COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

HAMPDEN, ss. Docket No. _____
Superior Court Docket No. 2179CV00494

THE FAMILY FREEDOM ENDEAVOR, INC., et al.,
Plaintiffs-Petitioners,

v.

JEFFREY C. RILEY, as COMMISSIONER OF MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION, et al.,
Defendants-Respondents

AND CONSOLIDATED CASES

PLAINTIFFS CHILDREN'S HEALTH RIGHTS OF MASSACHUSETTS AND CITIZENS FOR MEDICAL FREEDOM'S PETITION FOR INTERLOCUTORY RELIEF PURSUANT TO M.G.L. c. 231, § 118 (FIRST PARAGRAPH)

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Dated: December 16, 2021

Request for Review

Pursuant to M.G.L. c. 231, § 118 (first paragraph), the Plaintiff-Petitioners Children's Health Rights of Massachusetts, Inc., and Citizens for Medical Freedom, Inc.,[1] petition the Single Justice for relief from the Memorandum of Decision and Order on Plaintiffs' Motions for Preliminary Injunction ("Order") entered by the Hampden County Superior Court (Hodge, J.) on November 16, 2021, in *The Family Freedom Endeavor, Inc., et al. v. Jeffrey C. Riley, as Commissioner of the Massachusetts Department of Elementary and Secondary Education, et al.*, Docket No. 2179CV00494. The Order denied the Plaintiffs-Petitioners' request to enjoin mask mandates for school children

[1] Six cases were consolidated in the Superior Court below: The lead case is *The Family Freedom Endeavor, Inc., and the People's Freedom Endeavor, by its individual representatives, Justin McCarthy, Matthew Hall, Alecia DePesa, Joseph Boccelli, II, and Danielle Ashley-Silva v. Jeffrey C. Riley, as Commissioner of the Massachusetts Department of Elementary and Secondary Education and the Massachusetts Board of Elementary and Secondary Education*, Docket No. 2179CV00494, (Hampden County Superior Court) ("Case 1"). The other five cases were: *Children's Health Rights of Massachusetts v. Department of Elementary and Secondary Education, Andover Public School District, Attleboro Public School District, Easton Public School District, and Sandwich Public School District,* Docket No. 2173CV00672A, (Bristol County Superior Court) ("Case 2"); *Children's Health Rights of Massachusetts v. Department of Elementary and Secondary Education, Bridgewater-Raynham Regional School District, Carver Public School District, Hingham Public School District, West Bridgewater Public School District*, Docket No. 2183CV00766, (Plymouth County Superior Court) ("Case 3"); *Children's Health Rights of Massachusetts v. Department of Elementary and Secondary Education, Cambridge Public School District, City of Cambridge, Franklin Public School District, Northborough Public School District, Southborough Public School District, Northborough-Southborough Regional Public School District, Tyngsborough Public School District*, Docket No. 2182CV00874, (Norfolk County Superior Court) ("Case 4"); *Citizens for Medical Freedom v. Department of Elementary and Secondary Education, Dover Public School District, Sherborn Public School District, Dover-Sherborn Regional School District, Town of Dover*, Docket No. 2182CV00878, (Norfolk County Superior Court) ("Case 5"); and *Peter Carlino, et al. v. Department of Elementary and Secondary Education and Tewksbury Public School District*, Docket No. 2181CV02076, (Middlesex County Superior Court) ("Case 6"). The Plaintiffs-Petitioners in this Petition are appealing the Order as it affects Cases 2, 3, 4, and 5.

implemented by the Department of Elementary and Secondary Education ("DESE"), eighteen public school districts, and two municipalities.

The Plaintiffs-Petitioners seek interlocutory review of that Order and request that the Single Justice modify it and grant the Plaintiffs-Petitioners' request for a preliminary injunction: these mask mandates violate the Plaintiffs-Petitioners' Constitutional and statutory rights, and the record below demonstrates they will cause irreparable harm to children. Numerous decisions from other jurisdictions demonstrate that DESE and these municipalities lack the statutory and regulatory authority to issue these mandates. They also conflict with the Department of Public Health's ("DPH") statutory and regulatory scheme, which has never required masks in response to the Coronavirus.

Issues of Law

1. Whether the Superior Court erred in concluding DESE had the authority to issue and implement its mask mandate.

2. Whether the Superior Court erred in concluding DESE did not exceed its authority to issue and implement its mask mandate because there were and are no exigent circumstances concerning COVID-19 in Massachusetts.

3. Whether the Superior Court erred in concluding the school districts and municipalities had the authority to issue and implement their mask mandates.

4. Whether the Superior Court erred in concluding the mask mandates are not preempted by the Department of Public Health's statutory and regulatory scheme.

5. Whether the Superior Court erred, throughout the Order, in relying on hearsay statements contained in public health pronouncements and other communications by public health officials concerning COVID-19.

6. Whether the Superior Court erred in concluding the mask mandates to not violate Plaintiffs-Petitioners' Constitutional rights to direct the care and upbringing of their children.

7. Whether the Superior Court erred in concluding Plaintiffs-Petitioners could not establish irreparable harm, where the Plaintiffs-Petitioners submitted the affidavits of two experts demonstrating masks harm children, COVID-19 poses no real risk to children, and masks have been ineffective at reducing the risk of COVID-19 transmission, and the Defendants provided no evidence to contradict that information.

Reconsideration

No party filed a motion for reconsideration of the Superior Court's Order.

Request for Relief

Plaintiffs-Petitioners request that the Single Justice:

1. Modify the Superior Court's Order by granting the Plaintiffs-Petitioners' Motions for Preliminary Injunction.

2. Grant such other relief as is just and appropriate.

3. Hold a hearing on this Petition.

Respectfully submitted,

Plaintiffs-Petitioners Children's Health Rights of Massachusetts and Citizens for Medical Freedom,

By their attorneys,

/s/*Robert M. Fojo*

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Dated: December 16, 2021

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CERTIFICATE OF COMPLIANCE

I hereby certify that the Petition for Interlocutory Relief and Supporting Memorandum of Law comply with the length limits for proportionally spaced font under the Appeals Court Standing Order Concerning Petitions to the Single Justice Pursuant to G.L. c. 231, sec. 118 (First Paragraph) or Rule 12(a) of the Uniform Rules on Impoundment Procedure because they are produced in Times New Roman at size 14 and contain _____ non-excluded words in the Petition for Interlocutory Relief and _____ non-excluded words in the Supporting Memorandum of Law as counted using the word count feature of Microsoft Word.

/s/*Robert M. Fojo*_____
Robert M. Fojo

Dated: December 16, 2021

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2021, I served the Petition for Interlocutory Relief, Supporting Memorandum of Law, and Record Appendix by email on the following counsel for the parties:

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