THE CIRCUIT COURT OF BOONE COUNTY
THIRTEENTH JUDICIAL CIRCUIT OF MISSOURI

THE STATE OF MISSOURI ex rel. ERIC S. SCHMITT, *Plaintiff,* v. COLUMBIA PUBLIC SCHOOLS, and all others similarly situated: BOARD OF EDUCATION FOR THE SCHOOL DISTRICT OF COLUMBIA, and all others similarly situated: HELEN WADE, DELLA STREATY-WILHOIT, CHRIS HORN, KATHERINE SASSER, DAVID SEAMON, JEANNE SNODGRASS, AND BLAKE WILLOUGHBY; in their official capacities as Board Members for the Board of Education for Columbia Public Schools, and all others similarly situated: BRIAN YEARWOOD, in his official capacity as Superintendent for Columbia Public Schools, and all others similarly situated: *Defendants.*	No. 21BA-CV02754

STATE OF MISSOURI'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

The Motion to Dismiss and Memorandum in Support ("Def. Mem.") filed by the Defendants of Columbia Public Schools ("Defendants," or "CPS") has no merit. Defendants disregard the well-settled standards governing motions to dismiss by relying on documents outside the pleadings, disregarding facts alleged in the Petition, and trying to resolve disputed facts in their favor without evidence. And their legal arguments fail as a matter of law.

First, Defendants' challenge to the Attorney General's standing to sue, Def. Mem. 5-10, overlooks decades of Missouri case law establishing the Attorney General's authority to sue to vindicate sovereign and quasi-sovereign interests. The Attorney General may sue to ensure that the State's political subdivisions are complying with Missouri law, and he may sue to vindicate the State's quasi-sovereign interest in protecting the private rights of a sufficiently substantial segment of Missouri's citizens—here, thousands of schoolchildren subject to mask mandates.

Defendants' argument that there is no justiciable controversy, Def. Mem. 10-13, ignores the clear and concrete dispute between the State and the School District about the validity of its Mask Mandate, which it is currently enforcing on 19,000 schoolchildren and inflicting irreparable injury on them every day. There is nothing "hypothetical" about this dispute.

Defendants' argument that Count I fails to state a claim for relief because their Mask Mandate was supposedly "well-reasoned," Def. Mem. 14-16, relies on matters outside the pleadings and delves deeply into supposed "facts" that the State vigorously disputes. This argument is plainly improper in a motion to dismiss and should be raised at trial on the merits.

Defendants' argument that Count II fails to state a claim because they are supposedly exempt from various provisions of § 67.265, Def. Mem. 17-26, disregards the plain and ordinary

meaning of the statute, as found in the dictionary. They provide no meaningful analysis of the statute's plain meaning, but instead rely on policy arguments to try to change its meaning.

Defendants lack due-process rights and so they cannot bring a vagueness challenge against § 67.265, but the argument would have no merit anyway, because the statute's meaning is clear.

Defendants' argument that Count III fails to state a claim relies heavily on case law that has been superseded by statute. Current statutes confer authority on DHSS, not local school districts, the authority to issue public health orders at issue here.

All other arguments lack merit as well. The Court should deny the motion to dismiss.

LEGAL STANDARDS

"A motion to dismiss for failure to state a claim on which relief can be granted is solely a test of the adequacy of the petition." *Bromwell v. Nixon*, 361 S.W.3d 393, 398 (Mo. banc 2012). "When considering whether a petition fails to state a claim upon which relief can be granted, [the] Court must accept all properly pleaded facts as true, giving the pleadings their broadest intendment, and construe all allegations favorably to the pleader." *R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420, 424 (Mo. banc 2019) (quoting *Bromwell*, 361 S.W.3d at 398). "The Court does not weigh the factual allegations to determine whether they are credible or persuasive." *Bromwell*, 361 S.W.3d at 398. Instead, the Court accepts the well-pleaded facts as true, construes all allegations in the Amended Petition in the light most favorable to the State, and solely considers the legal adequacy of the petition. *See id.* When considering a motion to dismiss, "[t]he petition is reviewed in an almost academic manner to determine if the plaintiff has alleged facts that meet the elements of a recognized cause of action or of a cause that might be adopted in that case. The facts alleged in the petition are assumed to be true and are construed liberally in favor of the plaintiff." *Conway v. CitiMortgage, Inc.*, 438 S.W.3d 410, 414 (Mo. banc 2014).

Defendants' motion violates these standards by relying on unpled facts outside Petition and construing disputed facts in their own favor. Most notably, Defendants' Exhibit 1 to their response, their 2021-22 Coronavirus Plan, lies outside the Petition and cannot be considered on a motion to dismiss. A motion to dismiss considers only the well-pleaded facts of a petition. *See, e.g.*, *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 464 (Mo. banc 2001). The State did not attached Defendants' Exhibit 1 to its Petition, and the State is the master of its own Petition. CPS argues that the State incorporated the document because Exhibit A to Missouri's Petition "contains [Exhibit 1] by direct reference and hyperlink." Mem. 2 n.1. That is insufficient to incorporate the document into Missouri's pleading, as CPS's own case shows. *Krasney v. Curators of University of Missouri*, 765 S.W.2d 646 (Mo. Ct. App. 1989). In *Krasney*, the court concluded that alluding to documents was insufficient to incorporate them by reference. *See, e.g.*, 765 S.W.2d at 648 n.1. When the plaintiff referenced a personnel manual in her petition, "but without attachment of the purported document to the petition or by other presentment to the trial court," the document was not made part of the trial court record. *Id.* at 652; *see also Hester v. Barnett*, 723 S.W.2d 544, 561 (Mo. Ct. App. 1987) (requiring "clear and explicit" references to incorporate a document into a pleading).[1] *See also* Pl. Mo.'s Mot. Classwide Prelim. Inj. Count II & Mem. Supp. 7–8, 17.

[1] Exhibit A does not incorporate Exhibit 1 even assuming it incorporates the document to which it hyperlinks. Defendants allege that Exhibit 1 is CPS's *Coronavirus Plan* as "[c]reated June 29, 2021" and "[u]pdated August 13, 2021." *See* Ex. 1, at 2. But clicking the hyperlink in Exhibit A leads to a webpage with a coronavirus plan with the same title as Exhibit 1, but dated September 23, 2021. *See* COLUMBIA PUB. SCH., 2021-22 CORONAVIRUS PLAN: COLUMBIA PUBLIC SCHOOLS' SAFE RETURN TO IN-PERSON INSTRUCTION AND CONTINUITY OF SERVICES PLAN 2 (2021), https://www.cpsk12.org/cms/lib/MO01909752/Centricity/Domain/9557/CPSPlan20212022.pdf?utm_source=full+pdf+download&utm_medium=website. So if any document was incorporated into Exhibit A (and there is none), it would be that document, not the exhibit CPS attached to its motion to dismiss.