

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
21ST JUDICIAL DISTRICT AT FRANKLIN

2021 APR 30 AM 11:35

CITIZENS FOR LIMITED GOVERNMENT)
and CONSTITUTIONAL INTEGRITY, INC.,)
d/b/a RECALL WILLIAMSON, et. al,)

FILED FOR ENTRY

4/30/21

PLAINTIFFS,)

VS.)

CASE NO. 20CV-49753

JASON GOLDEN, in his capacity as)
SUPERINTENDENT FOR WILLIAMSON)
COUNTY SCHOOLS, et. al,)

DEFENDANTS.)

MEMORANDUM AND ORDER

This case is before the Court on Defendants Williamson County Board of Education, also known as Williamson County Schools (hereinafter "WCBOE") and Superintendent Jason Golden, in his official capacity's (hereinafter collectively referred to as "Defendants") *Motion to Dismiss or for Summary Judgment* filed September 21, 2020. It is important to note this Court is required to address all of the complex legal issues presented in this case by carefully applying the law to the facts, as is true in any other case. This Court has also set forth below legal, viable alternatives which are appropriate in this case and as recommended by our appellate courts in appropriate cases. As stated in more detail below, this Court is not convinced as a matter of law WCBOE acted within its statutory authority at the time it promulgated its face-covering requirements, and the Court is particularly unconvinced WCBOE has continuing authority to enforce its face-covering requirements in light of recent policy decisions by Williamson County, Tennessee Mayor Rogers C. Anderson (hereinafter referred to as "Mayor Anderson") and

Tennessee State Governor Bill Lee (hereinafter referred to as "Governor Lee"), WCBOE's continued enforcement of face-covering requirements is not viable.

I. BACKGROUND AND PROCEDURAL HISTORY

This case presents a challenge to WCBOE's face-covering requirements for Williamson County public school students, implemented in response to the COVID-19 pandemic.

On June 22, 2020, the State Board of Education promulgated an emergency rule and policy requiring each of Tennessee's local school districts to submit a plan for the 2020-2021 school year to the Tennessee Department of Education for approval. The resources sent to local school districts to utilize in developing their plans suggested they "develop and reinforce personal sanitation guidelines like frequent handwashing, the use of hand sanitizer, and potentially wearing PPE (local decision)."¹ The WCBOE submitted their proposed Reopening Framework (which included the face-covering policy at issue in this litigation) to the Tennessee Department of Education, which approved the plan on July 24, 2020.

On July 6, 2020, Mayor Anderson issued an order requiring face coverings to be worn in Williamson County. Mayor Anderson's face-covering requirement was extended on August 3, 2020; October 22, 2020; October 30, 2020; and December 28, 2020.

Mayor Anderson relied upon Governor Lee's Executive Order 54, which provided:

2. Specific delegation of authority to issue orders concerning face coverings. . . . [C]ounty mayors in the 89 counties that do not have a locally run county health department shall have the authority to issue orders or measures requiring or recommending the wearing of face coverings within their jurisdictions, consistent with Paragraph 3 of this order.

¹ Defs.' Reply in Support of Mot. to Dismiss or for Summ. J. at 6.

On August 3, 2020, Governor Lee promulgated Executive Order 55, which stated in part: "Local education agencies, schools, and institutions of higher education are strongly encouraged to implement a policy requiring the use of face coverings by students and staff, with appropriate exemptions, and consistent with any policies issued by the Tennessee Department of Education."

On September 11, 2020, Plaintiffs filed their initial *Complaint for Declaratory & Injunctive Relief* challenging WCBOE's face-covering requirements. On September 21, 2020, Defendants filed an *Answer*.

On September 21, 2020, Defendants also filed the pending *Motion to Dismiss or for Summary Judgment*, accompanying memorandum of law, and statement of undisputed material facts.

On September 24, 2020, Plaintiffs filed a *Motion to Amend Complaint*. On October 19, 2020, the Court entered an *Order* (i) allowing Plaintiffs to amend their complaint; and (ii) stating the pending summary judgment motion would still be heard as scheduled on December 21, 2020. On October 26, 2020, Plaintiffs filed their *Amended Complaint for Declaratory & Injunctive Relief*, adding additional parties.

On October 30, 2020, Plaintiffs filed their *Response to Motion to Dismiss or, Alternatively, for Summary Judgment and Response to Defendants' Statement of Undisputed Material Fact in Support of Motion for Summary Judgment and Statement of Additional Materia [sic] Facts*.

On November 9, 2020, Defendants filed the *Answer of Williamson County Board of Education and Jason Golden to Amended Complaint for Declaratory & Injunctive Relief*.

On November 13, 2020, Defendants filed WCBOE and Golden's *Reply in Support of Their Motion to Dismiss or For Summary Judgment*.

On December 21, 2020, Defendants' *Motion to Dismiss or for Summary Judgment* came before the Court for hearing, at which time the Court took the motion under advisement.

Governor Lee's encouragement of local education authorities to issue face-covering requirements set forth above was most recently extended by Executive Order 73, issued on December 22, 2020. This provision remained in effect until February 27, 2021, at which time it was allowed to expire, and has not been extended or renewed.

On February 27, 2021, Mayor Anderson's face-covering requirement was allowed to expire, and was not extended or renewed.

On April 27, 2021, Governor Lee promulgated Executive Order 80, which expressly removed the Governor's delegation of authority to county mayors, such as Mayor Anderson, to issue face-covering requirements for their counties.

II. DISCUSSION

Plaintiffs seek declaratory and injunctive relief, and specifically ask the Court to: (i) declare that WCBOE's face-covering requirement exceeds its authority as a local school board; (ii) declare that WCBOE's face-covering requirement denies students substantially equal educational opportunities as are afforded to other public school students within Tennessee; (iii) declare that Tenn. Code Ann. § 58-2-107, to the extent it permits Governor Lee to delegate authority to local school boards, violates the Tennessee constitution's principles of separation of powers; (iv) issue temporary and permanent injunctions prohibiting Defendants from enforcing their face-covering requirements.

Defendants now move for dismissal of Plaintiffs' claims pursuant to Tennessee Rule of Civil Procedure 12, arguing no justiciable case or controversy is properly before this Court; or alternatively, for summary judgment pursuant to Tennessee Rule of Civil Procedure 56 on the merits of Plaintiffs' claims.

A. Justiciability

The Court is required to consider the question of justiciability first.² As stated by the Supreme Court of Tennessee:

Despite the absence of express constitutional limitations on the exercise of their judicial power, Tennessee's courts have, since the earliest days of statehood, recognized and followed self-imposed rules to promote judicial restraint and to provide criteria for determining whether the courts should hear and decide a particular case. These rules, commonly referred to as justiciability doctrines, are based on the judiciary's understanding of the intrinsic role of judicial power, as well as its respect for the separation of powers doctrine in Article II, Sections 1 and 2 of the Constitution of Tennessee.

Tennessee's courts believed that "the province of a court is to decide, not advise, and to settle rights, not to give abstract opinions." Accordingly, they limited their role to deciding "legal controversies." A proceeding qualifies as a "legal controversy" when the disputed issue is real and existing, and not theoretical or abstract, and when the dispute is between parties with real and adverse interests.

Justiciability doctrines assist the courts in determining whether a particular case presents a legal controversy. The justiciability doctrines recognized by Tennessee courts mirror the justiciability doctrines employed by the United States Supreme Court and the federal courts. These doctrines include: (1) the prohibition against advisory opinions, (2) standing, (3) ripeness, (4) mootness, (5) the political question doctrine, and (6) exhaustion of administrative remedies.³

² *City of Memphis v. Hargett*, 414 S.W.3d 88, 96 (Tenn. 2013) ("This Court must first consider questions pertaining to justiciability before proceeding to the merits of any remaining claims."). See also *West v. Schofield*, 460 S.W.3d 113, 130 (Tenn. 2015) ("[T]o maintain an action for a declaratory judgment a justiciable controversy must exist.").

³ *Norma-Faye Pyles Lynch Fam. Purpose LLC v. Putnam Cty.*, 301 S.W.3d 196, 202–03 (Tenn. 2009) (internal citations omitted). See also *UT Med. Grp., Inc. v. Vogt*, 235 S.W.3d 110, 119 (Tenn. 2007) ("To be justiciable, a case must involve presently existing rights, live issues that are within a court's jurisdiction, and parties who have a legally cognizable interest in the issues. A case is not justiciable if it does not involve a genuine, existing controversy requiring the adjudication of presently existing rights.") (citation omitted).

This case implicates the doctrines of standing and mootness. The Court will consider each of these doctrines in turn.

i. **Standing**

"Courts employ the doctrine of standing to determine whether a particular litigant is entitled to have a court decide the merits of a dispute or of particular issues."⁴ The Supreme Court of Tennessee has summarized the doctrine of standing as follows:

The doctrine of standing is used to determine whether a particular plaintiff is entitled to judicial relief. It is the principle that courts use to determine whether a party has a sufficiently personal stake in a matter at issue to warrant a judicial resolution of the dispute. Persons whose rights or interests have not been affected have no standing and are, therefore, not entitled to judicial relief.

The sort of distinct and palpable injury that will create standing must be an injury to a recognized legal right or interest

Significantly, we do not consider the likelihood of the plaintiff's success on the merits of its petition in determining whether the plaintiff has standing. However, we must carefully examine a petition's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted

[W]e focus our standing inquiry on considerations of judicial restraint, such as whether a complaint raises generalized questions more properly addressed by another branch of the government⁵

Plaintiffs bear the burden of demonstrating they have standing to bring their claims.⁶ In this case, the individual Plaintiffs are: (i) Gary Humble (as parent and guardian of E.H. and G.H.), (ii) Tony Bates and Heather Bates (as parents and guardians of C.B.

⁴ *Am. Civil Liberties Union of Tennessee v. Darnell*, 195 S.W.3d 612, 619 (Tenn. 2006).

⁵ *The Metro. Gov't of Nashville v. The Bd. of Zoning Appeals of Nashville*, 477 S.W.3d 750, 755 (Tenn. 2015) (internal quotations and citations omitted). See also *Darnell*, 195 S.W.3d at 620 (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975) ("Without limitations such as standing and other closely related doctrines 'the courts would be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights.'").

⁶ *Fannon v. City of LaFollette*, 329 S.W.3d 418, 424 (Tenn. 2010).

and R.B.), (iii) Chelsea Gilbert (as parent and guardian of J.G., P.G., M.G., and B.G.); and (iv) John Phaender (as parent and guardian of P.P. and K.P.). The remaining Plaintiff is the institutional Plaintiff Citizens for Limited Government and Constitutional Integrity, Inc., d/b/a Recall Williamson (hereinafter, "Recall Williamson").

In order to establish standing to sue, a plaintiff must establish the following elements by a preponderance of the evidence: (1) a distinct and palpable injury, rather than one that is conjectural or hypothetical; (2) a causal connection between the claimed injury and the challenged conduct; and (3) that the alleged injury is capable of being redressed by a favorable decision of the court.⁷

Plaintiffs claim the following injuries: (i) Humble withdrew G.H. and E.H. from Oak View Elementary School "based solely upon the mandate issued by [Williamson County Schools] requiring students to wear a mask on campus;"⁸ (ii) Heather Bates and Tony Bates withdrew C.B. and R.B. from Nolensville Elementary School "based solely upon the mandate issued by [Williamson County Schools] requiring students to wear masks on campus;"⁹ and (iii) J.G., P.G., M.G., and B.G. "are unlawfully required to wear masks during the school day as a condition of their attendance imposed by [Williamson County Schools]"¹⁰ or are alternatively required to enroll in distance/virtual learning.

Plaintiffs' *Amended Complaint* is entirely devoid of any averments relating to the institutional Plaintiff Recall Williamson. Accordingly, Plaintiffs have not satisfied their burden of demonstrating Recall Williamson's standing to bring any claims before this

⁷ *Fannon*, 329 S.W.3d at 424 (internal quotations and citations omitted). See also *Hargett*, 414 S.W.3d at 98 ("To establish constitutional standing, a plaintiff must satisfy three 'indispensable' elements.").

⁸ Am. Compl. for Declaratory & Injunctive Relief at 4.

⁹ *Id.*

¹⁰ *Id.* at 5. Plaintiff John Phaender's claims relate to Defendant Franklin Special School District ("FSSD"). FSSD is not before the Court, and the Court will address only those claims directed at Defendants WCBOE and Golden in resolving their pending motion.

Court.¹¹ Recall Williamson's claims against Defendants, to the extent any have been stated, are therefore **DISMISSED**.

With respect to the individual Plaintiffs, Defendants argue: (i) Plaintiffs have suffered no injury to a recognized legal right or interest; (ii) Humble and Bates' injuries were self-inflicted; (iii) Plaintiffs' claimed injuries are generally shared by a large group of citizens; and (iv) Plaintiffs' claimed injuries are speculative and based upon conjecture.

First, "[t]he sort of distinct and palpable injury that will create standing must be an injury to a recognized legal right or interest."¹² To establish standing, Plaintiffs must allege an injury which is "distinct from that suffered in general by other citizens subject to the same law."¹³ Plaintiffs' standing

may not be predicated upon an injury to an interest that the plaintiff shares in common with all other citizens. Were such injuries sufficient to confer standing, the State would be required to defend against 'a profusion of lawsuits' from taxpayers, and a purpose of the standing doctrine would be frustrated.¹⁴

Additionally, Plaintiffs' injuries may not be self-inflicted:

a self-inflicted injury fails the second standing prerequisite, traceability. The plaintiff must show a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant. But if the plaintiff caused his own injury, he cannot draw a connection between that injury and the defendant's challenged conduct. A self-inflicted injury, by definition, is not traceable to anyone but the plaintiff.¹⁵

¹¹ See *Sneed v. Bd. of Pro. Resp. of Supreme Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010) ("It is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.").

¹² *McFarland v. Pemberton*, 530 S.W.3d 76, 105-106 (Tenn. 2017) (quoting *Wood v. Metro. Gov't of Nashville and Davidson County*, 196 S.W.3d 152, 158 (Tenn. Ct. App. 2005)).

¹³ *Durham v. Haslam*, 2016 WL 1301035, at *6 (Tenn. Ct. App. 2016).

¹⁴ *Darnell*, 195 S.W.3d at 620 (internal citation omitted).

¹⁵ *Buchholz v. Meyer Njus Tanick*, 946 F.3d 855, 866 (6th Cir. 2020) (internal quotations and citations omitted).

Here, as succinctly stated by Defendants, "Plaintiffs have failed to identify any legal authority to support the contention that their children have a legal right to receive a free and public education on-site at a school location without wearing a face covering."¹⁶

In this case, Plaintiffs Humble and Bates did not request an exemption from WCBOE's face-covering requirements for their children. None of Humble nor Bates' children were disciplined, or threatened with discipline, at any time for failing to comply with Defendants' face-covering requirements. Instead, Humble and Bates voluntarily withdrew their children from Williamson County Schools based upon their anticipation of some hypothetical discipline if their children failed to comply with the face-covering requirements. This is a self-inflicted, hypothetical injury which the Court cannot order Defendants to correct.

As our neighboring Supreme Court of Kentucky recently reasoned:

While the Plaintiffs argue that the [business] closure penalty for non-compliance [with statewide face covering requirements] is arbitrary due to lack of procedural due process, they do not identify any among themselves who has been threatened with a fine, fined, threatened with closure, or closed . . . in order for Kentucky courts to have constitutional jurisdiction to decide a claim, the litigant must have standing. Standing is achieved when a plaintiff alleges a personal injury fairly traceable to the defendant's allegedly unlawful conduct and which is likely to be redressed by the requested relief Here, because the Plaintiffs' injury is only hypothetical, they have failed to show the requisite injury for adjudication of their claim.¹⁷

Plaintiffs Humble and Bates' voluntary withdrawal of their children from Williamson County Schools is not redressable by a favorable decision of this Court. Therefore, Plaintiffs Gary Humble, Tony Bates, and Heather Bates' claims against Defendants are **DISMISSED**.

¹⁶ Defs.' Mem. of Law in Support of Mot. to Dismiss or for Summ. J. at 9. See *Sneed*, 301 S.W.3d at 615.

¹⁷ *Beshear v. Acree*, 2020 WL 6736090 at *35 (Ky. 2020).

Finally, Plaintiff Gilbert avers her children, who remain enrolled in Williamson County Schools, are unlawfully required to wear face coverings in their schools. “[P]rivate citizens cannot maintain an action complaining of the wrongful acts of public officials unless such private citizens aver special interest or a special injury not common to the public generally.”¹⁸

In determining whether the plaintiff has a personal stake sufficient to confer standing, the focus should be on whether the complaining party has alleged an injury in fact, economic or otherwise, which distinguishes that party, in relation to the alleged violations, from the undifferentiated mass of the public.

In Tennessee, the standing doctrine requires that the person challenging the constitutionality of a statute must show that he personally has sustained or is in immediate danger of sustaining, some direct injury and not merely that he suffers in some indefinite way in common with people generally. The mere status as a taxpayer or voter is not enough. The plaintiff must allege that the effect of the statute will impose burdens on him not common to the body of the citizens.¹⁹

Here, Gilbert has alleged no injury to her children which is not shared by the “undifferentiated mass” of every public-school student in Williamson County. “[A] plaintiff’s interest must be different from not only the general public, but also from any large class of citizens.”²⁰ Gilbert has not established standing to bring her claims against Defendants, and they are therefore **DISMISSED**.

ii. **Mootness**

Additionally, the Tennessee Supreme Court has summarized the mootness doctrine as follows:

A case must remain justiciable (remain a legal controversy) from the time it is filed until the moment of final appellate disposition. While the doctrines of standing and ripeness focus on the suit’s birth, the doctrine of mootness

¹⁸ *Fannon*, 329 S.W.3d at 427.

¹⁹ *Mayhew v. Wilder*, 46 S.W.3d 760, 767 (Tenn. Ct. App. 2001) (internal quotations and citations omitted).

²⁰ *Durham*, 2016 WL 1301035, at *6.

focuses attention on the suit's death. A moot case is one that has lost its justiciability either by court decision, acts of the parties, or some other reason occurring after commencement of the case. A case will be considered moot if it no longer serves as a means to provide some sort of judicial relief to the prevailing party.²¹

In this case, Plaintiffs ask the Court to declare Governor Lee's purported delegation of authority to local school boards via Executive Order 55, and renewed most recently by Executive Order 73, was an unconstitutional delegation of authority. To the extent Executive Order 55 and subsequent renewing executive orders purported to delegate any authority to local school boards, those provisions were allowed to expire on February 27, 2021. "The central question in a mootness inquiry is whether changes in the circumstances existing at the beginning of the litigation have forestalled the need for meaningful relief."²² In this case, circumstances have changed significantly since Plaintiffs initially filed their *Complaint* in September 2020. Plaintiffs' claim for a declaration regarding Governor Lee's authority under Tenn. Code Ann. § 58-2-107 is now moot and is therefore **DISMISSED**.

For the reasons set forth above, there is no justiciable case or controversy properly pending before this Court. Therefore, Defendants' *Motion to Dismiss or for Summary Judgment* is **GRANTED** pursuant to Tennessee Rule of Civil Procedure 12.

Alternatively, in the event a reviewing Court were to conclude Plaintiffs do in fact have standing to bring their claims, the Court makes the following additional findings of fact and conclusions of law pursuant to Tennessee Rule of Civil Procedure 56:

²¹ *Norma Faye Pyles Lynch Fam. Purpose LLC v. Putnam Cty.*, 301 S.W.3d 196, 203-04 (Tenn. 2009) (internal citations omitted).

²² *McIntyre v. Traugher*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994).

Plaintiffs' claims for declarations to the effect that (i) WCBOE's face-covering requirement exceeds its authority as a local school board; and (ii) WCBOE's face-covering requirement denies Williamson County students substantially equal educational opportunities as are afforded to other public school students within Tennessee, each survive a mootness inquiry.²³ Thus, the Court makes the following alternative ruling on the merits of those claims:

B. Local School Board Authority

Plaintiffs argue Tennessee's local school boards do not have authority to impose face-covering requirements in public schools. Defendants now move for summary judgment on this claim, arguing WCBOE acted within its statutory authority when requiring face coverings.

Article IX, § 12 of the Tennessee Constitution provides the right to a free public education in Tennessee:

The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such postsecondary educational institutions, including public institutions of higher learning, as it determines.²⁴

Tenn. Code Ann. § 49-1-102 provides the scheme for public school administration in Tennessee:

(a) The system of public education in this state shall be governed in accordance with laws enacted by the general assembly and under policies, standards, and guidelines adopted by the state board of education that are necessary for the proper operation of public education in kindergarten through grade twelve (K-12). The policies, standards and guidelines shall be formulated by the state board of education, with such

²³ As of April 29, 2021, WCBOE has publicly stated its intent to continue requiring the use of face coverings in Williamson County Schools. See <https://www.wcs.edu/Page/6734>.

²⁴ Tenn. Const. art. XI, § 12.

assistance from the commissioner of education as the state board may request.

(b) The commissioner shall perform such duties as are assigned to the commissioner by law and is responsible for the administration, implementation, supervision and enforcement of the policies, standards and guidelines of the state board of education.

(c) There shall be a local public school system operated in each county or combination of counties. There may be a local public school system operated in a municipality or special school district. **Any local public school system shall be administered by:**

(1) A local board of education; and

(2) A director of schools.

(d) In the event the local public school system is a multi-county system, the system shall be administered by an elected nine-member board of education and a director appointed by the board.²⁵

A 2018 formal opinion from the Office of the Attorney General describes the authority of local school boards in Tennessee:

As part of its constitutional authority and duty to provide for public education, the legislature has also created local boards of education and has mandated that the members of the local boards of education be locally elected. By statute, each county (or combination of counties) shall operate "a local public school system," and a municipality or special school district may also operate "a local public school system." Such local public school systems are to be administered by a local board of education. The members of each local board are elected by the people of that county, municipality, or district.

These local boards of education are wholly the creation of the state legislature, and, accordingly, they have no inherent or common law authority of their own. They may exercise only the authority given to them by the state legislature and must do so in accordance with state law, including the laws that subject local school systems and local boards of education to the authority of the state Board of Education.

The legislature has given the local boards of education the "duty" to "manage and control all public schools established under their jurisdiction." This includes, among other things, the duty to hire teachers, set salaries,

²⁵ Tenn. Code Ann. § 49-1-102 (emphasis added).

discipline students, and adopt standards for student attendance. And local boards of education are given some discretionary authority, including the authority to consolidate schools, take health and safety measures, establish minimum attendance requirements, and lease or sell buildings.

But at the same time, the legislature has clearly circumscribed the authority of the local boards of education. In performing their duties and exercising their authorities, local boards of education are required by the legislature to conform to state law and to the policies, guidelines, and standards established by the state Board of Education.

Local boards of education – members of which are elected by the people – are responsible for the day-to-day administration of their respective school systems and may exercise any authority given to them by the state legislature as long as they do so in accordance with state law and with the policies, guidelines, and standards of the state Board of Education.²⁶

Defendants argue they adopted face-covering requirements pursuant to the authority expressly delegated to them by the Tennessee legislature. Plaintiffs, on the other hand, argue the legislature has not given local school boards the authority to require students to wear face coverings.

The most relevant provision of the statute governing local school boards is Tenn. Code Ann. § 49-2-203(a)(2): "It is the duty of the local board of education to: Manage and control all public schools established or that may be established under its jurisdiction."²⁷ Defendants argue the legislature intentionally granted broad authority to local school boards, and rely upon this general grant of discretionary authority to support their face covering requirements.

²⁶ Tenn. Op. Atty. Gen. No. 18-34 (Tenn. A.G.) 2018 WL 3811826 (internal citations omitted) (**emphasis added**).

²⁷ Tenn. Code Ann. § 49-2-203(a)(2). The Court has also reviewed Tenn. Code Ann. §§ 49-2-203(a)(7), 49-2-203(a)(11), 49-2-203(b)(2), 49-1-302(h), 49-6-4002(a), 49-6-4005, and 49-6-4203(b)-(c). The Court is not persuaded, at the summary judgment stage, that authority to promulgate face-covering requirements can be found in those provisions.

The Court is not convinced, as a matter of law, that WCBOE acted within its statutory authority at the time it promulgated its face-covering requirements. Further, the policy decisions promulgated by Mayor Anderson and Governor Lee in February 2021 and April 2021 are inconsistent with WCBOE's continued enforcement of face-covering requirements. With respect to WCBOE's authority to issue a face-covering requirement, Defendants' *Motion to Dismiss or for Summary Judgment* is alternatively **DENIED**. The Court cannot find, as a matter of law, Defendants have acted within the authority given to them by the legislature when enacting face-covering requirements.

C. Equal Educational Opportunities

Finally, Defendants argue face-covering requirements in Williamson County Schools deprive their children of their right to equal educational opportunities under the Tennessee constitution.

Plaintiffs rely on the 1993 Tennessee Supreme Court case of *Tennessee Small School Systems v. McWherter*. *McWherter* involved a challenge to the state's system of funding public schools. That Court ultimately held the funding scheme violated the Tennessee constitution's equal protection provisions because there was no "legitimate state interest justifying the granting to some citizens, education opportunities that are denied to other citizens similarly situated."²⁸ That Court found:

The constitutional mandate that the General Assembly shall provide for a system of free public schools guarantees to all children of school age in the state the opportunity to obtain an education. **The provisions of the constitution guaranteeing equal protection of the law to all citizens, require that the educational opportunities provided by the system of free public schools be substantially equal.** The constitution, therefore, imposes upon the General Assembly the obligation to maintain and support

²⁸ *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 156 (Tenn. 1993).

a system of free public schools that affords substantially equal educational opportunities to all students.²⁹

The equal protection provisions of the Tennessee constitution “confer essentially the same protection” as the equal protection provisions of the United States Constitution.³⁰ Accordingly, Tennessee courts utilize the United States Supreme Court’s framework for analyzing equal protection claims:³¹ “Under this framework, one of three standards of scrutiny applies, depending upon the nature of the right asserted or the class of persons affected: (1) strict scrutiny; (2) heightened scrutiny; or (3) reduced scrutiny, applying the rational basis test.”³²

At the December 21, 2020 summary judgment hearing, Counsel for Plaintiffs suggested the Court should apply strict scrutiny review. Strict scrutiny does not apply because Defendants’ face-covering requirements do not disadvantage a suspect class³³ or involve a fundamental right.³⁴ Heightened scrutiny does not apply because the face-covering requirements do not involve a quasi-suspect class.³⁵ Thus, rational basis review applies. Applying rational basis review, the Court’s inquiry “is limited to whether the challenged classifications have a reasonable relationship to a legitimate state interest.”³⁶

²⁹ *McWherter*, 851 S.W.2d at 140-141 (**emphasis added**).

³⁰ *McWherter*, 851 S.W.2d at 152.

³¹ *McWherter*, 851 S.W.2d at 153.

³² *Gallaher v. Elam*, 104 S.W.3d 455, 460 (Tenn. 2003).

³³ *Gallaher*, 104 S.W.3d at 461. (“A suspect class is one that has been ‘saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian process.’”).

³⁴ *Gallaher*, 104 S.W.3d at 460. (“Strict scrutiny applies when the classification at issue: (1) operates to the peculiar disadvantage of a suspect class; or (2) interferes with the exercise of a fundamental right.”) See also *McWherter*, 851 S.W.2d at 152. (“[F]or the purpose of equal protection analysis, education is not a fundamental right under the federal constitution.”). Plaintiffs cite no case law supporting their classification of education as a fundamental right.

³⁵ *Gallaher*, 104 S.W.3d at 461. (“Heightened scrutiny applies only to legislative classifications involving a quasi-suspect class, such as gender or illegitimacy.”).

³⁶ *Gallaher*, 104 S.W.3d at 461.

Defendants argue their face-covering requirements bear a reasonable relationship to the State's legitimate interest in preventing or slowing the spread of COVID-19. As Plaintiffs note: "[T]he question of whether masks prevent the spread of COVID-19 is irrelevant to the pertinent issue presented for review."³⁷ Defendants' face-covering requirements were adopted based on the recommendations of local, State, and national health experts, specifically recommending face coverings be worn in schools.

The Court cannot conclude, as a matter of law, that Defendants' adoption of face-covering requirements bears no rational relationship to any legitimate state interest. With respect to equal educational opportunities under the Tennessee constitution, Defendants' *Motion to Dismiss or for Summary Judgment* is alternatively **GRANTED**.

III. CONCLUSION


Defendants' *Motion to Dismiss or for Summary Judgment* is hereby **GRANTED** pursuant to Tennessee Rule of Civil Procedure 12. Plaintiffs' claims against Defendants Williamson County Board of Education and Jason Golden are not justiciable, and are therefore **DISMISSED**.

Pursuant to Tennessee Rule of Civil Procedure 54.02, finding that there is no just reason for delay, the Court hereby certifies this *Memorandum and Order* as a final judgment from which the parties may appeal as a matter of right pursuant to Tennessee Rule of Appellate Procedure 3, and hereby directs the Clerk to enter a final judgment.

IT IS SO ORDERED.

³⁷ Pls.' Resp. to Mot. to Dismiss or for Summ. J. at 13.

ENTERED this 30th day of April, 2021.


Michael W. Binkley
Circuit Court Judge/Chancellor, Division III

CLERK'S CERTIFICATE OF SERVICE

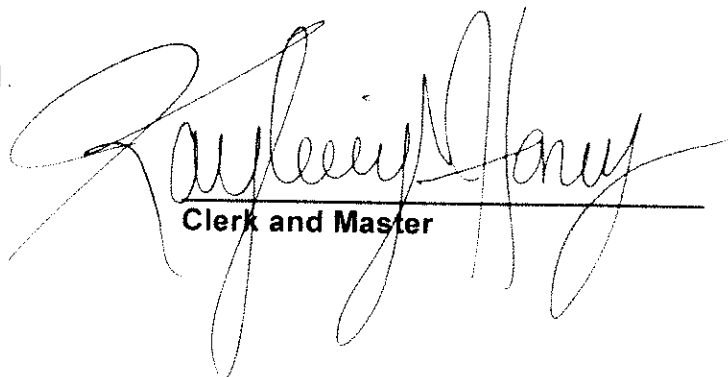
I hereby certify a true and exact copy of the foregoing *Memorandum and Order* was mailed, postage prepaid, and/or emailed, and/or faxed, to:

Jeremy Parham
Mary Henderson
Parham Law Office, LLC
1806 B Memorial Blvd
Murfreesboro, Tennessee 37219
e. jparham@parhamlawoffice.com
e. mhenderson@parhamlawoffice.com
Attorneys for Plaintiffs

Lisa Carson
Lee Ann Thompson
306 Public Square
Franklin, Tennessee 37064
e. lcarson@buergerlaw.com
e. lthompson@buergerlaw.com
Attorneys for Defendants

Janet Kleinfelter
301 6th Avenue North
Nashville, Tennessee 37241
e. janet.kleinfelter@ag.tn.gov
*Deputy Attorney General
for the State of Tennessee*

This the 30th day of April, 2021.


Clerk and Master