IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION

MATT SITTON and MATTHEW BENNETT AND
ELIZABETH BENNETT — PETITIONERS

V. Case No. _____

BENTONVILLE SCHOOL DISTRICT,
DR. DEBBIE JONES, Superintendent,
in her official capacity, ERIC WHITE,
School Board President, in his official capacity,
KELLY CARLSON, board member,
in his official capacity, BRENT LEAS,
board member, in his official capacity,
MATT BURGESS, board member, in his official
capacity, WILLIE COWGUR, board member,
in his official capacity, JOE QUINN, board
member, in his official capacity, and JENNIFER
FADDIS, board member, in her official capacity. — RESPONDENTS

MOTION FOR TEMPORARY RESTRAINING ORDER
AND INTEGRATED BRIEF IN SUPPORT

COMES NOW, the Petitioners, Matt Sitton and Matthew Bennett and Elizabeth Bennett, and in support of their Motion for Temporary Restraining Order pursuant to Rule 65(b) of the Arkansas Rules of Civil Procedure, states and alleges as follows:

1. Petitioners have contemporaneously with the filing of this Motion, filed a Petition for Declaratory Judgment, praying for a Judgment of this court that the face coverings mandate contained in the Bentonville School District ("Bentonville Schools") Safe Schools Plan for 2021-22 dated August 11, 2021 ("Mask Mandate") was issued without legal authority, in violation of the personal liberties secured by the U.S. and Arkansas Constitution and should be permanently enjoined.

2. Due to said mask mandate, the fundamental liberty interests recognized under the 14th Amendment to the U.S. Constitution and Article 2, Section 29 of the Arkansas Constitution of

care, custody and management of Petitioners' minor children are infringed upon each school day when said children are forced to wear face masks or face coverings without Plaintiff's consent at the risk of expulsion.

3. The educational school year for 2021-22 began on August 16, 2021, and for each school day thereafter, Petitioners are forced to choose either to exercise their fundamental liberty interests in refusing to place face coverings on their children against their will or for the children to risk expulsion from school.

4. Each day that Respondents mandate that school children wear face masks or be expelled from school under the Safe Schools Plan is a day that said constitutional rights are violated and the fundamental liberty interest of Petitioners in the care, custody and management of their minor children are infringed for which they are without adequate recourse such that, due to the immediate and irreparable loss of a fundamental liberty interest, a temporary restraining order enjoining enforcement of face coverings mandate contained on Page 5 of the Bentonville Schools Safe Schools Plan of August 11, 2021 should be issued without written or oral notice to Respondents.

5. The issuance of a temporary restraining order is a matter addressed to the sound discretion of the circuit court. *Arkansas Dep't of Hum. Servs. v. Ledgerwood*, 2017 Ark. 308, 8, 530 S.W.3d 336, 342 (2017), citing *Three Sisters Petroleum, Inc. v. Langley*, 348 Ark. 167, 72 S.W.3d 95 (2002).

6. In determining whether to issue a preliminary injunction or temporary restraining order pursuant to Rule 65, the trial court must consider two things: (1) whether irreparable harm will result in the absence of an injunction or restraining order, and (2) whether the moving party has demonstrated a likelihood of success on the merits. Regarding the first necessary showing,

this Arkansas Supreme Court has held: "Essential to the issuance of a temporary restraining order is a finding that a failure to issue it will result in irreparable harm to the applicant." *Kreutzer,* 271 Ark. at 244, 607 S.W.2d at 671 (citing Ark. R. Civ. P. 65). "The prospect of irreparable harm or lack of an otherwise adequate remedy is the foundation of the power to issue injunctive relief." *Wilson v. Pulaski Ass'n of Classroom Teachers,* 330 Ark. 298, 302, 954 S.W.2d 221, 224 (1997). Regarding the second thing that must be shown, this court has held: "Of course, in order to justify a grant of preliminary injunction relief, a plaintiff must establish that it will likely prevail on the merits at trial." *W.E. Long Co. v. Holsum Baking Co.,* 307 Ark. 345, 351, 820 S.W.2d 440, 443 (1991) (citing *Smith v. American Trucking Ass'n,* 300 Ark. 594, 781 S.W.2d 3 (1989)). The test for determining the likelihood of success is whether there is a reasonable probability of success in the litigation. *Custom Microsystems,* 344 Ark. 536, 42 S.W.3d 453. Such a showing "is a benchmark for issuing a preliminary injunction." *Id.* at 542, 42 S.W.3d at 457–58. *Three Sisters Petroleum, Inc. v. Langley*, 348 Ark. 167, 175, 72 S.W.3d 95, 100–01 (2002).

7. The parents of Bentonville school children, as in every school district throughout Arkansas, and indeed the nation, at roughly 8:00 a.m. each school day of the week, are faced with the potentially life-altering decision consistent with their fundamental right as a parent, to evaluate the medical and psychological needs of their own child and whether those needs dictate compliance with an arbitrary school board Mask Mandate issued without legal authority, abject refusal at the expense of the discipline their child at the hands of school personnel in the classroom or on school buses, or an alternative education plan despite the taxpayer funded free education to which their child is entitled but to whom entry is refused unless masked contrary to the will of the parent.

8. The damage, therefore, to the constitutional rights of Plaintiff acting in their capacity as parents making health and safety decisions in the best interest of their children is presumed given that "[v]iolations of constitutional rights are deemed irreparable harm for purposes of injunctive relief. *See Elrod v. Burns,* 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); *Planned Parenthood of Minn., Inc. v. Citizens for Community Action,* 558 F.2d 861, 867 (8th Cir.1977) (interference with constitutional rights "supports a finding of irreparable injury"); *see also Overstreet v. Lexington–Fayette Urban County Gov't,* 305 F.3d 566, 578 (6th Cir.2002) ("denial of an injunction will cause irreparable harm if the claim is based upon a violation of the plaintiff's constitutional rights"); *Jolly v. Coughlin,* 76 F.3d 468, 482 (2d Cir.1996) (presumption of irreparable injury flows from a violation of constitutional rights)." *Aaron v. Target Corp.*, 269 F. Supp. 2d 1162, 1173 (E.D. Mo. 2003), rev'd, 357 F.3d 768 (8th Cir. 2004), overturned on appeal for other reasons.

9. Moreover, given that Respondents acted without legal authority in amending their Safe Schools Plan on August 11, 2021 to include the Mask Mandate generally applicable to all students despite the adverse will of the parents, Petitioners have herein demonstrated the likelihood of success on the merits in their underlying matter.

WHEREFORE, Petitioners pray for an Order of this Court temporary restraining order of the Mask Mandate contained in the Bentonville Schools Safe Schools Plan dated August 11, 2021 until Petitioners' Petition for Declaratory Judgment can be heard by this Court.

[Signatures to Follow:]

Respectfully submitted,

STORY LAW FIRM, PLLC

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ATTORNEYS FOR PETITIONERS

ATTORNEY STATEMENT AS REQUIRED BY RULE 65(b)(1)(b)

Contemporaneously with the filing of this Petition for Declaratory Judgment and Motion for Temporary Restraining Order, counsel has provided a copy of both by email to the Superintendent of Bentonville Schools, Dr. Debbie Jones, by email to djones@bentonvillek12.org and counsel for Respondents, Marshall Ney by email to mney@fridayfirm.com. However, given that Plaintiff's fundamental liberty interests in the care, custody and management of his minor children is infringed each and every school day the mask mandate is in force, notice should not be required.

By_____
Travis W. Story (2008274)