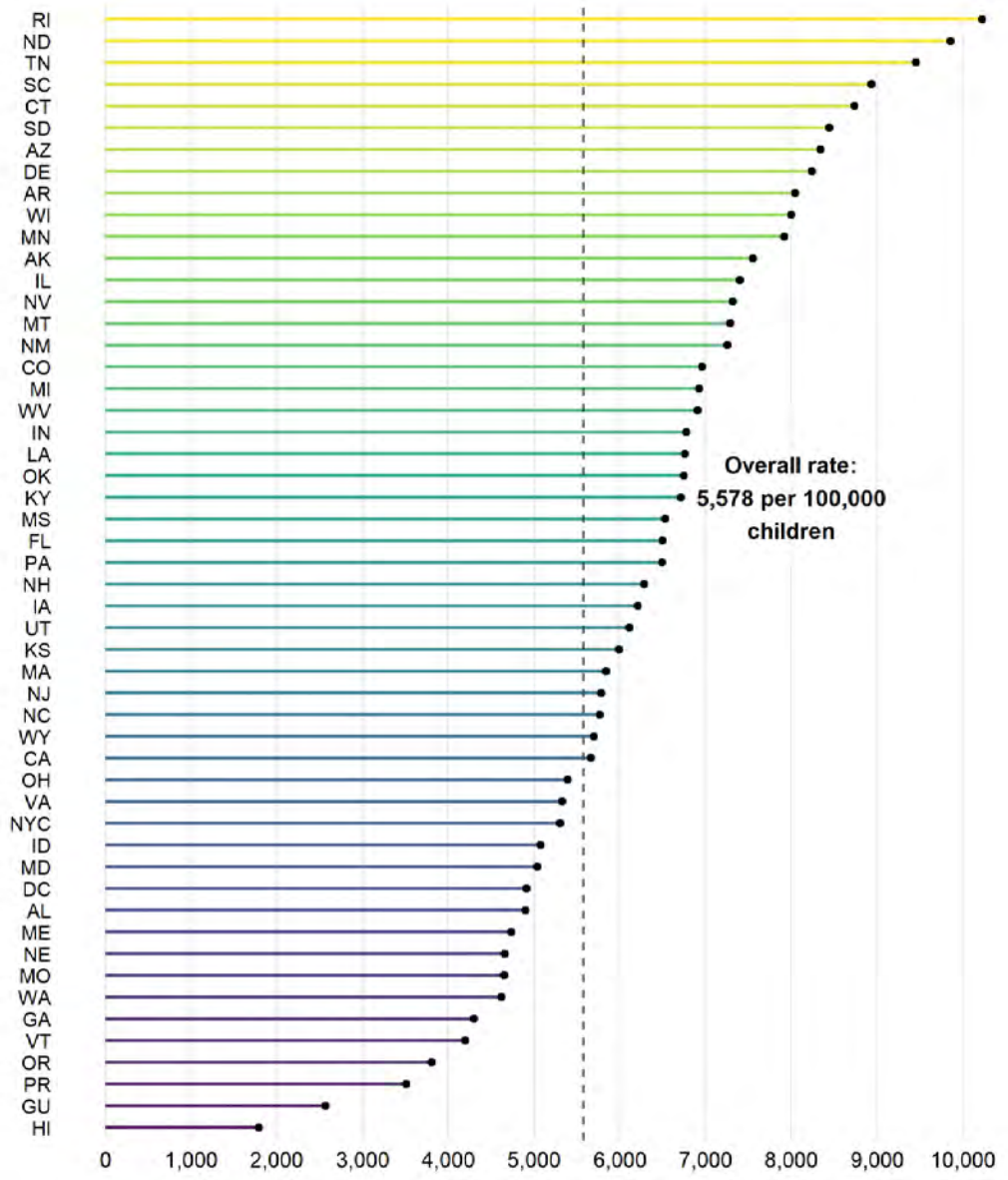
Fig 4. Cumulative COVID-19 Cases per 100,000 Children: 7/29/21

- Calculated using state-level population estimates from US Census Bureau (2019)*
- Overall rate: 5,578 child COVID-19 cases per 100,000 children in the population
- Nine states reported more than 8,000 cases per 100,000



See detail in Appendix: Data from 48 states, NYC, DC, PR, and GU (TX excluded from figure)
All data reported by state/local health departments are preliminary and subject to change
Analysis by American Academy of Pediatrics and Children's Hospital Association
As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative cases through 6/24/21
** Source: US Census Bureau, State Population by Characteristics: 2010-2019,*
https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-detail.html

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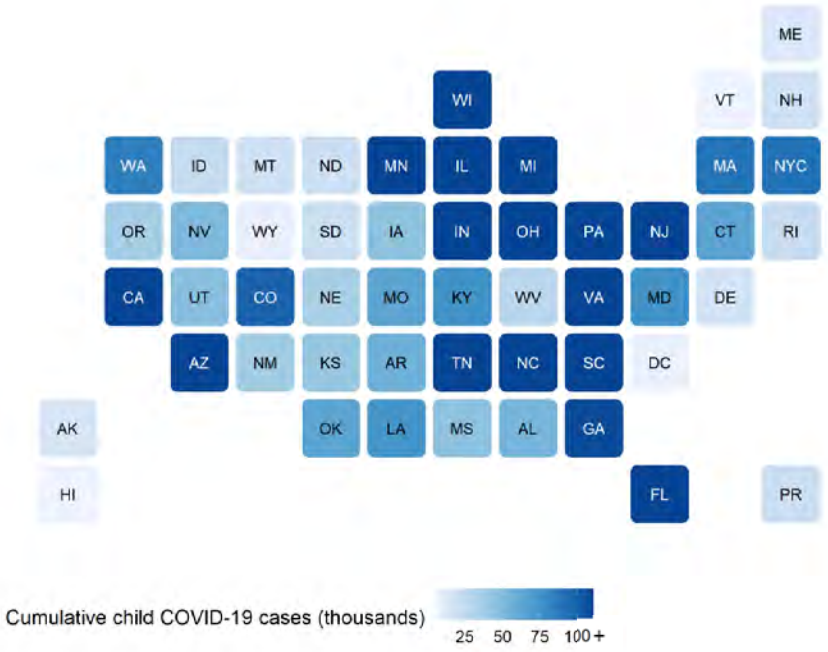
Fig 5. Cumulative Child COVID-19 Cases and Percent Increase in Child Cases

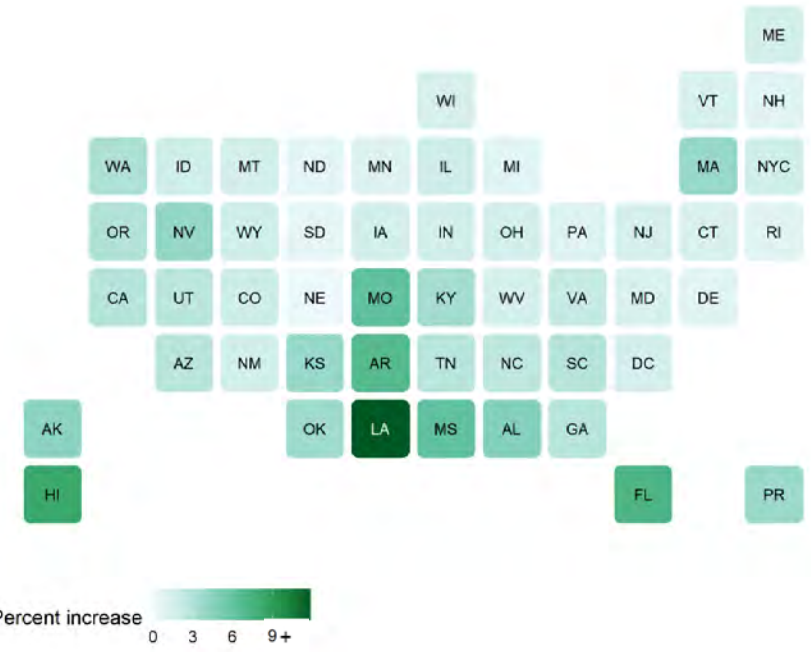
A. Cumulative Child COVID-19 Cases, 7/29/21

18 states with 100,000+ cumulative child cases



B. Percent Increase in Child Cases, 7/15/21-7/29/21

From 7/15-7/29, there were 110,380 child cases added (4,087,916 to 4,198,296; 3% increase)



See detail in Appendix: Data from 48 states, NYC, DC, and PR (TX excluded from figures);
All data reported by state/local health departments are preliminary and subject to change; Analysis by American Academy of Pediatrics and Children's Hospital Association
As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative cases through 6/24/21
Due to available data and calculations required to obtain MA child cases, weekly estimates fluctuate (eg, on 7/29/21 3,445 cases were added)
On 7/15/21, IA revised case data, resulting in a downward revision of cumulative child cases over 2 weeks (238 fewer cases)

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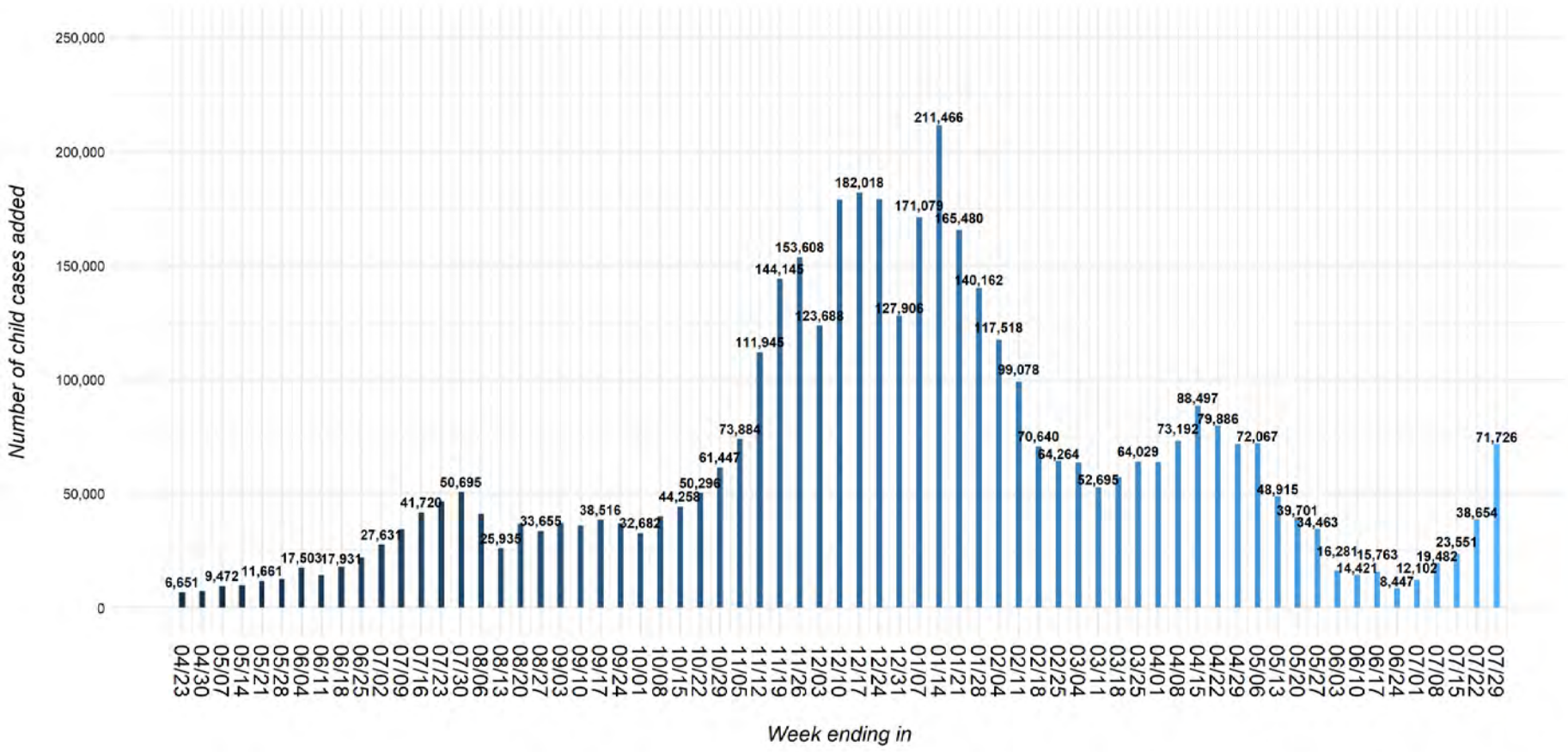
Fig 6. United States: Number of Child COVID-19 Cases Added in Past Week*



** Note: 4 states changed their definition of child cases: AL as of 8/13/20, HI as of 8/27/20, RI as of 9/10/20, MO as of 10/1/20; TX reported age for only a small proportion of total cases each week (eg, 3-20%)*
On 5/6/21, due to data revision and lag in reporting, RI experienced 30% increase in child cases (4,906 cases added)
As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative cases through 6/24/21
Due to available data and calculations required to obtain MA child cases, weekly estimates fluctuate (eg, on 7/29/21 3,445 cases were added)
On 7/15/21, IA revised case data, resulting in a downward revision of cumulative child cases (448 fewer cases)
See detail in Appendix: Data from 49 states, NYC, DC, PR and GU
All data reported by state/local health departments are preliminary and subject to change; Analysis by American Academy of Pediatrics and Children's Hospital Association

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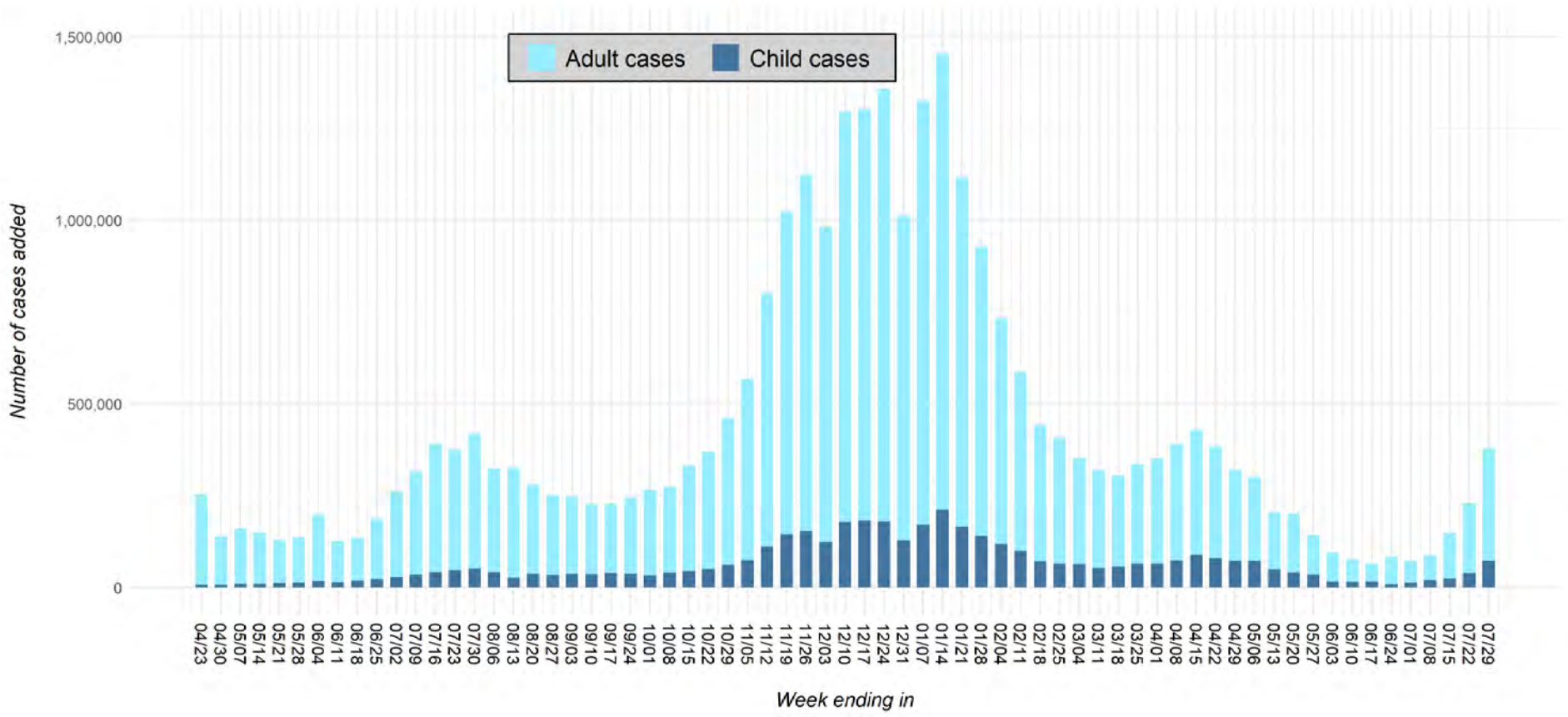
Fig 7. United States: Number of COVID-19 Cases Added in Past Week for Children and Adults*



** Note: 4 states changed their definition of child cases: AL as of 8/13/20, HI as of 8/27/20, RI as of 9/10/20, MO as of 10/1/20; TX reported age for only a small proportion of total cases each week (eg, 3-20%)*
On 5/6/21, due to data revision and lag in reporting, RI experienced 30% increase in child cases (4,906 cases added)
As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative cases through 6/24/21
Due to available data and calculations required to obtain MA child cases, weekly estimates fluctuate (eg, on 7/29/21 3,445 cases were added)
On 7/15/21, IA revised case data, resulting in a downward revision of cumulative child cases (448 fewer cases)
See detail in Appendix: Data from 49 states, NYC, DC, PR and GU
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Appendix Table 1: Case Data Available on 7/29/21

Summary data across the 49 states, NYC, DC, PR, and GU that provided age distribution of reported COVID-19 cases*

Child population, 2019	Cumulative total cases (all ages)	Cumulative child cases	Cumulative percent children of total cases	Cases per 100,000 children
75,266,842	29,402,405	4,198,296	14.3%	5577.9

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** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change. As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative cases through 6/24/21.*

Appendix Table 2A: Summary of Child Case Data from 4/16/20 – 7/29/21*

Date	Number of locations reporting age	Cumulative total cases (all ages)	Cumulative child cases^	Percent children of total cases	Cases per 100,000 children
7/29/21	49 states, NYC, DC, PR and GU	29,402,405	4,198,296	14.3%	5577.9
7/22/21	49 states, NYC, DC, PR and GU#	29,023,908	4,126,507	14.2%	5482.6
7/15/21	49 states, NYC, DC, PR and GU#±	28,793,845	4,087,916	14.2%	5431.2
7/8/21	49 states, NYC, DC, PR and GU	28,645,258	4,064,365	14.2%	5399.9
7/1/21	49 states, NYC, DC, PR and GU#Δ	28,557,884	4,044,884	14.2%	5374.1
6/24/21	49 states, NYC, DC, PR and GU#ǂ	28,486,004	4,032,782	14.2%	5358.0
6/17/21	49 states, NYC, DC, PR and GU	28,402,723	4,024,335	14.2%	5346.8
6/10/21	49 states, NYC, DC, PR and GU#	28,338,538	4,008,572	14.1%	5325.8
6/3/21	49 states, NYC, DC, PR and GU#	28,262,591	3,994,151	14.1%	5306.7
5/27/21	49 states, NYC, DC, PR and GU	28,167,723	3,977,870	14.1%	5285.0
5/20/21	49 states, NYC, DC, PR and GU~	28,025,875	3,943,407	14.1%	5239.2
5/13/21	49 states, NYC, DC, PR and GU	27,825,369	3,903,706	14.0%	5186.5
5/6/21	49 states, NYC, DC, PR and GUO	27,621,153	3,854,791	14.0%	5121.5
4/29/21	49 states, NYC, DC, PR and GUO ~	27,320,708	3,782,724	13.8%	5025.8
4/22/21	49 states, NYC, DC, PR and GU	27,001,107	3,711,075	13.7%	4930.6
4/15/21	49 states, NYC, DC, PR, and GU	26,617,913	3,631,189	13.6%	4824.4
4/8/21	49 states, NYC, DC, PR, and GU	26,188,186	3,542,692	13.5%	4706.8
4/1/21	49 states, NYC, DC, PR, and GUO	25,798,537	3,469,500	13.4%	4609.6

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*

^ Unknown: number of children infected but not tested and confirmed

 # For several weeks in 2021 (6/3, 6/10, 6/24, 7/1, 7/15, and 7/22), due to available data and calculations required to obtain child cases, there is a downward revision of cumulative child cases for MA

± On 7/15/21, IA revised case data, resulting in a downward revision of cumulative child cases

Δ As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative cases through 6/24/21

ǂ On 6/24/21, due to available CO data and calculation required to obtain child total cases, there is a downward revision of cumulative child cases

~ On 4/29/21, and 5/20/21, WY revised case data, resulting in a downward revision of cumulative child cases

O On 4/1/21 and 4/29/21, RI revised case data, resulting in a downward revision of cumulative cases; On 5/6/21, due to data revision and lag in reporting, RI experienced 30% increase in child cases (4,906 cases added)

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Appendix Table 2A, cont.: Summary of Child Case Data from 4/16/20 – 7/29/21*

Date	Number of locations reporting age	Cumulative total cases (all ages)	Cumulative child cases^	Percent children of total cases	Cases per 100,000 children
3/25/21	49 states, NYC, DC, PR, and GU	25,446,361	3,405,638	13.4%	4524.8
3/18/21	49 states, NYC, DC, PR, and GU	25,111,012	3,341,608	13.3%	4439.7
3/11/21	49 states, NYC, DC, PR, and GU#☐	24,806,402	3,284,531	13.2%	4363.8
3/4/21	49 states, NYC, DC, PR, and GU	24,487,634	3,231,836	13.2%	4293.8
2/25/21	49 states, NYC, DC, PR, and GU	24,134,958	3,168,274	13.1%	4209.4
2/18/21	49 states, NYC, DC, PR, and GU#~	23,726,925	3,104,010	13.1%	4124.0
2/11/21	49 states, NYC, DC, PR, and GU	23,284,471	3,033,370	13.0%	4030.2
2/4/21	49 states, NYC, DC, PR, and GU	22,697,315	2,934,292	12.9%	3898.5
1/28/21	49 states, NYC, DC, PR, and GU	21,963,445	2,816,775	12.8%	3742.4
1/21/21	49 states, NYC, DC, PR, and GU	21,036,194	2,676,612	12.7%	3556.2
1/14/21	49 states, NYC, DC, PR, and GU	19,918,714	2,511,132	12.6%	3336.3
1/7/21	49 states, NYC, DC, PR, and GU	18,463,319	2,299,666	12.5%	3055.4
12/31/20	49 states, NYC, DC, PR, and GU	17,137,295	2,128,587	12.4%	2828.1
12/24/20	49 states, NYC, DC, PR, and GU	16,125,324	2,000.681	12.4%	2658.1
12/17/20	49 states, NYC, DC, PR, and GU	14,766,831	1,821,746	12.3%	2420.4
12/10/20	49 states, NYC, DC, PR, and GU	13,462,337	1,639,728	12.2%	2178.6
12/3/20	49 states, NYC, DC, PR, and GU	12,167,620	1,460,905	12.0%	1941.0

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*
^ Unknown: number of children infected but not tested and confirmed
 # On 2/18/21 and 3/11/21, due to available MA data and calculations required to obtain child total cases, there is a downward revision of cumulative child cases
☐ On 3/11/21, due to only PR data available and calculation required to obtain child total cases, there is a downward revision of cumulative child cases
~ On 2/18/21, WY revised case data, resulting in a downward revision of cumulative child cases

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Appendix Table 2A, cont.: Summary of Child Case Data from 4/16/20 – 7/29/21*

Date	Number of locations reporting age	Cumulative total cases (all ages)	Cumulative child cases^	Percent children of total cases	Cases per 100,000 children
11/26/20	49 states, NYC, DC, PR, and GU	11,184,900	1,337,217	12.0%	1776.6
11/19/20	49 states, NYC, DC, PR, and GU	10,060,749	1,183,609	11.8%	1572.6
11/12/20	49 states, NYC, DC, PR, and GU	9,037,991	1,039,464	11.5%	1381.0
11/5/20	49 states, NYC, DC, PR, and GU	8,236,710	927,518	11.3%	1232.3
10/29/20	49 states, NYC, DC, PR, and GU	7,669,038	853,635	11.1%	1134.1
10/22/20	49 states, NYC, DC, PR, and GU	7,207,186	792,188	11.0%	1052.5
10/15/20	49 states, NYC, DC, PR, and GU	6,837,527	741,891	10.9%	985.7
10/8/20	49 states, NYC, DC, PR, and GU	6,505,390	697,633	10.7%	926.9
10/1/20	49 states, NYC, DC, PR, and GU#	6,231,564	657,572	10.6%	873.7
9/24/20	49 states, NYC, DC, PR, and GU	5,965,268	624,890	10.5%	828.5
9/17/20	49 states, NYC, DC, PR, and GU	5,721,402	587,948	10.3%	779.5
9/10/20	49 states, NYC, DC, PR, and GU	5,493,006	549,432	10.0%	728.5
9/3/20	49 states, NYC, DC, PR, and GU	5,265,157	513,415	9.8%	680.3
8/27/20	49 states, NYC, DC, PR, and GU	5,018,113	476,439	9.5%	631.3
8/20/20	49 states, NYC, DC, PR, and GU	4,766,825	442,785	9.3%	583.2
8/13/20	49 states, NYC, DC, PR, and GU~	4,486,830	406,109	9.1%	538.1
8/6/20	49 states, NYC, DC, PR, and GU	4,159,947	380,174	9.1%	500.7

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change.*
^ Unknown: number of children infected but not tested and confirmed
 # As of 10/1/20, MO changed definition of child case from 0-19 to 0-17 years, resulting in a downward revision of cumulative child cases.
~ As of 8/13/20, AL changed definition of child case from 0-24 to 0-17 years, resulting in a downward revision of cumulative child cases.

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Appendix Table 2A, cont.: Summary of Child Case Data from 4/16/20 – 7/29/21*

Date	Number of locations reporting age	Cumulative total cases (all ages)	Cumulative child cases^	Percent children of total cases	Cases per 100,000 children
7/30/20	49 states, NYC, DC, PR, and GU	3,835,573	338,982	8.8%	446.5
7/23/20	49 states, NYC, DC, PR, and GU	3,416,630	288,287	8.4%	379.7
7/16/20	49 states, NYC, DC, PR, and GU	3,042,413	241,904	8.0%	318.6
7/9/20	49 states, NYC, DC, PR, and GU	2,651,066	200,184	7.6%	263.7
7/2/20	49 states, NYC, DC, PR, and GU	2,335,060	165,845	7.1%	218.4
6/25/20	49 states, NYC, DC, PR, and GU	2,073,387	138,213	6.7%	182.0
6/18/20	49 states, NYC, DC, PR, and GU	1,885,905	116,176	6.2%	153.0
6/11/20	49 states, NYC, DC, PR, and GU	1,750,240	98,246	5.6%	129.4
6/4/20	49 states, NYC, DC, PR, and GU	1,623,334	84,016	5.2%	110.7
5/28/20	47 states, NYC, DC, PR, and GU	1,425,154	66,513	4.7%	91.5
5/21/20	47 states, NYC, DC, PR, and GU	1,288,305	54,031	4.2%	74.4
5/14/20	47 states, NYC, DC, PR, and GU	1,159,407	42,370	3.7%	58.3
5/7/20	46 states, NYC, DC, PR, and GU	1,010,112	32,568	3.2%	45.0
4/30/20	47 states, NYC, DC, and PR	849,615	23,096	2.7%	31.8
4/23/20	48 states, NYC, DC, PR, and GU	710,953	15,911	2.2%	21.2
4/16/20	46 states, NYC, and DC	456,923	9,259	2.0%	13.3

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change.*
^ Unknown: number of children infected but not tested and confirmed.

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Appendix Table 2B: Summary of Child Hospitalization Data from 5/21/20 –7/29/21

Date	Number of locations reporting age distribution of hospitalizations	Cumulative total hospitalizations (all ages)	Cumulative child hospitalizations	Percent children of total hospitalizations	Hospitalization rate^
7/29/21	23 states and NYC□Δ	753,956	17,059	2.3%	1.0%
7/22/21	23 states and NYC○Δ	747,858	16,878	2.3%	0.9%
7/15/21	23 states and NYC○Δ	743,863	16,756	2.3%	0.9%
7/8/21	23 states and NYC○±	740,371	16,623	2.2%	0.9%
7/1/21	23 states and NYC ~○Δ	737,706	16,520	2.2%	0.9%
6/24/21	23 states and NYC○#	728,647	15,783	2.2%	0.9%
6/17/21	23 states and NYC○□ǂ	819,143	16,997	2.1%	0.9%
6/10/21	24 states and NYC○	817,386	16,958	2.1%	0.9%
6/3/21	24 states and NYC○	813,351	16,822	2.1%	0.8%
5/27/21	24 states and NYC	800,302	16,525	2.1%	0.8%
5/20/21	24 states and NYC	793,175	16,261	2.1%	0.8%
5/13/21	24 states and NYC	786,279	16,013	2.0%	0.8%
5/6/21	24 states and NYC	778,080	15,740	2.0%	0.8%
4/29/21	24 states and NYC	768,506	15,456	2.0%	0.8%
4/22/21	24 states and NYC	759,280	15,187	2.0%	0.8%
4/15/21	24 states and NYC~	749,202	14,849	2.0%	0.8%

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*

^ Hospitalization rate = number of child hospitalizations / number of child cases

± On 7/8/21, GA revised hospitalization data, resulting in a downward revision of cumulative child hospitalizations

□ On 6/17/21 and 7/29/21, RI revised hospitalization data, resulting in a downward revision of cumulative child hospitalizations and (on 6/17/21) a downward revision of cumulative hospitalizations for all ages

Δ On 7/1/21, AZ revised data resulting in a 33% increase in cumulative child hospitalizations (592 hospitalizations added); On 7/15/21, 7/22/21 and 7/29/21, AZ revised data resulting in a downward revision of cumulative child hospitalizations

○ On 6/3/21, 6/10/21, 6/17/21, 6/24/21, 7/1/21, 7/8/21, 7/15/21, and 7/22, SD revised hospitalization data, resulting in a downward revision of cumulative child hospitalizations and cumulative hospitalizations for all ages

± On 7/8/21, GA revised hospitalization data, resulting in a downward revision of cumulative child hospitalizations

~ On 4/15/21, NE revised hospitalization data, resulting in a downward revision of cumulative hospitalizations for all ages; As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative hospitalizations through 6/24/21

 # On 6/24/21, FL stopped reporting hospitalization data, resulting in a downward revision of cumulative child hospitalizations and cumulative hospitalizations for all ages

ǂ On 6/17/21, VA revised hospitalization data resulting in a downward revision of cumulative child hospitalizations

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Appendix Table 2B, cont.: Summary of Child Hospitalization Data from 5/21/20 – 7/29/21*

Date~	Number of locations reporting age distribution of hospitalizations	Cumulative total hospitalizations (all ages)	Cumulative child hospitalizations	Percent children of total hospitalizations	Hospitalization rate^
4/8/21	24 states and NYC	738,793	14,489	2.0%	0.8%
4/1/21	24 states and NYC	722,365	14,179	2.0%	0.8%
3/25/21	24 states and NYC	713,236	13,953	2.0%	0.8%
3/18/21	24 states and NYC	699,071	13,540	1.9%	0.8%
3/11/21	24 states and NYC	690,206	13,283	1.9%	0.8%
3/4/21	23 states and NYC#	656,757	12,531	1.9%	0.8%
2/25/21	24 states and NYC	665,821	12,630	1.9%	0.8%
2/18/21	24 states and NYC	652,528	12,329	1.9%	0.8%
2/11/21	24 states and NYC	639,318	11,960	1.9%	0.8%
2/4/21	24 states and NYC	623,006	11,585	1.9%	0.8%
1/28/21	24 states and NYC	605,509	11,192	1.8%	0.8%
1/21/21	24 states and NYC	581,897	10,660	1.8%	0.8%
1/14/21	24 states and NYC	560,125	10,182	1.8%	0.8%
1/7/21	24 states and NYC	533,910	9,661	1.8%	0.9%
12/31/20	24 states and NYC	510,384	9,259	1.8%	0.9%
12/17/20	24 states and NYC	468,643	8,411	1.8%	0.9%
12/10/20	24 states and NYC	445,394	7,913	1.8%	0.9%
12/3/20	24 states and NYC	421,766	7,515	1.8%	1.0%
11/19/20	24 states and NYC	381,141	6,716	1.8%	1.1%

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*
~ Data from weeks ending 11/26/20 and 12/24/20 are not included
^ Hospitalization rate = number of child hospitalizations / number of child cases
 # On 3/4/21, SC not included due to incomplete data, resulting in a downward revision of cumulative hospitalizations for all ages

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Appendix Table 2B, cont.: Summary of Child Hospitalization Data from 5/21/20 – 7/29/21*

Date	Number of locations reporting age distribution of hospitalizations	Cumulative total hospitalizations (all ages)	Cumulative child hospitalizations	Percent children of total hospitalizations	Hospitalization rate^
11/12/20	23 states and NYC	362,453	6,337	1.7%	1.2%
11/5/20	24 states and NYC	360,724	6,172	1.7%	1.3%
10/29/20	24 states and NYC	348,296	5,899	1.7%	1.3%
10/22/20	24 states and NYC	324,720	5,585	1.7%	1.3%
10/15/20	24 states and NYC	314,715	5,353	1.7%	1.4%
10/8/20	25 states and NYC#	307,135	5,211	1.7%	1.4%
10/1/20	25 states and NYC	302,896	5,340	1.8%	1.6%
9/24/20	25 states and NYC	294,901	5,164	1.8%	1.7%
9/17/20	25 states and NYC	288,345	5,016	1.7%	1.6%
9/10/20	24 states and NYC	270,034	4,677	1.7%	1.8%
9/3/20	23 states and NYC	257,300	4,321	1.7%	1.9%
8/27/20	22 states and NYC	243,056	4,163	1.7%	2.1%
8/20/20	21 states and NYC	234,810	4,062	1.7%	2.2%

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*
^ Hospitalization rate = number of child hospitalizations / number of child cases
 # On 10/8/20, AZ revised hospitalization data, resulting in a downward revision of cumulative child hospitalizations

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Appendix Table 2B, cont.: Summary of Child Hospitalization Data from 5/21/20 – 7/29/21

Date	Number of locations reporting age distribution of hospitalizations	Cumulative total hospitalizations (all ages)	Cumulative child hospitalizations	Percent children of total hospitalizations	Hospitalization rate^
8/13/20	21 states and NYC	225,893	3,849	1.7%	2.2%
8/6/20	20 states and NYC	206,189	3,276	1.6%	2.2%
7/30/20	20 states and NYC	195,106	2,669	1.4%	2.0%
7/23/20	20 states and NYC	181,345	2,304	1.3%	2.0%
7/16/20	20 states and NYC	172,787	2,074	1.2%	2.1%
7/9/20	20 states and NYC	164,158	1,948	1.2%	2.4%
7/2/20	20 states and NYC	156,640	1,780	1.1%	2.6%
6/25/20	20 states and NYC	151,583	1,663	1.1%	2.9%
6/18/20	19 states and NYC	140,215	1,433	1.0%	3.2%
6/11/20	19 states and NYC	134,600	1,322	1.0%	3.4%
6/4/20	19 states and NYC	128,779	1,231	1.0%	3.4%
5/28/20	16 states and NYC	114,678	1,054	0.9%	3.8%
5/21/20	17 states and NYC	105,665	891	0.8%	3.8%

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*
^ Hospitalization rate = number of child hospitalizations / number of child cases

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Appendix Table 2C: Summary of Child Mortality Data from 5/21/20 – 7/29/21*

Date	Number of locations reporting age distribution of deaths	Cumulative total deaths (all ages)	Cumulative child deaths	Percent children of total deaths	Percent of child cases resulting in death^
7/29/21	43 states, NYC, PR and GU	528,896	358	0.07%	0.01%
7/22/21	43 states, NYC, PR and GU	527,019	349	0.07%	0.01%
7/15/21	43 states, NYC, PR and GU	525,470	346	0.07%	0.01%
7/8/21	43 states, NYC, PR and GU	523,848	344	0.07%	0.01%
7/1/21	43 states, NYC, PR and GU○ ~	522,380	335	0.06%	0.01%
6/24/21	43 states, NYC, PR and GU	520,660	336	0.06%	0.01%
6/17/21	42 states, NYC, PR and GU	518,016	335	0.06%	0.01%
6/10/21	43 states, NYC, PR and GU□	516,663	330	0.06%	0.01%
6/3/21	43 states, NYC, PR and GU	514,325	327	0.06%	0.01%
5/27/21	43 states, NYC, PR and GU	511,346	322	0.06%	0.01%
5/20/21	43 states, NYC, PR and GU○	507,373	316	0.06%	0.01%
5/13/21	43 states, NYC, PR and GU	503,900	308	0.06%	0.01%
5/6/21	43 states, NYC, PR and GU	500,262	306	0.06%	0.01%
4/29/21	43 states, NYC, PR and GU	496,248	303	0.06%	0.01%
4/22/21	43 states, NYC, PR and GU	492,057	296	0.06%	0.01%
4/15/21	43 states, NYC, PR and GU	487,881	297	0.06%	0.01%

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change; For additional information on US child mortality from the CDC, visit https://covid.cdc.gov/covid-data-tracker/#demographics*

^ Number of child deaths / number of child cases

○ On 5/20/21, NE revised mortality data, resulting in a downward revision of cumulative deaths for all ages; As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative deaths through 6/24/21

~ On 7/1/21, AL revised mortality data, resulting in a downward revision of cumulative child deaths

□ On 6/10/21, WA revised mortality data, resulting in a downward revision of cumulative deaths for all ages

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Appendix Table 2C: Summary of Child Mortality Data from 5/21/20 – 7/29/21*

Date	Number of locations reporting age distribution of deaths	Cumulative total deaths (all ages)	Cumulative child deaths	Percent children of total deaths	Percent of child cases resulting in death^
4/8/21	43 states, NYC, PR and GU	481,112	292	0.06%	0.01%
4/1/21	43 states, NYC, PR and GU	476,994	284	0.06%	0.01%
3/25/21	43 states, NYC, PR and GU○	471,104	279	0.06%	0.01%
3/18/21	43 states, NYC, PR and GU□	464,201	268	0.06%	0.01%
3/11/21	43 states, NYC, PR and GU	457,061	266	0.06%	0.01%
3/4/21	43 states, NYC, and GU#	444,878	253	0.06%	0.01%
2/25/21	43 states, NYC, and GU	438,657	256	0.06%	0.01%
2/18/21	43 states, NYC, and GU	425,350	247	0.06%	0.01%
2/11/21	43 states, NYC, and GU	407,222	241	0.06%	0.01%
2/4/21	43 states, NYC, and GU	388,204	227	0.06%	0.01%
1/28/21	43 states, NYC, and GU	369,149	215	0.06%	0.01%
1/21/21	43 states, NYC, and GU	348,860	205	0.06%	0.01%
1/14/21	43 states and NYC	330,261	191	0.06%	0.01%
1/7/21	42 states and NYC	297,914	188	0.06%	0.01%

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*

^ Number of child deaths / number of child cases

○ On 3/25/21, VA revised mortality data, resulting in a downward revision of cumulative deaths for all ages

□ On 3/18/21, KS revised mortality data, resulting in a downward revision of cumulative deaths for all ages

 # On 3/4/21, OH revised mortality data, resulting in a downward revision of cumulative deaths for all ages

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Appendix Table 2C, cont.: Summary of Child Mortality Data from 5/21/20 – 7/29/21*

Date~	Number of locations reporting age distribution of deaths	Cumulative total deaths (all ages)	Cumulative child deaths	Percent children of total deaths	Percent of child cases resulting in death^
12/31/20	43 states and NYC	294,443	179	0.06%	0.01%
12/17/20	42 states and NYC	263,833	172	0.07%	0.01%
12/10/20	42 states and NYC	249,442	162	0.06%	0.01%
12/3/20	43 states and NYC	236,996	154	0.06%	0.01%
11/19/20	43 states and NYC	218,007	138	0.06%	0.01%
11/12/20	42 states and NYC	210,441	133	0.06%	0.01%
11/5/20	42 states and NYC	199,564	123	0.06%	0.01%
10/29/20	42 states and NYC	194,175	121	0.06%	0.02%
10/22/20	42 states and NYC	189,250	120	0.06%	0.02%
10/15/20	42 states and NYC	184,294	120	0.07%	0.02%
10/8/20	42 states and NYC	180,014	115	0.06%	0.02%
10/1/20	42 states and NYC	175,423	112	0.06%	0.02%
9/24/20	42 states and NYC	170,971	109	0.06%	0.02%
9/17/20	42 states and NYC	167,019	109	0.07%	0.02%
9/10/20	42 states and NYC	160,856	105	0.07%	0.02%
9/3/20	42 states and NYC	156,053	103	0.07%	0.02%

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*
~ Data from weeks ending 11/26/20 and 12/24/20 are not included
^ Number of child deaths / number of child cases

Appendix Table 2C, cont.: Summary of Child Mortality Data from 5/21/20 – 7/29/21*

Date	Number of locations reporting age distribution of deaths	Cumulative total deaths (all ages)	Cumulative child deaths	Percent children of total deaths	Percent of child cases resulting in death^
8/27/20	43 states and NYC#	152,884	101	0.07%	0.02%
8/20/20	45 states and NYC	154,279	92	0.06%	0.02%
8/13/20	45 states and NYC	147,356	90	0.06%	0.02%
8/6/20	44 states and NYC	139,685	90	0.06%	0.02%
7/30/20	44 states and NYC	133,267	86	0.06%	0.03%
7/23/20	44 states and NYC	121,539	76	0.06%	0.03%
7/16/20	43 states and NYC	119,265	66	0.06%	0.03%
7/9/20	42 states and NYC	112,289	62	0.06%	0.03%
7/2/20	42 states and NYC	108,513	58	0.05%	0.04%
6/25/20	42 states and NYC	104,683	57	0.05%	0.04%
6/18/20	42 states and NYC	101,056	54	0.05%	0.05%
6/11/20	40 states and NYC	89,866	48	0.05%	0.05%
6/4/20	40 states and NYC	91,241	46	0.05%	0.06%
5/28/20	39 states and NYC	82,298	30	0.04%	0.05%
5/21/20	38 states and NYC	71,689	28	0.04%	0.06%

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*

^ Number of child deaths / number of child cases

 # As of 8/27/20, RI, MI, and SC not reporting age distributions of COVID-19 deaths (exact numbers not provided for <5 deaths); mortality data from those states excluded

Appendix Table 3A: Child COVID-19 Case Data Available on 7/29/21*

Click location name to view original data source

Location	Age range	Child population, 2019	Cumulative child cases	Percent children of total cases	Cumulative total cases (all ages)	Cases per 100,000 children
Alabama^	0-17	1,088,668	53,350	12.1%	442,373	4900.5
Alaska	0-19	196,852	14,874	20.7%	71,757	7555.9
Arizona	0-19	1,838,598	153,306	16.6%	921,445	8338.2
Arkansas	0-17	700,155	56,337	14.8%	379,726	8046.4
California	0-17	8,894,641	503,460	13.1%	3,830,008	5660.3
Colorado○	0-19	1,407,971	98,015	17.1%	572,854	6961.5
Connecticut	0-19	735,193	64,243	18.2%	353,505	8738.2
Delaware	0-17	203,572	16,772	15.1%	111,016	8238.9
District of Columbia	0-19	149,337	7,334	14.6%	50,268	4911.0
Florida	0-14	3,512,139	228,188	9.2%	2,479,975	6497.1
Georgia	0-17	2,503,881	107,637	11.6%	926,707	4298.8
Guam	0-19	57,727	1,483	17.4%	8,501	2569.0
Hawaii	0-17	299,868	5,363	13.6%	39,388	1788.5
Idaho	0-17	448,201	22,752	11.4%	199,516	5076.3
Illinois	0-19	3,145,309	232,739	16.4%	1,415,572	7399.6
Indiana	0-19	1,755,070	118,906	15.5%	768,624	6775.0
Iowa□	0-17	726,841	45,121	11.0%	410,166	6207.8
Kansas	0-17	700,250	41,958	12.7%	330,932	5991.9
Kentucky	0-19	1,118,934	75,114	15.7%	479,431	6713.0
Louisiana	0-17	1,087,630	73,519	16.6%	442,951	6759.6
Maine	0-19	281,158	13,305	18.9%	70,261	4732.2
Maryland	0-19	1,489,721	75,087	16.1%	467,435	5040.3
Massachusetts#	0-19	1,558,231	91,030	13.6%	668,404	5841.9
Michigan	0-19	2,407,690	166,715	16.5%	1,008,429	6924.3
Minnesota	0-19	1,445,346	114,420	18.7%	612,001	7916.4
Mississippi	0-17	698,583	45,607	13.3%	341,862	6528.5
Missouri†	0-17	1,370,585	63,742	11.3%	564,201	4650.7

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*
^ As of 8/13/20, AL changed definition of child case from 0-24 to 0-17 years
○ On 6/24/21, due to available CO data and calculation required to obtain child total, there is a downward revision of cumulative child cases
□ On 7/15/21, IA revised case data, resulting in a downward revision of cumulative child cases
 # As of 9/3/20, MA changed reporting from total child cases to cases added in last two weeks; 7/29/21 totals calculated using MA Dept. of Public Health COVID-19 Dashboard published 7/29/21 (data from 7/11/21-7/24/21) and 7/8/21 version of this report; For several weeks in 2021 (2/18, 3/11, 6/3, 6/10, 6/24, 7/1, 7/15, and 7/22), due to available data and calculations required to obtain child cases, there is a downward revision of cumulative child cases for MA
† As of 10/1/20, MO changed definition of child case from 0-19 to 0-17 years

Appendix Table 3B: Child COVID-19 Case Data Available on 7/29/21*

Click location name to view original data source

Location	Age range	Child population, 2019	Cumulative child cases	Percent children of total cases	Cumulative total cases (all ages)	Cases per 100,000 children
Montana	0-19	254,416	18,540	16.0%	116,143	7287.3
Nebraska~	0-19	760,272	35,425	15.8%	224,206	4659.5
Nevada	0-19	688,997	50,423	14.2%	355,091	7318.3
New Hampshire	0-19	291,038	18,295	18.2%	100,465	6286.1
New Jersey	0-17	1,938,578	112,081	12.4%	904,447	5781.6
New Mexico	0-19	531,712	38,562	18.4%	209,684	7252.4
North Carolina	0-17	2,300,715	132,616	12.7%	1,044,877	5764.1
North Dakota	0-19	200,777	19,791	17.8%	111,486	9857.2
NYC	0-17	1,726,900	91,565	11.4%	800,064	5302.3
Ohio	0-19	2,886,873	155,668	13.8%	1,126,625	5392.3
Oklahoma	0-17	952,238	64,219	13.5%	474,845	6744.0
Oregon	0-19	965,480	36,739	16.9%	217,690	3805.3
Pennsylvania	0-19	2,801,187	181,868	14.9%	1,223,390	6492.5
Puerto Rico□	0-19	594,011	20,848	14.4%	144,961	3509.7
Rhode Island○	0-18	220,525	22,549	15.6%	144,361	10225.1
South Carolina	0-20	1,314,988	117,448	19.1%	614,912	8931.5
South Dakota	0-19	240,567	20,314	16.2%	125,216	8444.2
Tennessee	0-20	1,762,659	166,602	18.7%	888,745	9451.7
Texas^	0-19	8,210,585	5,607	7.0%	80,313	--
Utah	0-14	774,764	47,360	11.0%	431,256	6112.8
Vermont	0-19	134,415	5,641	22.7%	24,830	4196.7
Virginia	0-19	2,087,426	111,263	16.1%	693,206	5330.2
Washington	0-19	1,840,306	84,962	18.0%	471,489	4616.7
West Virginia	0-19	402,473	27,814	16.7%	166,748	6910.7
Wisconsin	0-19	1,422,095	113,705	16.6%	686,013	7995.6
Wyoming#	0-18	140,694	8,014	14.8%	54,034	5696.0

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*
~ As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative cases through 6/24/21
□ On 3/11/21, due to only PR data available and calculation required to obtain child total, there is a downward revision of cumulative child cases
○ On 4/1/21 and 4/29/21, RI revised case data, resulting in downward revision of cumulative cases; On 5/6/21, due to data revision and lag in reporting, RI experienced 30% increase in child cases (4,906 cases added)
^ Texas reported age for only 3% of total confirmed cases; Cases per 100,000 children omitted for Texas; Data for Texas in this report is limited to the case count for which age is provided; On 7/22/21 and 7/29/21, TX did not update case data
 # On 2/18/21, 4/29/21, and 5/20/21, WY revised case data, resulting in a downward revision of cumulative child cases

Appendix Table 4: Child Testing Data Available on 7/29/21*

COVID-19 Testing and Children

Location	Age range	Cumulative total tests (all ages)	Cumulative child tests	Percent children of total tests	Positive rate^
Arizona	0-19	4,732,669	877,650	18.5%	17.5%
Illinois	0-19	26,720,724	3,651,584	13.7%	6.4%
Indiana	0-19	11,181,727	2,227,400	19.9%	5.3%
Iowa○	0-17	2,143,750	128,625	6.0%	35.1%
Minnesota~	0-19	10,464,681	1,643,859	15.7%	7.0%
Nevada	0-19	3,712,707	538,343	14.5%	9.4%
New Hampshire	0-19	2,125,687	382,310	18.0%	4.8%
Rhode Island	0-18	897,038	169,483	18.9%	13.3%
Tennessee	0-20	8,394,290	1,543,566	18.4%	10.8%
West Virginia□	0-19	3,115,799	361,433	11.6%	7.7%
Wyoming#	0-18	815,018	89,652	11.0%	8.9%

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*

^ Positive rate = number of child cases / number of child tests

○ On 5/20/21, 5/27/21, 6/3/21, 6/10/21, 6/17/21, 6/24/21, 7/1/21, and 7/8/21, IA revised testing data, resulting in a downward revision of cumulative tests for all ages; On 7/15/21, IA stopped updating child testing data; IA cumulative tests through 7/8/21

~ On 6/3/21, MN revised testing data, resulting in a downward revision of cumulative child tests; On 6/10/21, MN revised testing data, resulting in a downward revision of cumulative tests for all ages

□ On 6/17/21, WV revised testing data, resulting in a downward revision of cumulative child tests and cumulative tests for all ages

 # On 2/11/21 and 3/18/21, WY revised testing data, resulting in a downward revision of cumulative tests for all ages

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Appendix Table 5: Child Hospitalization Data Available on 7/29/21*

COVID-19-Associated Hospitalizations and Children

Location	Age range	Cumulative child hospitalizations	Cumulative total hospitalizations (all ages)	Percent children of total hospitalizations	Hospitalization rate^
Alaska	0-19	35	1,723	2.0%	0.2%
Arizona#	0-19	2,345	66,804	3.5%	1.5%
Colorado	0-19	1,035	32,740	3.2%	1.1%
Georgia±	0-17	1,391	66,742	2.1%	1.3%
Hawaii	0-17	56	2,285	2.5%	1.0%
Idaho	0-17	168	9,039	1.9%	0.7%
Indiana	0-19	1,087	61,651	1.8%	0.9%
Kansas	0-17	202	11,617	1.7%	0.5%
Minnesota	0-19	1,112	33,265	3.3%	1.0%
Mississippi	0-17	195	10,397	1.9%	0.4%
Nebraska~	0-19	131	6,891	1.9%	0.4%
New Hampshire	0-19	22	1,639	1.3%	0.1%
New Jersey	0-17	1,420	90,793	1.6%	1.3%
NYC	0-17	1,741	110,645	1.6%	1.9%
Ohio	0-19	1,646	61,833	2.7%	1.1%
Oregon	0-19	347	12,258	2.8%	0.9%
Rhode Island□	0-18	243	10,602	2.3%	1.1%
South Carolina	0-20	481	24,062	2.0%	0.4%
South Dakota○	0-19	133	6,508	2.0%	0.7%
Tennessee	0-20	536	22,847	2.3%	0.3%
Utah	0-14	400	18,526	2.2%	0.8%
Virginia†	0-19	640	31,266	2.0%	0.6%
Washington	0-19	562	26,634	2.1%	0.7%
Wisconsin	0-19	1,131	33,189	3.4%	1.0%

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change*

^ Hospitalization rate = number of child hospitalizations / number of child cases

 # On 10/8/20, 7/15/21, 7/22/21 and 7/29/21, AZ revised data, resulting in a downward revision of cumulative child hospitalizations; On 7/1/21, AZ revised data resulting in a 33% increase in cumulative child hospitalizations (592 added)

± On 7/8/21, GA revised hospitalization data, resulting in a downward revision of cumulative child hospitalizations

~ On 4/15/21, NE revised hospitalization data, resulting in a downward revision of cumulative hospitalizations for all ages; As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative hospitalizations through 6/24/21

□ On 6/17/21 and 7/29/21, RI revised hospitalization data, resulting in a downward revision of cumulative child hospitalizations and (on 6/17/21) cumulative hospitalizations for all ages

○ On 6/3/21, 6/10/21, 6/17/21, 6/24/21, 7/1/21, 7/8/21, 7/15/21, and 7/22, SD revised hospitalization data, resulting in a downward revision of child cumulative hospitalizations and cumulative hospitalizations for all ages

† On 6/17/21, VA revised hospitalization data resulting in a downward revision of cumulative child hospitalizations

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Appendix Table 6A: Child Mortality Data Available on 7/29/21*

COVID-19-Associated Deaths and Children

Location	Age range	Cumulative child deaths	Cumulative total deaths (all ages)	Percent children of total deaths	Percent of child cases resulting in death^
Alabama#	0-17	8	11,510	0.07%	0.01%
Alaska	0-19	0	379	0.00%	0.00%
Arizona	0-19	34	18,185	0.19%	0.02%
Arkansas	0-17	2	6,099	0.03%	0.00%
California	0-17	28	63,891	0.04%	0.01%
Colorado	0-19	18	6,924	0.26%	0.02%
Connecticut	0-19	4	8,293	0.05%	0.01%
Delaware	0-17	2	1,698	0.12%	0.01%
District of Columbia	0-19	0	1,146	0.00%	0.00%
Florida	0-15	7	38,670	0.02%	0.00%
Georgia	0-17	11	18,691	0.06%	0.01%
Guam	0-19	2	143	1.40%	0.13%
Hawaii	0-17	1	529	0.19%	0.02%
Idaho	0-17	0	2,190	0.00%	0.00%
Illinois	0-19	21	23,420	0.09%	0.01%
Indiana	0-19	8	13,564	0.06%	0.01%
Iowa	0-17	3	6,183	0.05%	0.01%
Kansas☐	0-17	2	5,247	0.04%	0.00%
Kentucky	0-19	2	7,325	0.03%	0.00%
Louisiana	0-17	9	9,883	0.09%	0.01%
Maine	0-19	1	899	0.11%	0.01%
Maryland	0-19	11	9,818	0.11%	0.01%
Massachusetts~	0-19	8	17,652	0.05%	0.01%
Minnesota	0-19	3	7,663	0.04%	0.00%

* *Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change;*
^ Number of child deaths / number of child cases;
 # As of 8/13/20, AL changed definition of child case, resulting in a downward revision of cumulative child deaths; On 7/1/21, AL revised mortality data, resulting in a downward revision of cumulative child deaths;
☐ On 3/18/21, KS revised mortality data, resulting in a downward revision of cumulative deaths for all ages
~ As of 9/3/20, MA changed reporting from total child cases to cases added in last two weeks; 7/29/21 totals calculated using MA Dept. of Public Health COVID-19 Dashboard published 7/29/21 (data from 7/11/21-7/24/21) and 7/8/21 version of this report.

Appendix Table 6B: Child Mortality Data Available on 7/29/21*

COVID-19-Associated Deaths and Children

Location	Age range	Cumulative child deaths	Cumulative total deaths (all ages)	Percent children of total deaths	Percent of child cases resulting in death^
Mississippi	0-17	3	7,533	0.04%	0.01%
Missouri	0-17	5	9,642	0.05%	0.01%
Nebraska○	0-19	4	2,259	0.18%	0.01%
Nevada	0-19	6	5,874	0.10%	0.01%
New Hampshire	0-19	0	1,386	0.00%	0.00%
New Jersey	0-17	7	23,870	0.03%	0.01%
North Carolina	0-17	3	13,618	0.02%	0.00%
North Dakota	0-19	1	1,538	0.07%	0.01%
NYC	0-17	26	28,417	0.09%	0.03%
Ohio~	0-19	7	20,490	0.03%	0.00%
Oklahoma	0-17	3	7,485	0.04%	0.00%
Oregon	0-19	3	2,849	0.11%	0.01%
Pennsylvania	0-19	15	27,842	0.05%	0.01%
Puerto Rico	0-19	4	2,577	0.16%	0.02%
South Dakota	0-19	0	2,043	0.00%	0.00%
Tennessee	0-20	10	12,722	0.08%	0.01%
Texas#	0-19	55	51,802	0.11%	–
Vermont	0-19	0	259	0.00%	0.00%
Virginia□	0-19	8	11,525	0.07%	0.01%
Washington†	0-19	10	6,100	0.16%	0.01%
Wisconsin	0-19	3	8,287	0.04%	0.00%
Wyoming	0-18	0	776	0.00%	0.00%

** Note: Data represent cumulative counts since states began reporting; All data reported by state/local health departments are preliminary and subject to change; ^ Number of child deaths / number of child cases*
○ On 5/20/21, NE revised mortality data, resulting in a downward revision of cumulative deaths for all ages; As of 6/30/21, NE COVID-19 dashboard is no longer available; NE cumulative deaths through 6/24/21
~ On 3/4/21, OH revised mortality data, resulting in a downward revision of cumulative deaths for all ages
 # As of 7/30/20, Texas provided age distribution for all COVID-19-associated deaths; Texas reported age for only 3% of total confirmed cases
Percent of child cases resulting in death omitted for Texas; Data for Texas in this report is limited to the case count for which age is provided
□ On 3/25/21, VA revised mortality data, resulting in a downward revision of cumulative deaths for all ages
† On 6/10/21, WA revised mortality data, resulting in a downward revision of cumulative deaths for all ages

Frequently Asked Questions

Q: *Why are the AAP and CHA collecting this data?*

A: Our goal is to provide a weekly snapshot of how COVID-19 is affecting children in the United States. CDC provides a national number of cases by age on its COVID-19 data tracker, but there are no geographic indicators provided and the age data are not released on a regular schedule. Our data collection method allows for tracking the number of child cases weekly, as well as providing publicly reported case numbers for children at the state level.

Q: *The age ranges for children in the report are broad – why were these age ranges chosen and are data available for more specific age ranges of children?*

A: Each state makes different decisions about how to report the age distribution of COVID-19 cases, and as a result the age range for reported cases varies by state. For the purposes of this report it is not possible to standardize more detailed age ranges for children based on what is publicly available from the states at this time. Please refer to specific state health department websites of interest to see if the state provides more granular detail of cases by age (see report Appendix for links to all state data sources).

Q: *What is the definition of a COVID-19 case?*

A: COVID-19 cases are defined as persons who have been identified as a confirmed (via a diagnostic molecular test) or probable (via a clinical diagnosis) case. COVID-19 cases are reported by the states, following reporting standards established by the CDC. For more information on the definitions of confirmed and probable cases, see the following resources: COVID Tracking Project: Definitions; CDC, COVID-19 Data and Surveillance.

Q*: Why are only a small portion (<5%) of child COVID-19 cases included for Texas?*

A: Texas Department of State Health Services reports overall confirmed cases but only a small fraction are included in the age distribution. Other sources for child COVID-19 cases are not included in the report but outline much higher numbers (eg, Texas Public Schools COVID-19 Data).

Q*: Why does the report not provide the percent of child cases that were symptomatic vs. asymptomatic or that had underlying conditions?*

A: For the report, we are limited to the data that states are making publicly available. At this time, states are not providing data related to symptoms or underlying conditions and age. CDC provides some information on COVID-19 hospitalizations by age on the CDC COVID-NET dashboard.

Q: *For the child population for each state, does that match the listed age range for the state's child COVID-19 data?*

A: Yes, the report uses child population numbers that match on directly with the listed age range for children provided by each state. State population numbers were obtained from the US Census Bureau.

Q: *The report provides "cumulative totals" for cases, tests, hospitalizations, and deaths for available states. Are those the total numbers since the states began reporting, or since the AAP and CHA started collecting this data?*

A: All "cumulative total" data represent cumulative counts since states began reporting COVID-19 data.

Q: *How can I learn more about COVID-19 cases in my state?*

A: Links to all state data sources are provided in the Appendix.

Q: *Are these data final?*

A: No. All data reported by state/local health departments included in this report are preliminary and subject to change and revision as health departments gather more information.

Q: *Is this the most recent report available? When will a new report be released?*

A: The most recent version of the report is available for download on the AAP website. New reports are made available on a weekly basis at **aap.org/CovidStateData.**

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Additional Resources

- For more information about COVID-19 data in your area, we encourage you to reach out to your state and local health department officials
- Visit the **AAP Critical Updates** site for daily updates, resources, and guidance on COVID-19 and pediatrics
- For COVID-19 articles for parents in English and Spanish, visit **HealthyChildren.org**, the parenting website of the AAP

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Acknowledgements

Special thanks to the following individuals for their contributions to this report: Alex Rothenburger, MPA (Children's Hospital Association), Vinson Do (Children's Hospital Association), Lynn Olson, PhD (American Academy of Pediatrics), Blake Sisk, PhD (American Academy of Pediatrics), Mary Pat Frintner, MSPH (American Academy of Pediatrics), Liz Gottschlich, MA (American Academy of Pediatrics), Kate Kornfeind, MPH (American Academy of Pediatrics), and Chloe Somberg (American Academy of Pediatrics)

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EXHIBIT K

77°

SOUTH CAROLINA NEWS

As COVID cases rise, Gov. McMaster says closing schools and mandating masks is not the answer, 'personal responsibility is'

FILE – In this July 29, 2020 file photo, South Carolina Gov. Henry McMaster speaks during a COVID-19 briefing as state epidemiologist Linda Bell, left, looks on, in West Columbia, S.C. McMaster ended South Carolina's ongoing pandemic-related state of emergency on Monday, June 7, 2021. The Republican said during a news conference that the coronavirus situation in the state had improved to the point that it was no longer necessary. (AP Photo/Meg Kinnard, File)

77°

Coronavirus cases are again rising as students across the state inch closer to a new school year. The South Carolina Department of Health and Environmental Control reported more than 800 new daily cases on Tuesday.

But many school districts will not require students to wear a face mask in the classroom.

Gov. McMaster won't allow SC schools to require masks, despite American Academy of Pediatrics' new recommendations →

"State law now prohibits school administrators from requiring students to wear a mask," said Gov, McMaster. "The General Assembly agreed with me – and that decision is now left up to the parents."

The South Carolina legislature's 'Mask Mandate Prohibition' proviso, which was

77°

mandating masks is not the answer. Personal responsibility is."

COVID-19: Local hospitalizations are on the rise among unvaccinated →

McMaster said the coronavirus vaccine works and again urged those who are resistant to speak with their doctors and family members to "consider all of your options."

The American Academy of Pediatrics (AAP) last week suggested "all students older than two years and all school staff should wear face masks at school (unless medical or developmental conditions prohibit use" during the upcoming school year.

SHARE THIS STORY

EXHIBIT L

Thread

Gov. Henry McMaster @henrymcmaster · Jul 27
State law now prohibits school administrators from requiring students to wear a mask. The General Assembly agreed with me – and that decision is now left up to the parents.
641 662 2.1K

Gov. Henry McMaster
@henrymcmaster

Replying to @henrymcmaster

The Delta Variant poses a real threat to South Carolinians. However, shutting our state down, closing schools and mandating masks is not the answer. Personal responsibility is.

3:57 PM · Jul 27, 2021 · Twitter Web App

141 Retweets **285** Quote Tweets **923** Likes

Gov. Henry McMaster @henrymcmaster · Jul 27
Replying to @henrymcmaster
The vaccine works. If you haven't decided whether to get vaccinated yet, please talk to your doctors and loved ones and consider all of your options. If you decide to get the vaccine, you can find a convenient location here:

Vaccine Location Web Map
Vaccine Location Web Map
sc-dhec.maps.arcgis.com

161 94 277

Barrett Gruber @barrettgruber · Jul 27
Replying to @henrymcmaster
Can you open with this portion?!
1

Kayliah @Kayliah_P95 · Jul 27
Schools in Greenwood and some surrounding area are ALREADY open. They went to year round model this year.
1 1

Show replies

KProieau @BettyduzDallas · Jul 27
Replying to @henrymcmaster
I'm going to make it MY personal responsibility to ensure you are voted out as governor!
14 4 172

Plantagenet @14thCenturyGray · Jul 27
Replying to @henrymcmaster
Yes. Thank you.

Explore

Settings

Search Twitter

health?

1 11

Bullet with Butterly wings @CarolinaReiver · Jul 27
Replying to @henrymcmaster
So you agree that it's a real threat but you're going to do nothing about it? What a joke
4 3 78

nicebluewave @Benitezvotes201 · Jul 27
Replying to @henrymcmaster
your people have no sense of responsiblity that's why covid is back
2 4

~ esperanza ~ @TeachEsp · Jul 27
Replying to @henrymcmaster
If you don't want to close schools, then mask up. If you're fighting masks that means you're FOR closing schools because That's what's going to happen if there's uncontrolled spread and sick/dead kids.
3 15 150

LogicRules @LogicRules10 · Jul 27
Replying to @henrymcmaster
Yes it is but when you mandate students have to go back to in person classes you have to protect them by mandating masks. It's really not that hard to make leadership decisions.
6 2 45

Daniel Correll @dcorrell387 · Jul 27
Replying to @henrymcmaster
Oof…you're out of touch with your constituents and our best interests.
1 5

Not Today @sillyfools09 · Jul 27
Replying to @henrymcmaster
Sir, you haven't figured it out yet? Common sense (as you have previously stated) is not so common here in beautiful SC 🤦🏻‍♀️ How many more ill & deaths are you asking for?
5 34

Anna D. (wear a mask) @ADJ5859 · Jul 27
Replying to @henrymcmaster
Personal responsibility places the responsible citizens lives in jeopardy. Too many irresponsible people in the United States is the reason the Delta Variant is taking over.
1

erica crist @crossvine2 · Jul 27
Replying to @henrymcmaster
Children 12 and under can't get the vaccine to protect themselves. Do you just not care about that demographic because they can't vote?
9 5 112

Malady @hack_mole · Jul 27
Mandating an unapproved vaccine is not the way to go
2 1

Show replies

Newsoum @mr_puzum · Jul 27

Don't miss what's happening
People on Twitter are the first to know.
Log in S

Bob Doyle @bob_doyle13 · Jul 27
Replying to @henrymcmaster
And the people have proven that they can NOT be responsible.

1 9

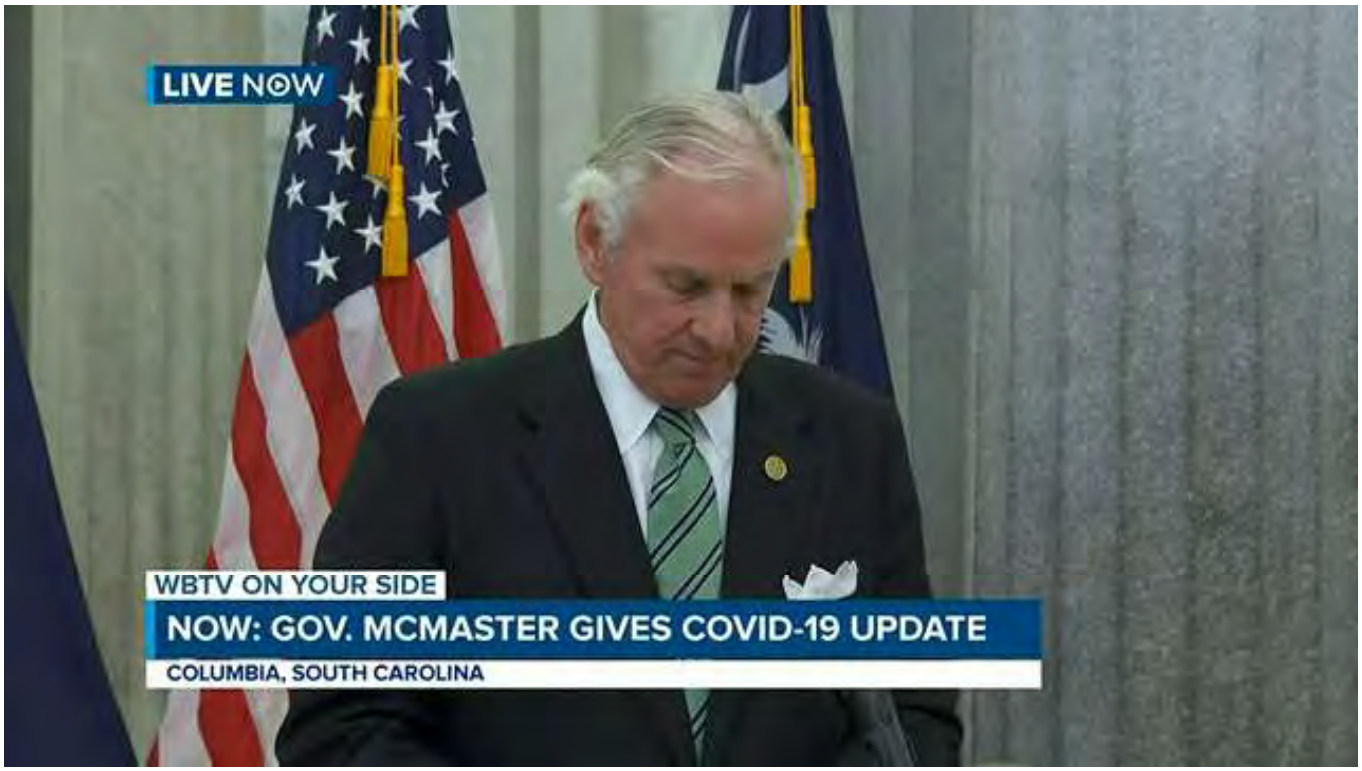
Lee Howell @leehowell32 · Jul 27
Replying to @henrymcmaster
If a kid is vaccinated should be left up to the parents. Period.

1 1

EXHIBIT M

Gov. McMaster encourages vaccinations, acknowledges Delta variant concerns but rejects school mask mandates

Gov. Henry McMaster says shutdowns will not return in South Carolina.



By WBTV Web Staff

Published: Aug. 9, 2021 at 7:33 AM EDT | *Updated: Aug. 9, 2021 at 10:18 AM EDT*

COLUMBIA, S.C. (WBTV/WIS) - Governor Henry McMaster urged South Carolinians to get vaccinated against COVID-19, but insisted school districts should not require masks in the classroom. on Monday morning.

"The new variant the Delta there it does pose a real threat. We know that it spreads more easily," McMaster said. "But shutting our state down, closing schools and masking children who have no choice -- for the government to mask children who have no choice to protect adults who do have a choice is the wrong thing to do. And we're not going to do it."

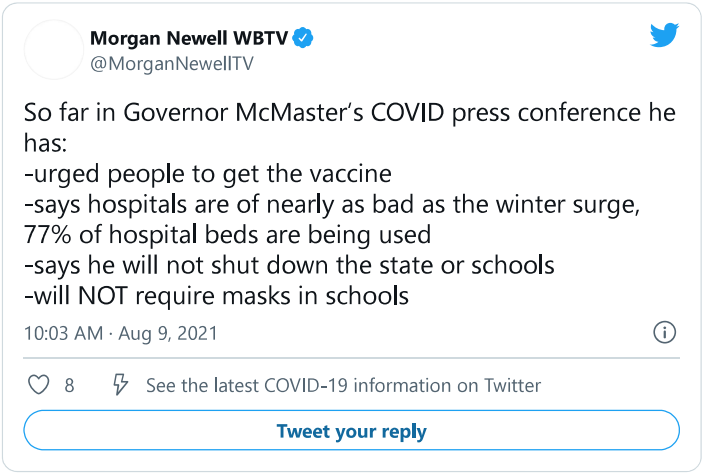
The governor held a news conference Monday morning from the Statehouse in Columbia where he acknowledged the increase in COVID-19 cases

Gov: SC law 'very clear' in banning school mask mandates

His statement came after South Carolina's capital city ratified an ordinance mandating the use of masks in Columbia elementary and middle schools for at least the beginning of the school year.

Columbia Mayor Steve Benjamin says the move will help protect children who are too young to be vaccinated against COVID-19.

But a state budget proviso prohibits South Carolina educational institutions from using appropriated funds to mandate masks. It's that provision that McMaster, a former prosecutor, says preempts the city's action.



McMaster said now is a great time to get the vaccine as schools gear up to begin the new school year. He said he took the vaccine and urged others to do so as well.

"I've been vaccinated. I've believed that it works. Studies show that all of the vaccines, all three are highly effective against COVID and the new variant," McMaster said.

South Carolina currently has reported 518,480 positive COVID-19 cases and 8,771 deaths with a daily percent positive of 16.3 percent.

Gov. McMaster says hospitalizations are nearly as bad as the winter surge of COVID-19 cases as 77 percent of hospital beds are being used.

The governor says he will not shut down the state or schools due to COVID-19.

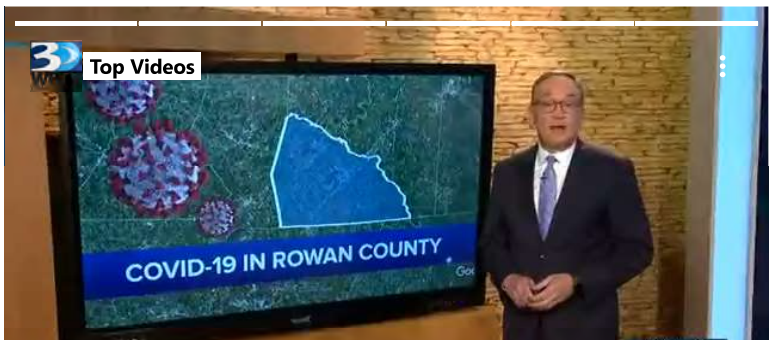


EXHIBIT N

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

State of South Carolina, ex rel Alan Wilson, Attorney General. . . . . Petitioner,

v.

City of Columbia. . . . . Respondent.

COMPLAINT

State of South Carolina, ex rel Alan Wilson, Attorney General (State), brings this action seeking a declaration by this Court that two City of Columbia mask ordinances for public schools are in conflict with State law and are invalid.

PARTIES

1. Attorney General Alan Wilson brings this action for the State of South Carolina as its chief legal officer in order to challenge municipal ordinances that conflict with State law as to mask requirements for public schools.

2. The City of Columbia is the municipality of the State of South Carolina that adopted the ordinances at issue.

JURISDICTION AND VENUE

3. The jurisdiction of this Court is founded upon Rule 245, SCACR, S.C. Code Ann §14-3-310 and S.C. Const. art. V, §5. Additionally, jurisdiction is founded on the South Carolina

Uniform Declaratory Judgments Act, §15-53-10, et seq.

CONTROLLING STATUTE

4. The Appropriations Act, Act No. 94, Part 1B, §1.108, 2021 S.C. Acts, of the provisos for the South Carolina Department of Education directs as follows: "(SDE: Mask Mandate Prohibition) No school district, or any of its schools, may use any funds appropriated or authorized pursuant to this act to require that its students and/or employees wear a facemask at any of its education facilities. This prohibition extends to the announcement or enforcement of any such policy." Although this statute is controlling, other authority is set forth below.

ORDINANCES AT ISSUE

7. City of Columbia Ordinance 2021-069 (Exhibits to Petition, p. 1), ratifies the Mayor's Declaration of Emergency by Ordinance 2021-068 (Exhibits, p. 3) and provides in part, as follows.

> facial coverings shall be required by all faculty, staff, children over the age of two (2), and visitors, in all buildings at public and private schools or daycares whose purpose is to educate and/or care for children between the ages of two (2) and fourteen (14) to slow the spread of the novel Coronavirus and the disease COVID- 19 within the City limits.

ALLEGATIONS REGARDING ORDINANCES

10. On August 6, 20201, the Honorable Harvey Peeler, Jr., President of the Senate, and the Honorable Jay Lucas, Speaker of the House, wrote the Attorney General on August 6, 2021, stating, in part, as follows:

> We believe Proviso 1.108 is clear and unambiguous. It prohibits face-covering mandates in public schools no matter where in the state they are located. Further, there is nothing about this proviso that indicates local government has authority to amend, augment or even ignore the policy set forth by the State. We also believe that any directive properly enacted by the General Assembly serves as the general law of the State

of South Carolina.

The actions taken by Columbia City Council at the request and direction of Mayor Benjamin are in clear and deliberate violation of the plain meaning of the proviso.

We would respectfully request that your office review the action of the City of Columbia and if you believe it necessary, take appropriate action on behalf of the State of South Carolina and the statewide policy adopted by Proviso 1.108.

Exhibits, p. 8.

11. The Attorney General wrote the Honorable Stephen K. Benjamin, Mayor of Columbia, and City Council members on August 11 stating, in part, as follows: Exhibits p. 9.

It is the opinion of my office that these ordinances [2021-068 and 2021-069] arc in conflict with state law and should either be rescinded or amended. Otherwise, the city will be subject to appropriate legal actions to enjoin their enforcement. Encouragement of facemask wearing by city officials and cven requirements for facemasks in city buildings and other facilities would not be in violation or the proviso. Also, parents, students, and school employees may choose to wear facemasks anywhere at any time.

My office has previously opined that budget provisos have the full force and effect of state law throughout the fiscal year for which a budget is adopted. . . .

While the proviso [1.108] does not mention municipalities. it is clear from both a plain reading of its language and from the intent expressed by legislative leaders that the General Assembly does not believe that school students or employees should be subject to facemasks mandates. While we appreciate the efforts of city leaders around the state to protect their populace from the spread of the COVID-19 virus and variants of it, these efforts must conform to state law.

17. The City responded to the Attorney General on August 11, 2021 stating, in part, as follows:

In the matter at hand, the issue is whether a Proviso that acts as a “Mask Mandate Prohibition” for schools and school districts, is germane to fiscal issues, raising and spending taxes, which is the sole purpose of the appropriations act? The clear answer, using the sound logic of our Supreme Court is that it is not. A mask mandate prohibition is clearly not a matter that is germane to fiscal issues which is the only issue allowed to be taken up in the general appropriations act and therefore it is unconstitutional and unenforceable.

Exhibits, p. 11.

FOR A FIRST CAUSE OF ACTION

19. The above paragraphs are incorporated by reference as fully as if set forth herein.

20. The above ordinances of the City directly conflict with and are barred by Proviso 1.108.

21. Although the City provisos state that the City will provide masks to the schools, the responsibility for ensuring compliance will fall on the schools, themselves, and will require the use of public funds via school personnel and other school resources in violation of Proviso 1.108.

22. Proviso 1.108 is presumed to be constitutional. *S.C. Dep't of Soc. Servs. v. Michelle G.*, 407 S.C. 499, 506, 757 S.E.2d 388, 392 (2014)("'all statutes are presumed constitutional and, if possible, will be construed to render them valid.'). '[A] legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt.'"). The City must comply with Proviso 1.108 absent a declaration of a court of law that the law is unconstitutional. Therefore, Ordinances 21-068 and 21-069 are void and unenforceable.

23. Proviso 1.108 does not violate S.C. Const. art. III, §17 as "it reasonably and inherently relates to the raising and spending of tax monies." *Town of Hilton Head Island v. Morris*, 324 S.C. 30, 35, 484 S.E.2d 104, 107 (1997)

FOR A SECOND CAUSE OF ACTION

22. The above paragraphs are incorporated by reference as fully as if set forth herein.

23. Apart from Proviso 1.108, the above ordinances exceed the authority of the City of Columbia under State law and conflict with the authority of school districts as well as the General Assembly. *See, eg.*, S.C. Code Ann. §59-19-90 (general powers and duties of school trustees); *Moye v. Caughman*, 265 S.C. 140, 143, 217 S.E.2d 36, 37 (1975)("public education is not the duty of the counties, but of the General Assembly.").

WHEREFORE, Petitioner State ex rel Wilson respectfully requests that this Court declare Ordinances 2021-068 and 2021-069 invalid under State law and provide for such other relief as it deems just and proper.

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

s/ J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680; (803)734-3677 (Fax)
esmith@scag.gov

ATTORNEYS FOR THE
STATE EX REL WILSON

August 19, 2021

EXHIBIT O

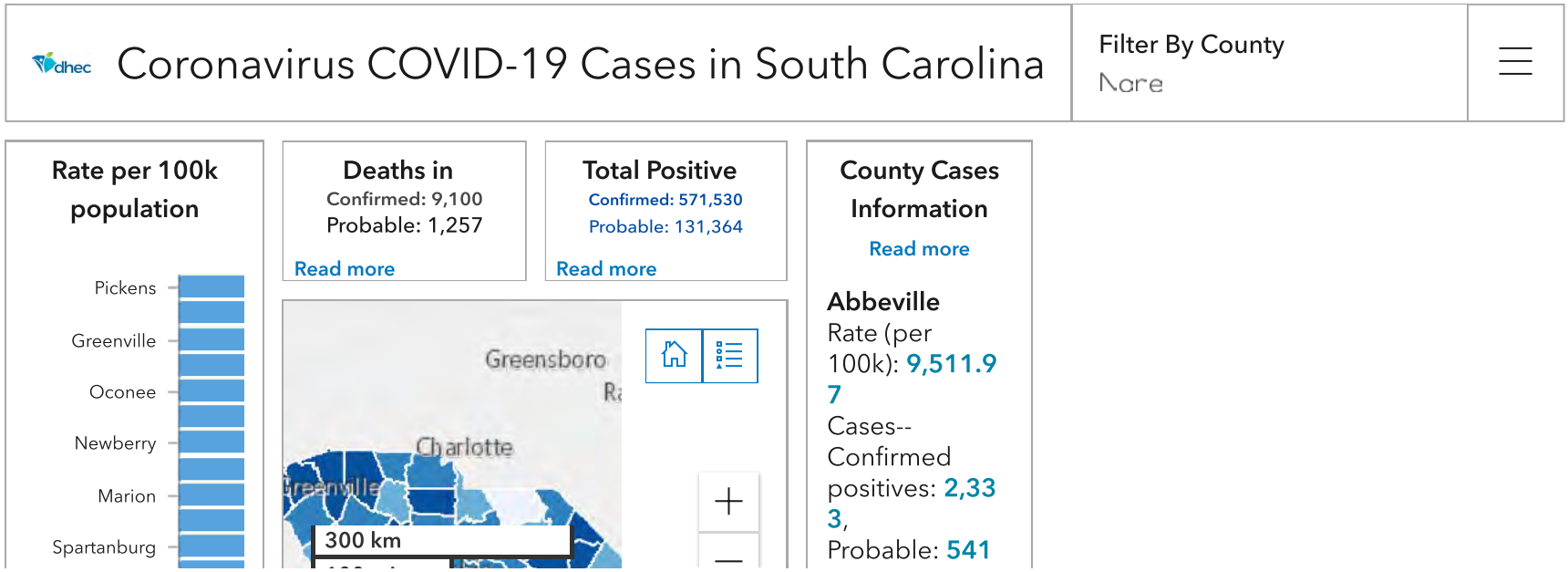
COVID-19 Testing Data & Projections

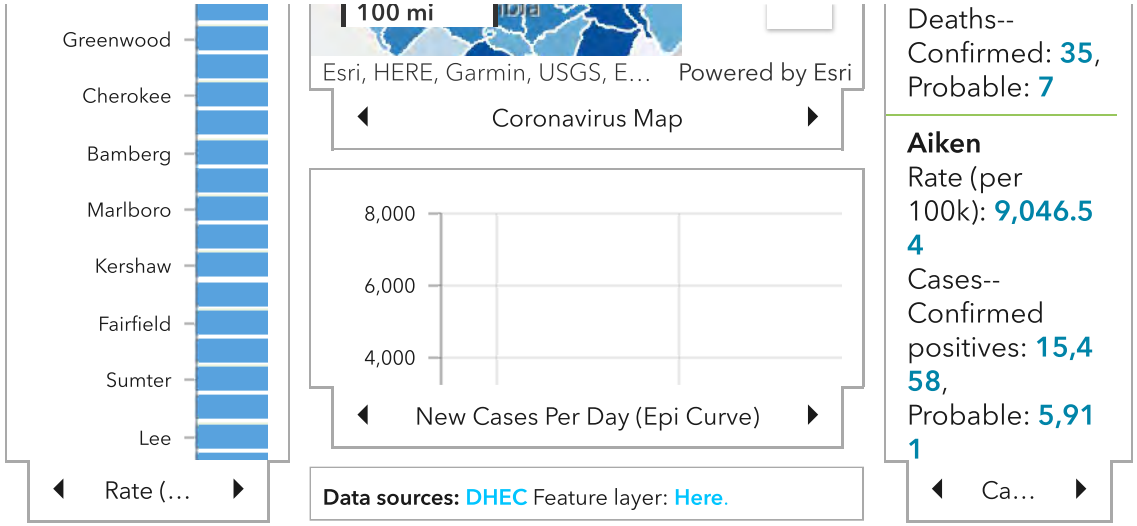
Wednesday, Aug. 25, 2021

Updated Monday-Friday

Testing

Laboratories are required to report every positive and negative COVID-19 test result for South Carolina residents to DHEC within 24 hours. DHEC investigates every confirmed and probable case of COVID-19. Find more information about COVID-19 cases, deaths, hospitalizations, demographics and more on the **County-Level Data for COVID-19** </south-carolina-county-level-data-covid-19> dashboard.





Find a COVID-19 Testing Site Near You </infectious-diseases/viruses/coronavirus-disease-2019-covid-19/covid-19-screening-testing-sites>

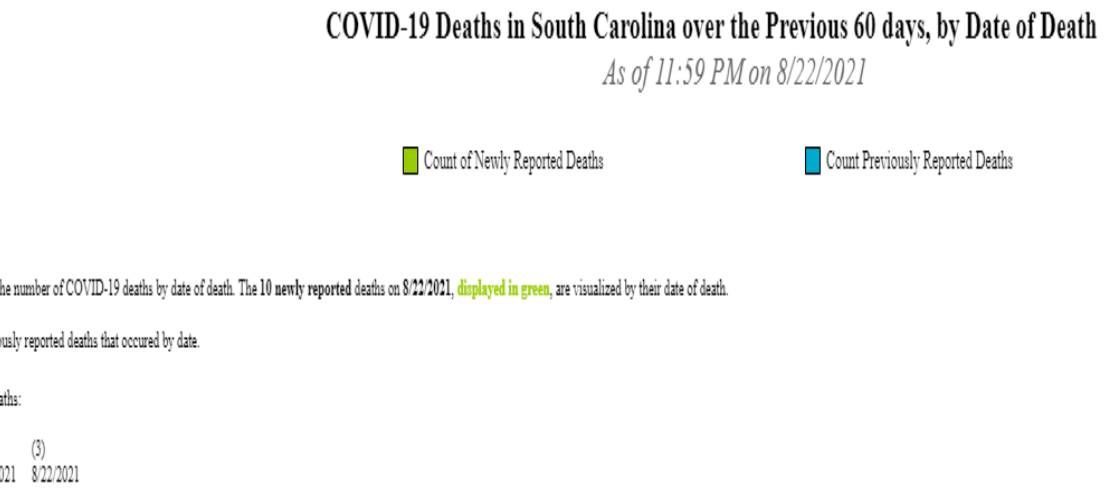
Testing Type Information </covid-19-testing-type-information>

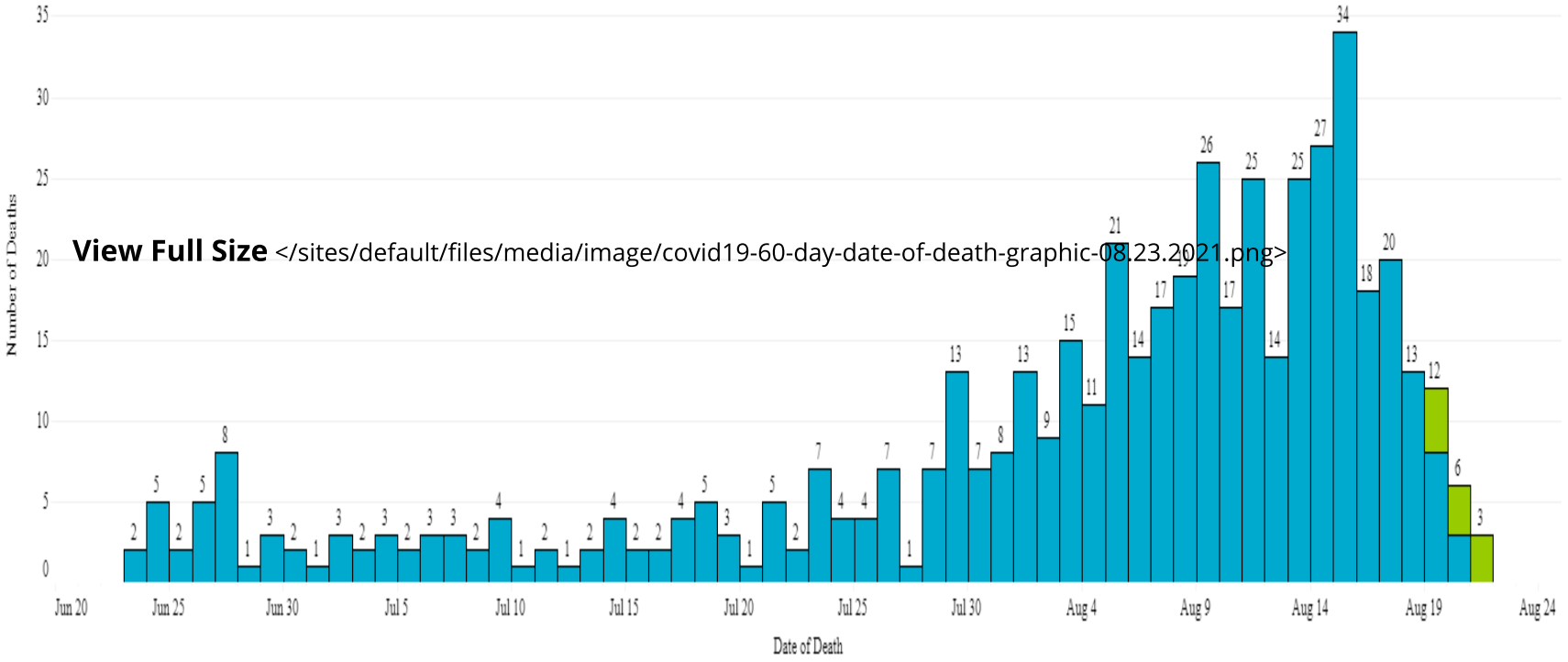
Multisystem Inflammatory Syndrome in Children (MIS-C) </infectious-diseases/viruses/coronavirus-disease-2019-covid-19/multisystem-inflammatory-syndrome-children-mis-c>

COVID-19 Deaths in South Carolina Over the Previous 60 Days, by Date of Death

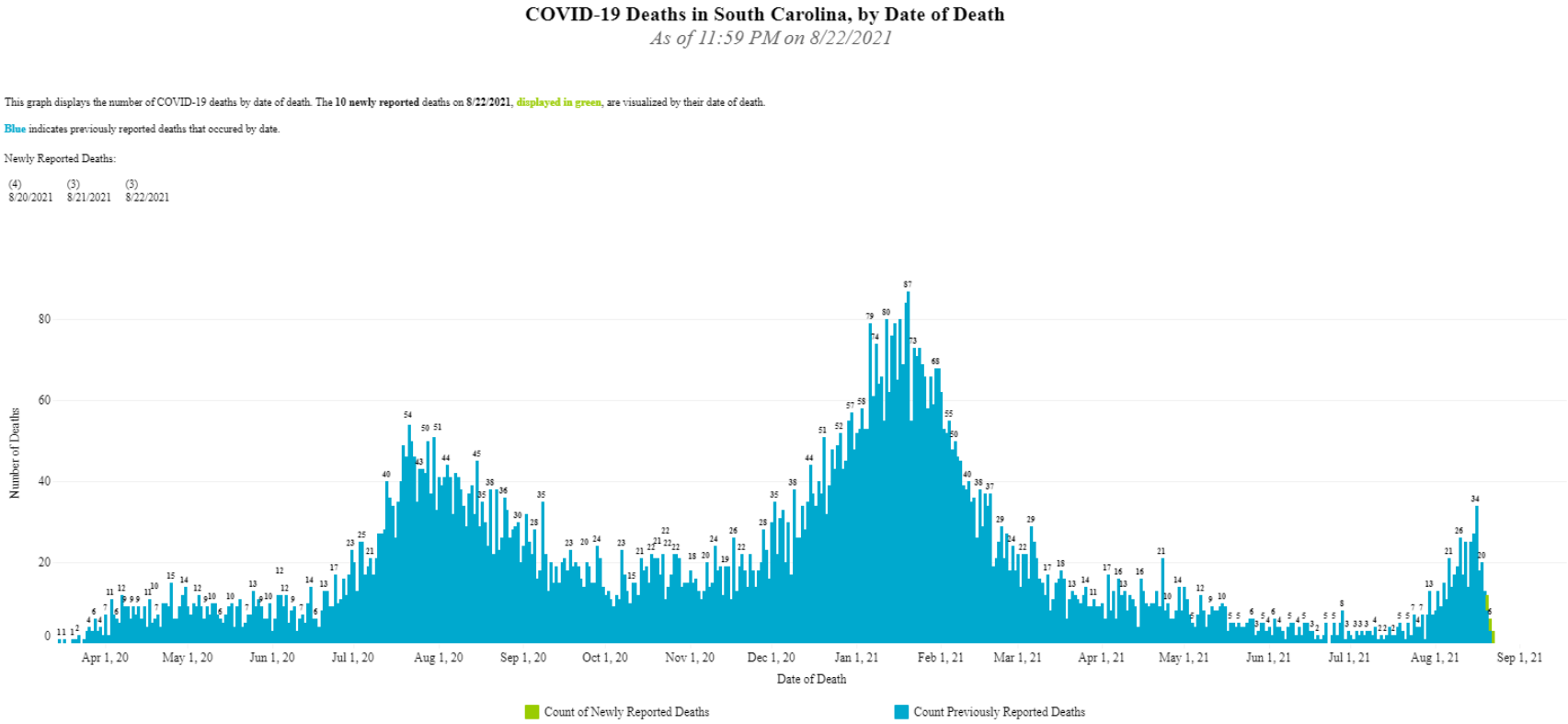
To clearly provide the actual dates of COVID-19-related deaths, DHEC provides this graph representing COVID-19 Deaths in South Carolina by Date of Death. This data visualization provides the date that COVID-19 deaths occurred, not the day they were announced, as there can sometimes be a delay in when a death occurred to when it is confirmed and reported publicly. **For better visibility, this graph has been updated to show the previous 60 days.**

Updated on Tuesdays





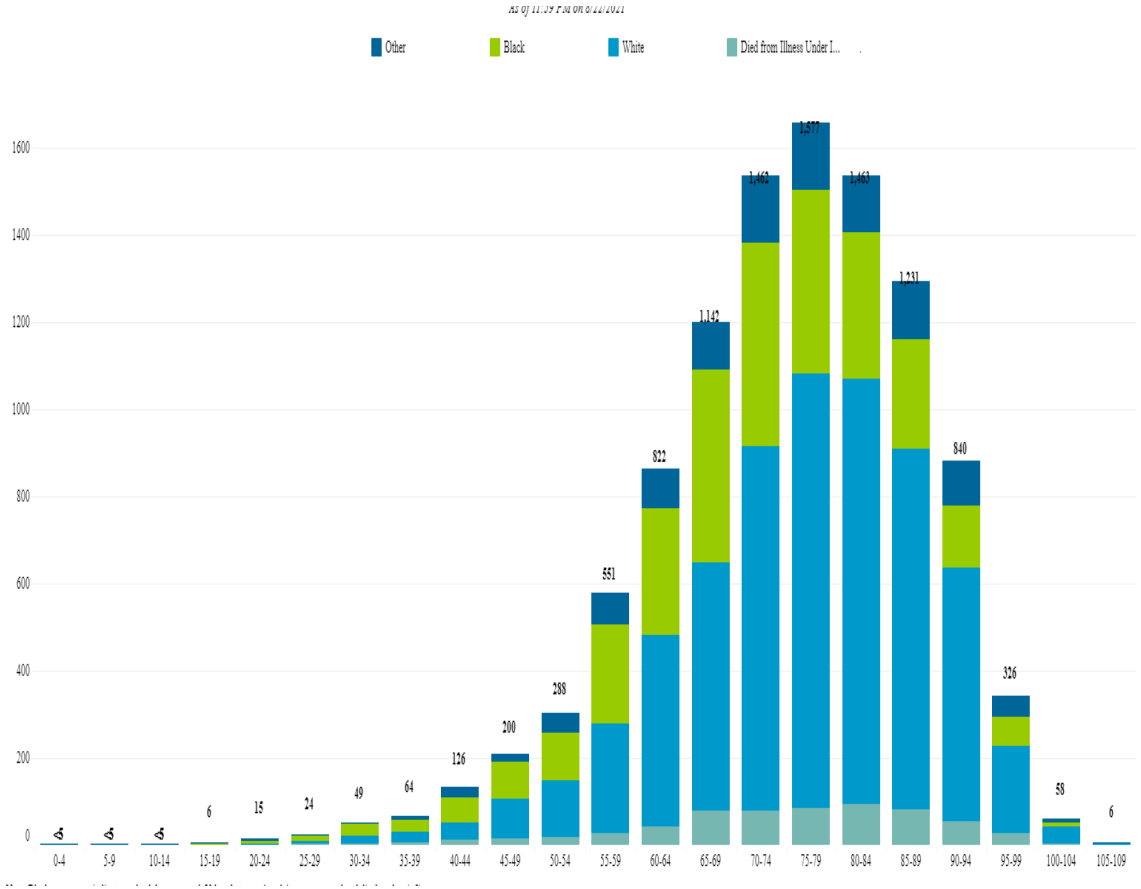
View Full Size </sites/default/files/media/image/covid19-60-day-date-of-death-graphic-08.23.2021.png>



View Full Size </sites/default/files/media/image/covid19-cumulative-date-of-death-graphic-08.23.2021.png>

COVID-19 Reported Deaths in South Carolina by Age and Race

Updated on Tuesdays



View Full Size </sites/default/files/media/image/covid19-reported-deaths-by-race-08.23.2021.png>

The 14-day heat map displays the most recent reported cases during the past 14-day period and estimates where the current burden is due to recently reported cases. The cumulative heat map is no longer updated as of June 25, 2021.

Note: Blank row means indicate no death has occurred. Values between 1 and 4 are suppressed and displayed as (<5)

COVID-19 </covid-19>

County-Level Data Dashboard </south-carolina-county-level-data-covid-19>

Testing & Projections </sc-testing-data-projections-covid-19>

Hospital Bed Occupancy </hospital-bed-capacity-covid-19>

References for Modeling and Projecting COVID-19 Cases, Deaths and Hospitalizations

The Centers for Disease Control and Prevention (CDC) has compiled predictive modeling resources for use by the public that provide information for forecasting COVID-19 cases, hospitalizations and deaths. There are various methods for developing models and projections. Learn more and **access the CDC resource here** </sites/default/files/media/document/references%20for%20use%20in%20forecasting%20covid%20%281%29.pdf>.

Beginning Oct. 12, two projection charts previously included on this page—**Observed and Projected SC COVID-19 Cases by Week and South Carolina's Projected Case Rates per 100,000 Compared, Selected Severely Impacted States**—and the **Institute for Health Metrics and Evaluation's projections** <http://www.healthdata.org/> are replaced by the **Centers for Disease Control and Prevention (CDC) forecasting** <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/index.html> for COVID-19 cases, hospitalizations and deaths, as follows:

cases (state- and county-level forecasts) <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/forecasting.html>

deaths (state-level forecasts) <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/forecasting-us.html>

hospitalizations (state-level forecasts) <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/hospitalizations-forecasts.html>

Using a single source for projection data—the CDC—instead of comparing the two DHEC-developed projection charts and the IHME-developed projections provides a more comprehensive overview and more accurate comparisons.

Tags

COVID-19

S.C. Department of Health and Environmental Control

EXHIBIT P

August 18, 2021

The Honorable Henry McMaster
Governor
The Capitol
1100 Gervais Street
Columbia, SC 29201

The Honorable Molly Spearman
State Superintendent of Education
South Carolina Department of Education
1006 Rutledge Building, 1429 Senate St.
Columbia, SC 29201

Dear Governor McMaster and Superintendent Spearman:

As the new school year begins in school districts across South Carolina, it is our shared priority that students return to in-person instruction safely. The safe return to in-person instruction requires that school districts be able to protect the health and safety of students and educators, and that families have confidence that their schools are doing everything possible to keep students healthy. **South Carolina's actions to block school districts from voluntarily adopting science-based strategies for preventing the spread of COVID-19 that are aligned with the guidance from the Centers for Disease Control and Prevention (CDC) puts these goals at risk and may infringe upon a school district's authority to adopt policies to protect students and educators as they develop their safe return to in-person instruction plans required by Federal law.**

We are aware that South Carolina has enacted a State law prohibiting local educational agencies (LEAs) from adopting requirements for the universal wearing of masks.[1] This State level action against science-based strategies for preventing the spread of COVID-19 appears to restrict the development of local health and safety policies and is at odds with the school district planning process embodied in the U.S. Department of Education's (Department's) interim final requirements. As you know, the American Rescue Plan Act of 2021 (ARP Act) requires each LEA that receives Elementary and Secondary School Emergency Relief (ARP ESSER) funds to adopt a plan for the safe return to in-person instruction and continuity of services. (See section 2001(i).) The Department's interim final requirements clarify that such plan "must describe…how [the LEA] will maintain the health and safety of students, educators, and other staff and the extent to which it has adopted policies, and a description of any such policies, on each of the following safety recommendations established by the CDC…" The safety recommendations include "universal and correct wearing of masks."

The Department is concerned that South Carolina's actions could limit each LEA's ability under the ARP Act to adopt a plan for the safe return to in-person instruction and continuity of services that the LEA determines adequately protects students and educators by following CDC guidance. **The Department recognizes that several LEAs in your State have already moved to adopt such policies in line with guidance from the CDC for the reopening and operation of school**

[1] See: https://ed.sc.gov/newsroom/school-district-memoranda-archive/proviso-1-108-guidance-and-face-coverings-on-school-buses-update/proviso-1-108-guidance-and-face-coverings-on-school-buses-update-memo/.

facilities despite the State-level prohibitions. The Department stands with these dedicated educators who are working to safely reopen schools and maintain safe in-person instruction.

The Department also emphasizes that it is within an LEA's discretion to use ARP ESSER funds for implementing indoor masking policies or other policies aligned with CDC guidance. Section 2001(e)(2)(Q) of the ARP Act explicitly gives LEAs the authority to use ARP ESSER funds (as well as ESSER funds granted through prior relief funding) for "developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff."

We are eager to partner with South Carolina on any efforts to further our shared goals of protecting the health and safety of students and educators. In addition, the Department will continue to closely review and monitor whether South Carolina is meeting all of its Federal fiscal requirements. It's critical that we do everything in our power to provide a safe environment for our students and staff to thrive.

Sincerely,

Miguel A. Cardona, Ed.D.

DECLARATION OF AMANDA McDOUGALD SCOTT

I, Amanda McDougald Scott, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C § 1746.

1. My name is Amanda McDougald Scott. I live at 433 Longview Terrace Greenville, SC 29605.

2. My son, P.S., is 5-years-old and cannot be vaccinated. He does wear a mask.

3. P.S. is diagnosed with asthma, which the CDC has identified as a risk factor for COVID-19. P.S.'s asthma can substantially affect a major life activity; namely, breathing.

4. P.S. has also been previously hospitalized for Henoch-Schönlein purpura (HSP), a condition that involves inflammation of small blood vessels.

5. Due to the severity of P.S.'s HSP, he is at greater risk of the condition returning. We are also concerned because upper respiratory illnesses, like COVID-19, are a risk factor for P.S.'s HSP returning.

6. We hoped and intended to enroll P.S. at Blythe Elementary School this year. Blythe is in the Greenville County School District.

7. Blythe is prohibited from requiring masks for students and staff under Budget Proviso 1.108. Before the school year, we were also informed that enrollment for virtual learning is closed.

8. Because of P.S.'s asthma, my husband and I elected to remove him from Blythe Elementary School for the 2021-22 schoolyear.

9. Instead, we have enrolled P.S. at the Furman Child Development Center because of their greater compliance with CDC and DHEC guidance regarding COVID-19. The Furman facility is much further from my house (30 minutes) and imposes a significant financial burden on our family ($7,000).

10. I believe that if everyone was wearing a mask and Blythe Elementary School was following the guidance and recommendations from the CDC and SC DHEC, my son could safely attend public school this year.

11. But because of Budget Proviso 1.108, my son has been denied free and appropriate public education.

Under penalty of perjury, I, Amanda McDougald Scott, declare that the above is true and correct.

(signature on following page)

Amanda M. McDougald Scott
Amanda M. McDougald Scott (Aug 23, 2021 13:29 EDT)

Amanda McDougald Scott
433 Longview Terrace
Greenville, SC 29605
(803) 960-7477
ammcdou@g.clemson.edu

Dated this 23rd day of August, 2021

DECLARATION OF EMILY POETZ

I, Emily Poetz, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C § 1746.

1. My name is Emily Poetz. I reside at 105 Dogwood Terrace Lane Clemson, SC 29631.

2. My husband and I are both Registered Nurses.

3. My son, L.P., is a 6-year-old kindergarten student at Clemson Elementary School.

4. L.P. is too young to be vaccinated but he wears a mask.

5. L.P. has been diagnosed with congenital myopathy, which substantially affects several of his major life activities.

6. L.P.'s chest muscles are much weaker than an average boy his age, which causes him to be particularly vulnerable to upper respiratory illnesses including pneumonia and COVID-19.

7. L.P. receives speech therapy and occupational therapy and has an IEP.

8. L.P. qualifies for Medicaid under the Katie Beckett Program.

9. As nurses, my husband and I have seen the devastating impacts of the COVID-19 pandemic.

10. Because of his vulnerability to COVID-19, I am scared to send L.P. to a school where mask mandates are illegal.

11. I was told that my son, because of his condition, could be added to a waiting list to participate in virtual learning for the 2021-22 school year.

12. My son was isolated from his peers last year and I witnessed serious negative consequences. Speech and occupational therapy are difficult or impossible to participate in virtually. I do not believe my son should be isolated from in-person schooling because of his disability.

13. I believe that if everyone was wearing a mask and the school was following the guidance and recommendations from the CDC and SC DHEC, my son would be safe in school.

Under penalty of perjury, I, Emily Poetz, declare that the above is true and correct.

Emily Poetz

Emily Poetz
105 Dogwood Terrace Lane
Clemson, SC 29631
(864) 324-2642
poetze@bellsouth.net

Dated this 22nd day of August, 2021

DECLARATION OF LYUDMYLA TSYKALOVA

I, Lyudmyla Tsykalova, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C § 1746.

1. My name is Lyudmyla Tsykalova. I reside at 142 Folger Street Clemson, SC 29631.

2. My daughter, M.A., is a 5 year old kindergarten student at Clemson Elementary School.

3. M.A. is too young to be vaccinated but she wears a mask.

4. In December of 2019, M.A. was diagnosed with asthma by her pediatrician, Dr. James Feiste.

5. I did not enroll M.A. in daycare last year because of her vulnerability to COVID-19. M.A.'s pediatrician, Dr. Feiste, agreed that it was the appropriate decision.

6. This 2021-22 school year is M.A.'s first year in public school.

7. I discussed my safety concerns with M.A.'s teacher before the beginning of the year. She assured me that the school did well at preventing transmission in 2020-21 and would continue to follow conservative practices to reduce the spread of COVID-19.

8. But when classes began, I noticed that less than 10% of children and teachers were wearing masks.

9. I then reached out via email to my daughter's principal, her school board, and to state legislators regarding my concerns that students and staff were not wearing masks and that Budget Proviso 1.108 (the anti mask mandate law) would make it too dangerous for M.A. to attend kindergarten.

10. I was given the option of enrolling M.A. in virtual learning because of her asthma.

11. I do not believe that it is possible for my daughter to learn or develop through virtual learning, and do not believe that it is fair to alienate her from her classmates because of her medical condition.

12. I believe that if everyone was wearing a mask and the school was following the guidance and recommendations from the CDC and SC DHEC, my daughter would be safe in school.

13. I do not want my daughter to miss out on the entire school year. After being out of contact with her peers since March 2020, she was so much looking forward to starting her kindergarten in "the big school with blue roof." I worry that another year away from her peers will stunt her development, particularly socially.

14. Still, I do want her to be—as much as can be reasonably ensured—safe and protected from the lasting effects of COVID-19. My daughter deserves to be safe in school.

Under penalty of perjury, I, Lyudmyla Tsykalova, declare that the above is true and correct.

Lyudmyla Tsykalova (Aug 23, 2021 07:26 EDT)

Lyudmyla Tsykalova
142 Folger Street
Clemson, SC 29631
(864) 207-9289
tsykaloval@gmail.com

Dated this 22nd day of August, 2021

DECLARATION OF HEATHER PRICE

I, Heather Price, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C § 1746.

1. My name is Heather Price. I reside at 342 Downey Drive, Pelion, SC 29123.

2. My son H.P. is a 15-year-old 9th grader at Pelion High School in Lexington School District One.

3. My son is fully vaccinated as is everyone in my household who is eligible. I have a four-year-old son who is too young to be vaccinated. My husband is disabled and has Charcot-Marie-Tooth disease, which causes nerve damage and makes him high risk for COVID according to his doctors.

4. My son, H.P. has Autism and Attention-deficit/hyperactivity disorder. He has a 504 plan.

5. H.P. is a people pleaser and will mimic peer behavior. Due to his disability, he also has to be reminded about social distancing and washing his hands. He will wear a mask if others are doing so.

6. H.P. attended school virtually last year. He did not do well in a virtual setting. He had a difficult time keeping up with his schoolwork. I do not believe that virtual instruction provides him with the necessary supports, services, and accommodations, including direct instruction and socialization with his peers.

7. When I went to Pelion High School to register my son for school this year, I saw that no one was wearing a mask except for me. This includes staff, and other students.

8. I addressed my concern with the Superintendent of Lexington One Schools Dr. Greg Little. He responded to my email and told me that his "hands were tied when it comes to these mandates" because of the proviso in the budget that the South Carolina Legislature passed.

9. I believe that if everyone was wearing a mask and the school was following the CDC guidelines, and recommendations by SC DHEC my son would be able to attend school.

10. My son wants to be in school with his peers and he was excited for the beginning of this school year.

11. Unfortunately, due to the concerns I have about the health and safety of my family, I have had to make the difficult decision to move my son back to virtual learning to keep him and my family safe from Covid.

Under penalty of perjury, I, Heather Price, declare that the above is true and correct.

Heather Price
342 Downey Drive
Pelion, SC 29132
(803) 466-0225
Hprice55@gmail.com

Dated this 20th day of August, 2021

DECLARATION OF CATHY LITTLETON

I, Cathy Littleton, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C § 1746.

1. My name is Cathy Littleton. I reside at 19 Woodbury Street, Walhalla, SC 29691.

2. My son Q.L. is a five-year-old kindergartener at James M. Brown Elementary in Oconee County Public Schools.

3. My son is too young to be vaccinated and I have a one-year-old child at home as well.

4. My son has Autism, Global Developmental Delays and he is nonverbal. He has an Individualized Education Plan (IEP).

5. Q.L. has a history of RSV infection, and his conditions make it more likely that he will be severely impacted should he get COIVD. His doctor has recommended that he not attend school due to his disability and the rates of COVID at this time. I have applied to the school for medical homebound.

6. Q.L. attended school virtually last year. My district no longer offers this option because kids were not making progress. Last year for virtual instruction he received packets of materials to complete and zoom meeting with his teacher once a week or once every two weeks. We unenrolled him in this program in January because I had to care for my elderly disabled parents.

7. My son can wear a mask, but does have to be reminded to keep it on. My school is not requiring masks and they can not provide me with assurances that they will remind my son to keep his mask on. They are also only keeping children 3 feet apart.

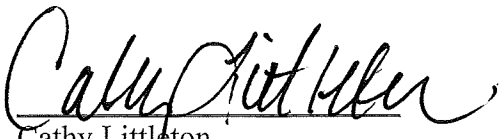
8. Because my son is nonverbal. He cannot communicate to me if others are masking around him nor can he tell me when he is not feeling well.

9. I believe that if everyone was wearing a mask and the school was following the CDC guidelines, and recommendations by SC DHEC my son would be able to attend school.

10. My son wants to be in school with his peers and he was excited for the beginning of this school year.

11. In my frustration over the school not requiring masks, I emailed the governor's office and received a response that he was not responsible, and he did not make the law.

Under penalty of perjury, I, Cathy Littleton, declare that the above is true and correct.



Cathy Littleton
19 Woodbury Street
Walhalla, SC 29691
(864) 784-1597
johntcathy@hotmail.com

Dated this 20th day of August, 2021

DECLARATION OF SAMANTHA BOEVERS

I, Samantha Boevers, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C § 1746.

1. My name is Samantha Boevers. I reside at 3006 Spring Tide Drive, Charleston, SC 29414.

2. My child, P.B., attends Springfield Elementary School in the Charleston County School District.

3. P.B. has Autistic Spectrum Disorder and has an IEP.

4. Due to his developmental delay and communication delay, P.B. is more likely to contract COVID-19, and if he does contract the virus, his symptoms will likely be exacerbated by his difficulty in communicating his health needs and symptoms.

5. Also, his sensory needs make it much more difficult for him to adhere to current mitigation strategies (social distancing, hand-washing independently, using hand sanitizer).

6. Previously he has been hospitalized for basic illnesses like the flu due to his inability to communicate his symptoms, pain levels, and needs in a timely manner to receive care before symptoms worsen.

7. P.B's pediatrician has advised us that due to sensory and communication issues that P.B. is at higher risk for disease because he is unable to wash hands independently, has sensory issues with hand sanitizer, and lacks social awareness of space.

8. P.B's pediatrician advises that he return to school only if he would be in a fully masked environment.

Under penalty of perjury, I, Samantha Boevers, declare that the above is true and correct.

Dated this 20th day of August, 2021

Samantha Boevers
3006 Spring Tide Drive,
Charleston, SC 29414
samanthaboevers@gmail.com

HELLOSIGN

Audit Trail

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VIEWED	**08 / 23 / 2021** 20:42:48 UTC	Viewed by Samantha Boevers (samanthaboevers@gmail.com) IP: 174.215.65.250
SIGNED	**08 / 23 / 2021** 20:45:49 UTC	Signed by Samantha Boevers (samanthaboevers@gmail.com) IP: 174.215.65.250
COMPLETED	**08 / 23 / 2021** 20:45:49 UTC	The document has been completed.

DECLARATION OF CHRISTINE COPELAND

I, Christine Copeland, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C § 1746.

1. My name is Christine Copeland. I reside at 812 Benchmade Road, Conway, SC 29527

2. My daughter L.C. is an 11-year-old 6th grader at Whittemore Park Middle School.

3. My daughter is too young to be vaccinated but she wears a mask.

4. L.C. has Autism and anxiety. She has an IEP

5. L.C.'s disability causes her to become nervous or scared by something that she doesn't expect. This causes her to be in fight or flight mode. She has a paraprofessional five and half hours a day, which is most of the school day.

6. L.C attended school virtually last year. Virtual school was miserable. Her social and behavioral skills declined in a virtual setting. I do not believe that a virtual setting provides her with a free and appropriate public education (FAPE). I do not think that she gets the necessary supports, services, and accommodations, including direct instruction and socialization with her peers virtually.

7. I made the decision last school year for L.C. to attend school in person this year. I was hopeful that L.C would be eligible for a vaccine before school started. I also believed that the school would follow the CDC guidelines for health and safety of all kids in the school.

8. I believe that if everyone was wearing a mask and the school was following the CDC guidelines, and recommendations by SC DHEC my daughter would be safe in school.

9. I have reached out to the Superintendent of schools for an accommodation, but he has not responded. I have also called the governor's office to express my concern.

10. I send a request to my daughter's IEP team for an accommodation requesting everyone who has contact with her to wear a mask and I am still waiting for an IEP meeting to discuss this further with the IEP team.

11. My daughter deserves to be safe in school.

Under penalty of perjury, I, Christine Copeland, declare that the above is true and correct.

Christine Copeland
812 Benchmade Road
Conway, SC 29527
(843) 465-9834
Chrissycopeland82@gmail.com

Dated this 20th day of August, 2021

DECLARATION OF TIMICIA GRANT

I, Timicia Grant, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C § 1746.

1. My name is Timicia Grant. I reside at 108 Taylor Street in Greenville, South Carolina.

2. My son E.G. is a 9 year old 4th grader at Westcliffe Elementary. In Greenville County Public schools.

3. My son is on the Autism spectrum and has Attention-deficit/hyperactivity disorder (ADHD). He has an Individualized Education Plan (IEP).

4. E.G.'s disability causes him to struggle with social distancing. He has a lack of spatial awareness and needs constant physical touch. This makes it impossible for him to stay 6 feet away from peers and staff.

5. Last year, E.G. attended school virtually. It was an awful experience. I do not believe that a virtual setting provides him with a free and appropriate public education (FAPE). I do not believe that he gets the necessary supports, services, and accommodations that he needs virtually. I believe that all the related therapy that he received virtually was a diminished quality and not as effective as in person services.

6. My son cannot be vaccinated because he is too young. But he can wear a mask and he will listen to prompts and reminders about social distancing.

7. I believe that if everyone was wearing a mask and the school was following the CDC guidelines, and recommendations by SC DHEC my son would be able to attend school safely.

8. My son needs to be in school. I am a single working mother and I do not have the resources to be able to serve as his one-to-one aid for virtual instruction.

Under penalty of perjury, I, Timicia Grant, declare that the above is true and correct.


Timicia Grant (Aug 26, 2021 09:43 EDT)

Timicia Grant
108 Taylor Street
Greenville, SC 29601
(864) 354-4890
timiciagrant@gmail.com

Dated this 20th day of August, 2021

DECLARATION OF MICHELLE FINNEY

I, Michelle Finney, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C § 1746.

1. My name is Michelle Finney. I reside at 103 Chelsea Court Summerville, South Carolina 29485.

2. My son, M.F., is 16-years-old and has received his first COVID-19 vaccine shot. He receives his second shot on Thursday August 26, 2021. M.F. wears a mask.

3. M.F. suffers from a genetic disease called Renpenning Syndrome, which is a rare disorder that causes developmental delay, moderate to severe intellectual disability, and distinctive physical features and anatomical anomalies.

4. M.F. is enrolled at Summerville High School in the Dorchester County School District.

5. M.F. has an IEP and attends special needs classes due to his condition.

6. Renpenning Syndrome is exceedingly rare and there are no known published studies relating it to COVID-19. But due to M.F.'s condition, he is at high risk of swelling around his heart and lungs and his body is generally immunocompromised and lacks the ability to fight off infection and disease. For these reasons, M.F.'s doctors have advised that he must be especially careful during the COVID-19 pandemic.

7. My son's school does not have a mask mandate because of Budget Proviso 1.108.

8. Dorchester County School District started classes on August 16, 2021. After one week of school, the district is reporting 324 current COVID-19 infections amongst students, with 771 students in quarantine. [1] Additionally, three staff members in the district have died from COVID-19—including a coach at my son's school.

9. Because of M.F.'s vulnerabilities to infection and the district's failure to follow CDC and DHEC guidance on masking, I have temporarily removed my son from school.

10. Without access to public schooling, M.F. will miss out on many necessary services and invaluable social learning opportunities.

11. I believe that if everyone was wearing a mask and the school was following the guidance and recommendations from the CDC and SC DHEC, my son could safely attend school at Summerville High School.

[1] https://www.ddtwo.org/covid

Under penalty of perjury, I, Michelle Finney, declare that the above is true and correct.

Michelle Finney
MIchelle Finney (Aug 23, 2021 15:14 EDT)

Michelle Finney
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Summerville, SC 29485
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Dated this 23rd day of August, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

DISABILITY RIGHTS SOUTH CAROLINA; ABLE SOUTH CAROLINA; AMANDA McDOUGALD SCOTT, *individually and on behalf of P.S., a minor*; MICHELLE FINNEY, *individually and on behalf of M.F., a minor*; LYUDMYLA TSKALOVA, *individually and on behalf of M.A., a minor*; EMILY POETZ, *individually and on behalf of L.P., a minor*; SAMANTHA BOEVERS, *individually and on behalf of P.B., a minor*; TIMICIA GRANT, *individually and on behalf of E.G., a minor*; CHRISTINE COPELAND, *individually and on behalf of L.C., a minor*; HEATHER PRICE, *individually and on behalf of H.P., a minor*; and CATHY LITTLETON, *individually and on behalf of Q.L., a minor*, Plaintiffs,	§
vs.	Civil Action No.: 3:21-02728-MGL
HENRY McMASTER, *in his official capacity as Governor of the State of South Carolina*; ALAN WILSON, *in his official capacity as Attorney General of South Carolina*; MOLLY SPEARMAN, *in her official capacity as State Superintendent of Education*; GREENVILLE COUNTY SCHOOL BOARD; HORRY COUNTY SCHOOL BOARD ONE; LEXINGTON COUNTY SCHOOL BOARD ONE; OCONEE COUNTY SCHOOL BOARD; DORCHESTER COUNTY SCHOOL BOARD TWO; CHARLESTON COUNTY SCHOOL BOARD; and PICKENS COUNTY SCHOOL BOARD; Defendants.	§

MEMORANDUM OPINION AND ORDER GRANTING PLAINTIFFS' MOTIONS FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

I. INTRODUCTION

Disability Rights South Carolina; Able South Carolina; Amanda McDougald Scott, individually and on behalf of P.S., a minor; Michelle Finney, individually and on behalf of M.F., a minor; Lyudmyla Tsykalova, individually and on behalf of M.A., a minor; Emily Poetz, individually and on behalf of L.P., a minor; Samantha Boevers, individually and on behalf of P.B., a minor; Timicia Grant, individually and on behalf of E.G., a minor; Christine Copeland, individually and on behalf of L.C., a minor; Heather Price, individually and on behalf of H.P., a minor; and Cathy Littlejohn, individually and on behalf of Q.L., a minor (collectively, Plaintiffs) filed a complaint for declaratory and injunctive relief.

They filed their lawsuit against Henry McMaster, in his official capacity as Governor of the State of South Carolina (Governor McMaster); Alan Wilson, in his official capacity as Attorney General of South Carolina (AG Wilson); Molly Spearman, in her official capacity as State Superintendent of Education (Superintendent Spearman); Greenville County School Board; Horry County School Board One; Oconee County School Board; Dorchester County School Board Two; Charleston County School Board; Pickens County School Board (the School Boards); and Lexington County School Board One (Lexington) (collectively, Defendants).

In Plaintiffs' complaint, they seek declaratory and injunctive relief to stop enforcement of Proviso 1.108, inasmuch as it bars schools and localities from requiring masking in schools. Plaintiffs assert three claims for relief for violations of: (1) Title II of the Americans with Disabilities Act (Title II), (2) § 504 of the Rehabilitation Act of 1973 (Section 504), and the American Rescue Plan Act of 2021 (ARPA). The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

Pending before the Court are Plaintiffs' motions for a temporary restraining order and a preliminary injunction, both asking the Court to enjoin enforcement of Proviso 1.108.

Having carefully considered the motions, the responses, the replies, the supplements, the record, and the relevant law, the Court is of the opinion the motions should be granted.

II. FACTUAL AND PROCEDURAL HISTORY

The minor plaintiffs "are students with disabilities, including certain underlying medical conditions, which increase their risk of contracting COVID-19 and/or increase their risk of serious complications or death from a COVID-19 infection." Compl. ¶ 5. "These conditions include asthma, congenital myopathy, Renpenning Syndrome, Autism, and weakened immune systems—many of which have been identified by the [Centers for Disease Control & Prevention] as risk factors for severe COVID-19 infections." *Id.*

According to Plaintiffs, "[s]chool districts with students who have disabilities . . . that make them more likely to contract and/or become severely ill from a COVID-19 infection have a legal obligation to ensure that those children can attend school with the knowledge that the school district has followed the recommended protocols to ensure their safety." *Id.* ¶ 7.

In the 2021–22 Appropriations Act, the South Carolina General Assembly prohibited school districts in South Carolina from using appropriated or authorized funds to announce or enforce a mask mandate:

> No school district, or any of its schools, may use any funds appropriated or authorized pursuant to this act to require that its students and/or employees wear a facemask at any of its education facilities. This prohibition extends to the announcement or enforcement of any such policy.

Proviso 1.108.

Plaintiffs contend "[b]y prohibiting any school from imposing a mask mandate, Proviso 1.108 interferes with [a] school's ability to comply with its obligations under federal disability rights laws and illegally forces parents of children with underlying [health] conditions to choose between their child's education and their child's health and safety, in violation of [Title II] and Section 504." Compl. ¶ 7.

As is relevant here, Plaintiffs filed their lawsuit for declaratory and injunctive relief, and two days later, filed motions for a temporary restraining order and preliminary injunction. Defendants responded, and Plaintiffs replied, as well as filed two supplements.

The Court, having been fully briefed on the relevant issues, is prepared to adjudicate the two motions.

III. STANDARD OF REVIEW

A. Factors to consider in the granting of motions for a temporary restraining order and a preliminary injunction

The substantive standards for granting a request for a temporary restraining order and entering a preliminary injunction are the same. *See Virginia v. Kelly*, 29 F.3d 145, 147 (4th Cir. 1994) (applying the preliminary injunction standard to a request for a temporary restraining order).

Both "are intended to meet exigent circumstances[.]" *Ideal Toy Corp. v. Plawner Toy Mfg. Corp.*, 685 F.2d 78, 84 (3d Cir. 1982). They are "an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "[T]he party seeking [either of these types of relief] must prove [its] own case and adduce the requisite proof, by a preponderance of the evidence, of the conditions and circumstances upon which [it] bases the right to and necessity for injunctive relief." *Citizens Concerned for Separation of Church & State v. City of Denver*, 628 F.2d 1289, 1299 (10th Cir. 1980).

A temporary restraining order and a preliminary injunction should issue only when plaintiffs can "[1] establish that [they are] likely to succeed on the merits, [2] that [they are] likely to suffer irreparable harm in the absence of [temporary or] preliminary relief, [3] that the balance of equities tips in [their] favor, and [4] that [injunctive relief] is in the public interest." *Winter*, 555 U.S. at 20. The burden is on the party seeking injunctive relief to show they are entitled to the relief, not the burden of the other party to show the movant is unentitled. *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 443 (1974).

"[A]ll four requirements must be satisfied." *Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d 342, 346 (4th Cir. 2009). Thus, even a strong showing of likely success on the merits cannot compensate for failure to show likely injury. *Winter*, 555 U.S. at 21–22. And, irreparable injury alone is insufficient to support equitable relief. *See id.* at 23 (holding irreparable injury was likely to occur, but holding injunctive relief was improper because of the burden on the government and the impact on public interest). In other words, "[a temporary restraining order or a] preliminary injunction shall be granted only if the moving party clearly establishes entitlement." *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017).

"Given [the] limited purpose [of a temporary restraining order and a preliminary injunction], and given the haste that is often necessary . . . , [they are] customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). "Because [the] proceedings are informal ones designed to prevent irreparable harm before a later trial governed by the full rigor of usual evidentiary standards, district courts may look to, and indeed in appropriate circumstances rely on, hearsay or other inadmissible evidence when deciding whether a [temporary restraining order or] preliminary injunction is warranted." *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*,

822 F.3d 709, 725–26 (4th Cir. 2016), *vacated and remanded on other grounds*, 137 S. Ct. 1239 (2017).

B. Prohibitory or mandatory injunctive relief

Injunctive relief "may be characterized as being either prohibitory or mandatory." *League of Women Voters of N. C. v. North Carolina*, 769 F.3d 224, 235 (4th Cir. 2014). "Whereas mandatory [temporary restraining orders and preliminary] injunctions alter the status quo [generally by requiring the non-movant to do something], prohibitory [ones] aim to maintain the status quo and prevent irreparable harm while a lawsuit remains pending." *Id.* at 236 (citation omitted) (internal quotation marks omitted). The Fourth Circuit has "defined the status quo for this purpose to be the last uncontested status between the parties which preceded the controversy." *Id.* (citation omitted) (internal quotation marks omitted).

"Mandatory . . . injunctive relief in any circumstance is disfavored, and warranted only in the most extraordinary circumstances." *Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir. 1994) (citation omitted). Or, put differently, "It is fundamental that mandatory injunctive relief should be granted only under compelling circumstances inasmuch as it is a harsh remedial process not favored by the courts." *Citizens Concerned for Separation of Church & State*, 628 F.2d at 1299.

The Fourth Circuit has stated, "Because [temporary restraining orders and] preliminary injunctions are extraordinary remedies involving the exercise of very far-reaching power, [it] should be particularly exacting in its use of the abuse of discretion standard when it reviews an order granting [injunctive relief]." *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013) (citations omitted) (internal quotation marks omitted) (alteration marks omitted). "Furthermore, when the [injunctive relief] is mandatory rather than prohibitory in nature, [the Fourth Circuit's] application

of this exacting standard of review is even more searching." *Id.* (citation omitted) (internal quotation marks omitted).

IV. DISCUSSION AND ANALYSIS

As a preliminary matter, "Rule 65 does not require an evidentiary hearing[,]" so long as "the party opposing [the injunctive relief has] a fair opportunity to oppose the application and to prepare for such opposition." *Granny Goose Foods, Inc.*, 415 U.S. at 433 n.7. The Court must ensure, however, "relief follows only after consideration of all facts and arguments deemed important by the parties." *Drywall Tapers & Pointers of Greater NYC, Local 1974 v. Operative Plasterers' & Cement Masons' Int'l Ass'n of U.S. & Can.*, 537 F.2d 669, 674 (2d Cir. 1976).

In *Drywall Tapers*, the Second Circuit held "the documentary evidence presented to [the district court] by both sides was sufficient to . . . enable the court to decide whether [injunctive relief] should issue." *Id.* And, as that court noted, plaintiffs "were obviously content to rest on that evidence, as they never requested a . . . hearing." *Id.*

Here, Defendants have had "a fair opportunity to oppose the application and to prepare for such opposition." *Granny Goose Foods, Inc.*, 415 U.S. at 433 n.7. And, neither party requested a hearing. Accordingly, the Court will decide Plaintiffs' motions without a hearing. *See* Local Civil Rule 7.08 ("Unless so ordered, motions may be determined without a hearing.").

A. Whether Plaintiffs seek prohibitory or mandatory injunctive relief

Only the School Boards address whether the relief Plaintiffs seek is prohibitory or mandatory. The School Boards posit the relief sought is mandatory, as it attempts to alter the status quo of Proviso 1.108. Thus, according to the School Boards, a temporary restraining order

and a preliminary injunction would alter the status quo by placing the parties in their positions pre-enactment of Proviso 1.108.

But, as noted above, the Fourth Circuit has "defined the status quo for this purpose to be the last uncontested status between the parties which preceded the controversy." *League of Women Voters of N. C.*, 769 F.3d at 236 (citation omitted) (internal quotation marks omitted). In that case, the Fourth Circuit concluded the last uncontested status between plaintiffs challenging duly enacted legislation was the period of time prior to its enactment, and under such a scenario, the relief sought was prohibitory, not mandatory. *Id.*

Consequently, the status quo in this case is the position of the parties prior to the enactment of Proviso 1.108 when school districts had the discretionary authority to mandate masks. As such, the relief Plaintiffs seek is prohibitory, not mandatory. But, even if the Court concluded Plaintiffs seek mandatory relief, it would still afford them the relief they seek, even under that tougher standard, for the reasons included herein.

B. Title II and Section 504

Prior to addressing the parties' arguments, the Court will provide a brief primer on Title II and Section 504.

Title II provides "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. To state a claim under Title II, plaintiffs must prove three elements: "(1) they have a disability; (2) they are otherwise qualified to receive the benefits of a public service, program, or activity; and (3) they were denied the benefits of such service, program, or activity, or otherwise

discriminated against, on the basis of their disability." *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 503 (4th Cir. 2016).

Section 504 declares "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance[.]" 29 U.S.C. § 794(a). "To the extent possible, [the Court will] construe [Title II] and [Section 504] to impose similar requirements." *Halpern v. Wake Forest Univ. Health Sciences*, 669 F.3d 454, 461 (4th Cir. 2012).

"Claims under . . . Title II and [Section 504] can be combined for analytical purposes because the analysis is 'substantially the same.'" *Seremeth v. Bd. of Cnty. Comm'rs Frederick Cnty.*, 673 F.3d 333, 336 n.1 (4th Cir. 2012) (quoting *Doe v. Univ. of Md. Med. Sys. Corp.*, 50 F.3d 1261, 1265 n.9 (4th Cir. 1995)).

Together, these laws require public schools to afford students with disabilities an equal opportunity to participate in or benefit from the aids, benefits, or services that are provided to others. 28 C.F.R. § 35.130(b)(1), 34 C.F.R. § 104.4(b)(ii).

C. Plaintiffs vs. Governor McMaster and AG Wilson

1. Whether Plaintiffs have established they are likely to succeed on the merits

Here, Plaintiffs argue, among other things, the "Defendants are failing to make reasonable modifications in violation of 28 C.F.R. § 35.130 . . . because they are prohibiting schools from requiring all students . . . wear masks at school so that students with disabilities can participate in in-person learning with their peers." Pls.' Mot. at 15–16. Plaintiffs note, however, they "have not asked the Court to order universal masking for all students[,]" but rather "have merely insisted that

the Court enjoin Proviso 1.108" so the School Boards and Lexington can satisfy their burden to make reasonable modifications under Title II and Section 504. Pls.' Reply at 17.

Governor McMaster and AG Wilson contend, among other things, there is no private right of action for failure to accommodate claims under Title II and Section 504, and even if there was, Title II and Section 504 permit only claims for intentional discrimination.

Here, this Court need look no further than the Fourth Circuit's decision in *Lamone*, 813 F.3d 494, to conclude Title II and Section 504 provide for a private right of action under Title II and Section 504, as well as allow Plaintiffs to assert non-intentional discrimination claims.

The Fourth Circuit, in affirming the district court's conclusion Maryland's absentee voting program violated [Title II and Section 504], noted:

> [Title II and Section 504] do more than simply provide [for a private right of action] for intentional discrimination. They reflect broad legislative consensus that making the promises of the Constitution a reality for individuals with disabilities may require even well-intentioned public entities to make certain reasonable accommodations. Our conclusions here are not driven by concern that defendants are manipulating the election apparatus intentionally to discriminate against individuals with disabilities; our conclusions simply flow from the basic promise of equality in public services that animates [Title II and Section 504].

Id. at 510.

Consequently, inasmuch as the Court concludes Plaintiffs may bring a Title II and Section 504 discrimination claim based on a failure to make reasonable accommodations, as did the litigants in *Lamone*, the Court must determine whether Plaintiffs have shown they have been denied meaningful access to in-person education, programs, services, and activities, and whether allowing school districts to require mandatory face coverings is a reasonable modification.

a. Whether Plaintiffs have shown they have been denied meaningful access to in-person education, programs, services, and activities

A review of the declarations provided by Plaintiffs in this case demonstrate, because of Proviso 1.108, Governor McMaster and AG Wilson have denied the minor plaintiffs meaningful access to in-person education, programs, services, and activities because of Proviso 1.108. *See* Price Decl. ¶ 11 ("Unfortunately, due to the concerns I have about the health and safety of my family, I have had to make the difficult decision to move my son back to virtual learning to keep him and my family safe from [COVID-19]."); Boevers Decl. ¶ 8 (noting her child's "pediatrician advises that [her son] return to school only if he would be in a fully masked environment."); Tsykalova Decl. ¶ 13 ("I do not want my daughter to miss out on the entire school year. After being out of contact with her peers since March 2020, she was so much looking forward to starting her kindergarten in 'the big school with blue roof.' I worry that another year away from her peers will stunt her development, particularly socially."); Copeland Decl. ¶ 6 (noting virtual school last year for her child was "miserable[,]" and her child's "social and behavioral skills declined in a virtual setting."). Governor McMaster and AG Wilson fail to address this issue.

b. Whether allowing school districts to require mandatory face coverings is a reasonable modification that would enable students with disabilities to have equal access to in-person education, programs, services, and activities

Concluding Governor McMaster and AG Wilson have denied the minor plaintiffs meaningful access to in-person education, programs, services, and activities does not end our analysis. "Not all public services, programs, or activities can be made meaningfully accessible to all citizens, or at least they cannot be made so without a prohibitive cost or unreasonable effort on the part of the public entity." *Lamone*, 813 F.3d at 507. "For this reason, to prevail on [a Title II

and Section 504] claim, plaintiffs must propose a reasonable modification to the challenged public program that will allow them the meaningful access they seek." *Id.*

Department of Justice regulations implementing Title II provide "[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability." 28 C.F.R. § 35.130(b)(7). Section 504's "regulations impose similar requirements." *Lamone*, 813 F.3d at 506 n.8.

"A modification is reasonable if it is 'reasonable on its face' or used 'ordinarily or in the run of cases' and will not cause 'undue hardship.'" *Id.* at 507 (quoting *Halpern*, 669 F.3d at 464). "Determination of the reasonableness of a proposed modification is generally fact-specific." *Id.*

Plaintiffs "argue that mandatory face coverings are a reasonable modification that would enable students with disabilities to have equal access to in-person education, programs, services, and activities." Pls.' Reply at 16.

Governor McMaster and AG Wilson contend requiring all students to wear a face mask is an unreasonable modification for children with disabilities.

As noted by Plaintiffs' expert Robert Saul, President of the South Carolina Chapter of the American Academy of Pediatrics, "[b]ased on data from [forty-nine] states, South Carolina . . . has the third highest proportion of pediatric COVID-19 cases in the United States[,] with children accounting for over [nineteen] percent of all South Carolina COVID-19 cases." Saul Decl. ¶ 13 (footnote omitted). And, "[r]ecent studies have confirmed that wearing masks is one of the most powerful tools to thwart the transmission of COVID-19 in indoor settings, such as schools." *Id.* ¶ 26.

Thus, the Court concludes allowing school districts, at their discretion, to require face coverings is a reasonable modification, as the benefits of masking significantly exceed the costs.

See generally Henrietta D. v. Bloomberg, 331 F.3d 261, 280 (2d Cir. 2003) (quoting *Borkowski v. Valley Cent. Sch. Dist.*, 63 F.3d 131, 138 (2d Cir. 1995)) (stating that the burden of establishing the reasonableness of an accommodation is "'not a heavy one'" and that it "is enough for the plaintiff to suggest the existence of a plausible accommodation, the costs of which, facially, do not clearly exceed its benefits[.]").

c. Whether Plaintiffs' argument is undercut by unrelated lawsuits filed by plaintiffs with disabilities in other courts asserting their disability precludes them from wearing a mask in a store setting

Nevertheless, Governor McMaster contends Plaintiffs' argument is "irreconcilable with the frequent statements that disability-rights advocates have made since early in this pandemic that many people with disabilities cannot wear masks and should be excluded from mask mandates." Governor McMaster Resp. in Opp'n at 25. And, he avers "[m]ultiple disabled plaintiffs have challenged mask mandates, demanding that they not be subject to those mandates under the ADA." *Id.* (citing cases). Plaintiffs' fail to directly address this contention.

Here, Governor McMaster's contention is without merit. As an initial matter, the cases cited by Governor McMaster supporting his argument all involve Title III. Title III prohibits discrimination in places of public accommodations, such as businesses. Second, none of the cases involves a disability-rights organization as a party. And, most importantly, the crux of the different lawsuits cited by Governor McMaster involve plaintiffs with disabilities suing a store that required them to wear masks while shopping, hardly similar to the factual situation before this Court. Besides, "[e]ven the CDC's own guidance says that a 'person with a disability who cannot wear a mask, or cannot safely wear a mask, for reasons related to the disability' should not be required to wear a mask." *Id.* (quoting *Guidance for Wearing Masks*, Ctrs. For Disease Control & Prevention (Apr. 19, 2021)).

At bottom, the Court concludes Proviso 1.108 conflicts with Title II and Section 504 because it fails to accommodate disabled children and denies them the benefits of public schools' programs, services, and activities to which they are entitled. Consequently, Plaintiffs have met their burden of demonstrating they are likely to succeed on the merits of their failure to make reasonable accommodations claim. Inasmuch as this issue is dispositive as to the success-on-the-merits factor, the Court need not address the parties' other arguments.

2. Whether Plaintiffs have established they are likely to suffer irreparable harm in the absence of injunctive relief

Plaintiffs aver, among other things, "the heightened exposure to a deadly viral contagion—COVID-19[,]" demonstrates they are likely to suffer irreparable harm in the absence of injunctive relief. Pls.' Mot. at 20.

Governor McMaster, in response, posits "Plaintiffs do not have a high probability of contracting COVID-19 or having a severe outcome." Governor McMaster Resp. in Opp'n at 32 (internal quotation omitted). In support of this position, Governor McMaster notes "six children between infancy and ten years old have died of COVID-19 [in South Carolina], and [twelve] children between ten and [twenty] years old have died of COVID-19 [in South Carolina], while there have been about 54,000 and 115,000 cases in those two age ranges [in South Carolina, respectively]." *Id.* AG Wilson fails to address this injunctive relief factor.

As noted above, a temporary restraining order and a preliminary injunction should issue only when plaintiffs can establish they are "likely to suffer irreparable harm in the absence of [temporary or] preliminary relief[.]" *Winter*, 555 U.S. at 20.

Here, as noted by Saul, "[p]ediatric COVID-19 cases comprise an increasing share of overall COVID-19 cases both in the United States and South Carolina." Saul Decl. ¶ 12. And, "[b]ased on available data from [forty-eight] states assembled by the American Academy of

Pediatrics, South Carolina has the fourth highest cumulative case rate per 100,000 children in the United States, with over 9,500 recorded pediatric cases per 100,000 children." *Id.* ¶ 13 (footnote omitted).

Governor McMaster, in his citation of the low percentage of adolescent COVID-19 cases that result in death, appears to argue Plaintiffs must show a likely risk of death to demonstrate irreparable harm. But, as adeptly noted by Plaintiffs, the risk of the minor plaintiffs just contracting COVID-19 constitutes irreparable harm. Pls.' Reply at 21–22.

Other courts have recently considered the dangers associated with COVID-19 in schools and have also concluded irreparable harm is demonstrated by the threat of COVID-19. *See The Arc of Iowa v. Reynolds*, Case No. 4:21-cv-00264, 2021 WL 4166728, at * 9 (S.D. Iowa Sept. 13, 2021) ("Because [the disabled] Plaintiffs have shown that [Iowa's] ban on mask mandates in schools substantially increases their risk of contracting the virus that causes COVID-19[,] and that due to their various medical conditions they are at an increased risk of severe illness or death, Plaintiffs have demonstrated that an irreparable harm exists."); *G.S. v. Lee*, Case No. 21-cv-02552-SHL-atc, 2021 WL 4057812, at * (W.D. Tenn. Sept. 3, 2021) ("Plaintiffs have satisfied their burden of showing that irreparable harm will result if the Governor's Executive Order remains in place by including in their pleadings" information regarding the threat of COVID-19 and alleging that '[w]ithout the ability to implement a universal mask mandate, Plaintiffs will continue to be exposed to an increased risk of infection, hospitalization, or death because of COVID-19, or they will be forced to stay home and denied the benefits of an in-person public education.'") (quoting the plaintiffs' complaint).

Accordingly, the Court concludes Plaintiffs have demonstrated they are likely to suffer irreparable harm in the absence of injunctive relief. Inasmuch as this issue is dispositive as to the

likelihood of suffering irreparable harm factor, the Court need not address the parties' other arguments.

3. Whether Plaintiffs have established the balance of equities tip in their favor and injunctive relief is in the public interest

Plaintiffs aver the "balance of equities tip decisively in [their] favor . . . and an injunction is undoubtedly in the public interest[,]" as persons with disabilities must be treated equally, "thereby maximizing their integration and independence." Pls.' Mot. at 22–23.

Governor McMaster disagrees and argues, among other things, "Courts have no authority to enjoin . . . legislative acts" passed by the General assembly. Governor McMaster Resp. in Opp'n at 34. AG Wilson fails to address these two injunctive relief factors.

When the defendants are governmental entities, the equities and public interest analyses "merge[.]" *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Here, inasmuch as Governor McMaster and AG Wilson are governmental entities, the Court will consider these two factors together. Contrary to Governor McMasters' contention the balance of equities and the public interest is best served by enforcement of South Carolina's Proviso 1.108, the public interest does not lie with enforcement of a state law that violates the laws which Congress has passed to prevent discrimination based on disability. Moreover, there is little harm to enjoining Proviso 1.108 and permitting the public-school districts to satisfy their burden to make reasonable modifications under Title II and Section 504.

Consequently, the Court concludes the balance of equities tips in Plaintiffs' favor and injunctive relief is in the public interest. As this argument is dispositive as to these two factors, the Court need not address the parties' other arguments. As such, the Court will grant Plaintiffs motions for a temporary restraining order and a preliminary injunction against Governor McMaster and AG Wilson.

C. Plaintiffs vs. The School Boards, Superintendent Spearman, and Lexington

Inasmuch as the Court has concluded Proviso 1.108 violates Title II and Section 504, and the Court will grant Plaintiffs' motion for a temporary restraining order and a preliminary injunction against Governor McMaster and AG Wilson, it need not address the parties' other arguments as to the School Boards, Superintendent Spearman, and Lexington. This is so because if Proviso 1.108 is violative of laws passed by Congress, which it is, then any party's enforcement of Proviso 1.108, such as the School Boards, Superintendent Spearman, and Lexington, is illegal. *See generally Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial departments to say what the law is.").

D. Whether the Court must address the parties' arguments regarding the ARPA

Because the Court concludes Plaintiffs are entitled to relief under Title II and Section 504, it need not address the parties' arguments regarding the ARPA.

E. Whether the Court should issue the temporary restraining order and preliminary injunction without bond

Plaintiffs request the temporary restraining order and preliminary injunction issue without bond. None of the Defendants address this issue.

"The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security set by the court[.]" Rule 65(c). Nevertheless, the Fourth Circuit has held that "the district court retains discretion to set the bond amount as it sees fit or waive the security requirement." *Pashby*, 709 F.3d at 332.

Because the Defendants are in no way harmed by the issuance of injunctive relief, the Court concludes the temporary restraining order and preliminary injunction should issue without bond.

* * * * *

Some may find it incomprehensible that the General Assembly, by enacting Proviso 1.108, has tied the hands of local school districts to initiate measures they might deem necessary to keep their students safe. But that question, nor the question of whether, as some might suggest, Proviso 1.108 amounts to COVID incompetence, is not before the Court.

Some have also contended that the politicalization, by both opponents and proponents, of the decision to forbid local school districts from requiring students to wear a mask at school is gravely wrong. Literally. But, that question is not before the Court either.

This case presents a legal question, not a political one. And, the question is quite simple: whether the Court will allow Defendants to continue to discriminate against the minor plaintiffs here based on their disabilities. The answer is, of course, a resounding "No!" As such, because the Court has concluded Proviso 1.108 is illegal, under both Title II and Section 504, it must be enjoined.

It is true that the fundamental right of a parent to decide what is best for their child cannot be ignored. It is also generally true that parents are the ones who know their children best, what is best for their health, and their ability to learn. But, those same truths apply equally to all parents, including the parents of children with disabilities, such as the minor plaintiffs here.

Plaintiffs' request that school districts in South Carolina ought to be allowed to choose whether to mandate mask wearing aligns perfectly with Title II's and Section 504's goals of creating a fully inclusive society that protects its most vulnerable, and integrates children with disabilities into our society. And, as the Court has detailed above, several prominent health organizations, who have reported on school age children in desperate conditions, are calling on lawmakers to give school districts the option to implement universal masking in schools. The fact

that health organizations such as the Centers for Disease Control and Prevention and the American Academy of Pediatrics recommend mask-wearing lends support to the notion that Plaintiffs' request is reasonable.

It is noncontroversial that children need to go to school. And, they are entitled to any reasonable accommodation that allows them to do so. No one can reasonably argue that it is an undue burden to wear a mask to accommodate a child with disabilities.

Both Title II and Section 504 guarantee individuals with disabilities the same access to an education as those children without disabilities enjoy. But, Proviso 1.108's prohibition on allowing school districts to decide whether to mandate masks is effectively a barrier to such access.

Years ago, ramps were added to schools to accommodate those with mobility-related disabilities so they could access a free public education. Today, a mask mandate works as a sort of ramp to allow children with disabilities access to their schools. Thus, the same legal authority requiring schools to have ramps requires that school districts have the option to compel people to wear masks at school.

And, just as a law forbidding a school district to install ramps in its building would be held to be an affront to Title II and Section 504, so is Proviso 1.108, which proscribes a school district from mandating masks, even when it concludes it is appropriate to do so. Accordingly, masks must, at a minimum, be an option for school districts to employ to accommodate those with disabilities so they, too, can access a free public education.

Governor McMaster, in support of his opposition to Plaintiffs' requests for injunctive relief, cites to Chief Justice Roberts's concurrence in a COVID-related case in which the Supreme Court declined to issue a stay of California's safety guidelines, concluding they failed to discriminate against places of worship in violation of the First Amendment. McMaster Resp. in

Opp'n at 23 (citing to *South Bay United Pentecostal Church v. Newsom*, 140 S.Ct. 1613 (2020) (Roberts, C.J., concurring).

In that opinion, Roberts opines that "[o]ur Constitution principally entrusts the safety and the health of the people to the politically accountable officials of the States to guard and protect." *South Bay United Pentecostal Church*, 140 S.Ct. at 1613 (citation omitted) (internal quotation marks omitted) (internal alteration marks omitted). "When those officials undertake to act in areas fraught with medical and scientific uncertainties, their latitude must be especially broad." *Id*. (citation omitted) (internal quotation marks omitted) (internal alteration marks omitted).

"Where those broad limits are not exceeded, they should not be subject to second-guessing by an unelected federal judiciary, which lacks the background, competence, and expertise to assess public health and is not accountable to the people." *Id*. 1613-14 (citation omitted) (internal quotation marks omitted).

All of that is certainly true, except when such guidelines discriminate against someone. Then, when the Court determines, as it has here, that there is outright discrimination, the enjoining "by an unelected judiciary," *id*., of a statute passed by "politically accountable officials[,]" *id*., is particularly and perfectly proper.

The Court takes its cue from the Supreme Court's decision in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63 (2020), which deals a fatal blow to McMaster's arguments. In that case, the plaintiffs asked for, and the Supreme Court granted, their application to enjoin the enforcement of the Governor of New York's emergency Executive Order imposing occupancy restrictions on houses of worship during COVID-19 pandemic. *Id*. at 65-66. According to the Supreme Court, the Executive Order violated the First Amendment. *Id* at 7.

There, the Supreme Court held that COVID measures cannot discriminate on the basis of religion. It then logically follows that, if presented with the question as to whether COVID measures can discriminate against those with disabilities, it would give the same answer: No.

"[T]he liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good." *Jacobson v. Commonwealth of Mass*., 197 U.S. 11, 26 (1905). Thus, in a health emergency such as this, it is the government's burden to navigate the tension between protecting the public health and safety, while, at the same time, preserving individual rights and liberties.

It cannot be seriously debated that the government's broad powers to protect the public during a declared emergency is well settled. *See id.* But, these emergency powers exist against the backdrop of individual rights and liberties, including the right to be free from discrimination. Such rights are sacrosanct.

Consequently, there is an inherent tension between the exercise of one's personal freedoms and rights, on the one hand, and the government's protecting the health of the public, on the other. This case presents the added burden of making sure the government's public health measures are not infringing against one's right to be free from discrimination. And, as the Supreme Court did in *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Court must call the government out when it finds its public health measures are discriminatory.

This Court has always been extremely deferential to governmental decision-making. It is not called to make law, but to interpret it. And, that is exactly what it has done here.

This is not a close call. The General Assembly's COVID measures disallowing school districts from mandating masks, as found in Proviso 1.108, discriminates against children with disabilities. Thus, with this Order, the Court will enjoin its enforcement.

V. CONCLUSION

Wherefore, based on the foregoing discussion and analysis, it is the judgment of the Court Plaintiffs' motions for a temporary restraining order and a preliminary injunction are **GRANTED**, and Defendants are enjoined from enforcing Proviso 1.108, which is violative of Title II and Section 504.

Plaintiffs shall not be required to post bond.

IT IS SO ORDERED.

Signed this 28th day of September 2021, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE