

**IN THE CIRCUIT COURT FOR THE FOURTEENTH JUDICIAL DISTRICT  
AT MANCHESTER, COFFEE COUNTY, TENNESSEE**

**FILED**

SEP 24 2020

CIRCUIT COURT  
COFFEE COUNTY, TN  
HEATHER HINDS DUNCAN, CLERK  
TIME ..... AM/PM

**HEATHER MURCHISON**, Individually and )  
as the Parent and Guardian of **N.S.**, a Minor Child )  
Plaintiffs, )

vs. )

**Civil Action No.:** 2020-CV-46.965

**DR. CHARLES LAWSON**, in his official )  
capacity as **Director of Schools** and the )  
**Coffee County, Tennessee Board of Education** )  
Defendants, )

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**ORDER**

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*This matter came before the Court* on September 8, 2020, upon Plaintiff's petition for a preliminary injunction seeking to enjoin Defendants' enforcement of a face covering policy pending the Court's ruling on the merits of the Plaintiff's case. At the hearing, the Court heard testimony from the Plaintiff, a minor child (*referred to as N.S.*), Heather Murchison and Dr. Charles Lawson. Counsel for the parties subsequently filed Briefs in support of their respective positions on Monday, September 21, 2020.

**The Court finds the following:**

On March 12, 2020, Governor Lee declared a state of emergency in response to the COVID-19 pandemic. Since then, Governor Lee has issued a series of emergency management executive orders attempting to slow the spread of the disease and to protect the health of Tennessee residents. These orders have been issued pursuant to the emergency management powers granted to the Governor by the General Assembly. Tenn. Code Ann. § 58-2-107. Pursuant to Executive Orders Nos. 54, 55 and 59, the Coffee County Mayor has been delegated the authority from the Governor to require the usage of face coverings within Coffee County.

Coffee County Mayor, Gary Cordell, delegated his authority regarding face covering requirements for the Coffee County School District (*referred to as CCSD*) to the Director of Schools, Dr. Charles Lawson. Mayor Cordell set forth this delegation of authority in a letter to Dr. Lawson. *See Trial Exhibit 3*. In his letter, the Mayor wisely stated that Dr. Lawson was in a better position to know how to best implement safety requirements within the CCSD based upon input from teachers and staff and his knowledge of the schools' layouts.

Based upon the delegation of authority from Mayor Cordell and a request from a Coffee County School Board member, Dr. Lawson formulated a proposed face mask policy to present to the Coffee County School Board (*referred to as CCSB*) for approval. It is the responsibility of the school board to approve policies for the Coffee County school system. At CCSB's July 10, 2020 meeting, the Board approved the mask mandate policy, with one amendment, by a 5 to 1 vote. The amendment was added to the policy to provide that the use of mask during extracurricular activities will be under the guidance of the governing body of said activity, such as TSSAA. The mask mandate policy took effect on August 12, 2020. The policy, as adopted by CCSB, was entered into evidence as Trial Exhibit 2.

N.S. is a ninth grade student at the Raider Academy, a school within the CCSD. On August 13, 2020, N.S. attempted to entered school without a mask. N.S. initially told school staff that wearing the mask was against his religious beliefs, but admitted at the hearing that this was not true. He also indicated that he had a medical reason for refusing to wear the mask, but there was no evidence presented at the hearing to substantiate this claim. N.S. stated that wearing the mask makes it difficult for him to concentrate.

N.S. has received no disciplinary actions for his refusal to wear a mask. He has been required to go to a room where he could be socially distanced from other students. This is the same room in which students serve in-school detention. There has been one or other students in the room with N.S. and one staff member, Coach Jennings.

While at school, N. S. has received his instruction via videos and Google classroom (*i.e. virtual learning*). The virtual learning instruction that N.S. receives is the same instruction as received by students who have opted to stay home and "distance" learn.

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N.S. has continued to participate in the extracurricular football program. He is also continuing to take his elective Spanish class. N.S. is a good student and has continued to receive high grades.

There are four factors that the Court should consider to decide whether to grant Plaintiff's request for a preliminary injunction. Those factors are:

- (1) whether Plaintiff has shown a likelihood of success on the merits;
- (2) whether Plaintiff will suffer irreparable harm if the injunction is not issued;
- (3) whether the issuance of the injunction will cause irreparable harm to others; and
- (4) whether the issuance of the injunction will serve the public interest.

Plaintiff, as the moving party, carries the burden of establishing the existence of these factors.

The first factor, likelihood of success on the merits, is a question of law and is often the determinative factor. Pursuant to Tenn. Code Ann. § 58-2-107, Governor Lee has issued several emergency management executive orders designed to slow the spread of Covid-19 and to protect the health of Tennessee residents, and he has delegated the authority to Mayor Cordell to require the usage of face coverings within Coffee County. As stated above, Mayor Cordell authorized Dr. Lawson to formulate a mask policy for the CCSB which was approved and adopted by the CCSB. The Tennessee Attorney General has issued an opinion which examines the issue of the Governor's authority to issue these emergency executive orders and to delegate his authority.

In Tenn. Op. Atty. Gen. No. 20-07 (Apr. 27, 2020), the Attorney General opined as follows:

"The Governor's power to issue these executive orders is grounded in the broad grant of authority—a responsibility and authority that the General Assembly has vested solely in the office of the governor—to assume control over all aspects of the State's response to an emergency such as the COVID-19 pandemic:

The governor is responsible for addressing the dangers presented to this state and its people by emergencies. In the event of an emergency beyond local control, the governor ... may assume *direct operational control over all or any part of the emergency management functions* within this state .... *The governor is authorized to delegate such powers as the governor may deem prudent.*

Tenn. Code Ann. § 58-2-107(a)(1) (emphasis added). To exercise this exclusive authority "the governor may issue executive orders, proclamations, and rules and may amend or rescind them. Such executive orders, proclamations, and rules *have the force and effect of law.*" *Id.* § 58-2-

107(a)(2)(emphasis added). *See also* Tenn. Code Ann. § 58-2-107(b)(1)(A) (authorizing issuance of executive orders to implement governor's authority).

An “emergency” is defined expressly to include “disease outbreaks and epidemics.” Tenn. Code Ann. § 58-2-101(7). “Emergency management” is defined broadly to cover all stages of dealing with an emergency; it “means the preparation for, the mitigation of, the response to, and the recovery from emergencies and disasters.” Tenn. Code Ann. § 58-2-101(8). “

Clearly Tenn. Code Ann. § 58-2-107(a)(1) gives Governor Lee the authority to issue a mask mandate and to delegate that authority as he deems prudent.

The constitutionality of Tenn. Code Ann. § 58-2-107 is not at issue in this case. In order for Plaintiff to challenge the constitutionality of this statute, Tenn. Code Ann. § 29-14-107(b) requires the attorney general to be served with a copy of the proceeding and he is entitled to be heard. The Attorney General was not served with a copy of the Plaintiff’s complaint and was not afforded an opportunity to be heard.

The Court finds that the mask policy was properly adopted by the CCSB, pursuant to a lawful and constitutional delegation of authority by Governor Lee and Mayor Cordell. Therefore, the Court finds that the Plaintiff has no likelihood of success on the merits.

Although the Plaintiff’s lack of success on the merits is probably determinative, the Court also finds that the Plaintiff has not carried the burden of proof on the remaining factors. N.S.’s objection to wearing a mask was simply that it made it difficult to concentrate. He does not have a medical condition that would be exacerbated by wearing a mask, nor does he have a religious belief that would prevent him from wearing a mask. He continues to receive the same instruction as students who are staying at home and “distance” learning. He has continued to participate in football and his elective Spanish class. His grades have not suffered, and he continues to receive good grades. There is simply no proof that he will suffer irreparable harm from being required to wear a mask in order to participate in class at the Raider Academy.

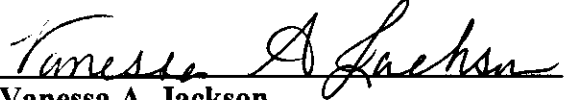
As to the factors of whether the issuance of the injunction will cause irreparable harm to others and whether the issuance of the injunction will serve the public interest, the Court can take judicial notice of the grave danger posed to the public by the COVID-19 pandemic, and the overwhelming advice of infectious disease experts, such as Dr. Fauci, that wearing a mask is the best defense to stop the spread of this disease. Dr. Lawson testified that it is in the best interest of students and parents for the schools to remain open for in-person learning for those who desire

to attend. A significant outbreak of the COVID virus would lead to closing of the schools to the detriment and irreparable harm of those students and parents.

The issuance of the requested preliminary injunction will in effect negate enforcement of the CCSB's mask policy. In other words, issuance of a preliminary injunction would not apply to N.S. solely, but would in effect allow all students to ignore the mask policy, and thus create a greater risk of the spread of the virus to other students, faculty and parents, and possible closing of schools to in-person learning. The issuance of an injunction enjoining the enforcement of the CCSB's mask policy will not serve the greater good and the public interest.

Based on the facts and applicable law, the Court denies the Plaintiff's request for a preliminary injunction to enjoin Defendants' enforcement of its face covering policy.

Enter: This the 24 day of September, 2020.

  
**Vanessa A. Jackson**  
**Circuit Court Judge, Part II**

RECORDED  
ON MINUTES

SEP 24 2020

Heather Hinds Duncan, Clerk  
Coffee County TN