

No. 128205

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**IN THE SUPREME COURT OF ILLINOIS**

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**JULIEANNE AUSTIN, as the Parent  
or Legal Guardian of T.L., and L.A.,  
et al.**

**Plaintiffs-Respondents,**

**vs.**

**THE BOARD OF EDUCATION OF  
COMMUNITY UNIT SCHOOL  
DISTRICT #300 et al.**

**Defendant-Petitioners**

**(Only the State Defendants have so far  
petitioned this Court for leave to appeal)**

) **Petition for Leave to Appeal  
) the Appellate Court of Illinois,  
) Fourth Judicial District**

) **Nos. 4-22-0090, 4-22-0092,  
) 4-22-0093, 4-22-0094**

) **There Heard on Appeal from  
) the Circuit Court of Sangamon  
) County, IL**

) **Cause No: 2021-CH-500002  
) 2021-CH-500003  
) 2021-CH-500005  
) 2021-CH-500007**

) **Hon. Raylene Grischow**

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**RESPONSE TO PETITIONERS MOTION FOR  
EXPEDITED CONSIDERATION FOR LEAVE TO APPEAL**

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COMES NOW, Thomas G. DeVore and the Silver Lake Group Ltd., and on behalf of all named Plaintiffs in 2021-CH-500002, 2021-CH-500005, 2021-CH-500007, provides the following response for Expedited Consideration of their Petition for Leave to Appeal, and hereby pleads:

- 1) At every turn of the legal proceedings in this matter, the Governor, and his state agencies, have peddled fear and despair should anyone dare not follow the “guidance.”
- 2) The conjecture flows like fine wine across voluminous pages of the pleadings which are part of the record in this matter prophesying about the public health disaster which awaits the people of Illinois should the courts not rule in favor of the Governor and his agencies in such a way as to cloak them with real or apparent authority to continue forcing masks on students as well as forcing vaccination/testing on our educators.<sup>1</sup>
- 3) Nowhere does the Governor attempt to explain how the “facts and science” are such that on February 28, 2022, just three days from now, the children of our state can go almost anywhere and do almost anything without a mask, but once they walk in the school building they must wear a mask to limit the spread of COVID.
- 4) Children can fill the stadiums to watch sporting events, while sitting arm-to-arm with 50,000 people, but when it’s time to head back to school the next day, they must wear a mask with their 20 fellow students in a class room, all the while sitting 6 feet apart.
- 5) Children can head out to their club sports teams, play in tournaments, go to their friends parties, head to the mall, or anything else they like, but when they go to school they have no choice but to wear their mask as the “facts and science” demands it to keep them safe.

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<sup>1</sup> Not only is it found within this cause, in the numerous trial court matters which immediately preceded this cause, the same health disasters were proffered to the trial courts in Adams, Macoupin, Montgomery, Bond, Clinton, and Effingham counties, yet each and every one of those trial courts found due process of law was paramount, and the fear driven arguments of the school districts made in support of the Governor, and state agencies, mandates did not carry the day with any of those judges.

- 6) It is assuredly these types of irrational inconsistencies which in part have given the judiciary pause when the Governor continues to push his closely held “facts and science” which now allegedly supports masking only in the school environment.
- 7) Of course, the Governor’s facts and science are propped up by the best medical “experts” the taxpayers can afford, but those opinions are becoming more suspect as they are compared with the realities viewed by the public as they watch these matters unfold around the nation and within their state.
- 8) On February 04, 2022, when Judge Grischow entered her order, the 7-Day daily average of COVID cases in our state was 8,627, and our state now finds itself at only 2,020 average daily cases as of February 24, 2022. <sup>2</sup>
- 9) Yet the Petitioners still plead to this Court that as a result of the TRO, which was entered almost three weeks ago, a disaster will be felt by the people of the state if this Court doesn’t intervene immediately, yet the rate of transmission of COVID has fallen over 75% since February 04, 2022. <sup>3</sup>
- 10) It is important to note that Judge Grischow’s order was limited to the named Plaintiff’s in the case, and it obviously only applied to the 146 school districts named as Defendants.
- 11) However, within a week or so after the trial courts limited ruling, hundreds and hundreds of districts made their own choice to free their children from the masking policies which had been in place for almost two years. <sup>4</sup>

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<sup>2</sup> <https://dph.illinois.gov/covid19/data.html>

<sup>3</sup> Where is the looming disaster? Should it not have hit already, even just a little, if the Governor’s fact and science had merit?

<sup>4</sup> <https://www.chicagotribune.com/coronavirus/ct-illinois-school-mask-mandate-covid-court-ruling-20220218-x6zrrezteje7jc2a2nlcxft6qm-story.html>

- 12) The Petitioners pleadings include outright self-serving speculation as to why those hundreds of school districts have voluntarily chosen to eliminate mask mandates and vaccination or testing mandates within their schools by suggesting it was a result of mass confusion and hysteria due to Judge Grischow's ruling.
- 13) It is not just as plausible that over 700 of our states school districts chose to eliminate these mandates since they no longer operated in fear of the illusion of the repercussions which the Governor, and his agencies have threatened them with for months on end.
- 14) The pleadings made to this Court by the Defendants-Petitioners are merely a rehashing of the same arguments which have been unsuccessful with the lower courts, and one can only presume they bring the same arguments to this Court on an interlocutory basis, not to protect the state from a public health emergency, but merely to look for a proverbial third bite at the apple. <sup>5</sup>
- 15) While Governor Pritzker continuously postures a public health crisis is just around the corner if masks aren't mandated in schools, if the Governor would be transparent with this Honorable Court, as well as to the people of Illinois, he would admit he finds himself facing a self-made political emergency, and he wrongfully seeks this Courts intervention to aid him with the same.
- 16) Besides the Governor's lifting of his universal mask mandate, the City of Chicago will no longer have a mask or vaccine requirement on February 28, 2022. <sup>6</sup>
- 17) The Chicago Arch Diocese, following along with most other catholic schools in the state, will no longer require masks in its school on February 28, 2022. <sup>7</sup>

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<sup>5</sup> The Petitioner is seeking review of the lower court's rulings not to offer this Honorable Court the opportunity to provide the final analysis on the merits of our laws, as this is an interlocutory request. The Petitioner seeks an interlocutory review for all the wrong reasons which will be discussed herein.

<sup>6</sup> <https://wgntv.com/news/coronavirus/chicago-to-lift-mask-vaccine-mandates-on-feb-28/>

- 18) Even this Honorable Court has dropped its mask requirement effective February 28, 2022 in the court buildings across the state, and leaving it to local circuits.
- 19) Even Governor Pritzker has suggested the lifting of the requirement of masks within schools is imminent.
- 20) Given all of these events, it is readily apparent there is no public health emergency which is looming at present which warrants this Court to either issue a stay of the trial courts order, or to expedite any consideration for leave to appeal.<sup>8</sup>
- 21) The current public health data, coupled with the actions of the Governor as well as other private and public officials, is conclusive there is no public health disaster on the horizon; to the contrary the average positive cases continue to fall through the floor even though almost 90% of our public school districts, and a great deal of our private schools, have abandoned their mask policies.
- 22) There will be an appropriate time when the ultimate issues of the lawfulness of the actions by the Governor, IDPH, ISBE, and the local school districts may be presented to this Honorable Court for full review on the merits.
- 23) When that time comes, all the parties will assuredly be looking forward to the wisdom of this Court in providing clarity and certainty as to what our laws say and what they don't say.
- 24) However, at this time, there is no just reason for this Court to address this matter on an interlocutory basis in any fashion.

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<sup>7</sup> <https://www.nbcchicago.com/news/coronavirus/archdiocese-of-chicago-schools-to-go-mask-optional-beginning-monday/2767322/>

<sup>8</sup> While the Respondent is not considering this a formal response to the PLA, this Court should not only deny the stay and expedited consideration, it should also outright deny the request for leave to appeal without even offering the Plaintiffs-Respondents time to respond, as this Honorable Court should follow the same approach as it has with other interlocutory requests regarding COVID matters and not review these issues until the matters are fully vetted on the merits in the lower courts and come to this Court ripe for final adjudication. Moving forward in such a fashion would be the responsible path.

- 25) There is no just reason to expedite consideration of this appeal; there is no just reason to stay the TRO of Judge Grischow, and at the end of the day there is no just reason to even hear this appeal at this interlocutory stage of the proceedings.
- 26) Besides the public schools, according to Governor Pritzker, Mayor Lightfoot, the Catholic Church, and this Honorable Court, on Monday, February 28, 2022, masks will not be required almost anywhere in this state.
- 27) The current health data shows COVID transmission has dropped 75% since the entry of the TRO.
- 28) Moreover, the transmission rate has dropped this significantly notwithstanding millions of children across the state are going to school without masks due to independent actions by the school districts which was in no way ordered by the trial courts TRO.
- 29) Given all of these realities, the Plaintiffs-Respondents ask of this Court; what is the public health emergency which warrants taking this issue up on an interlocutory basis. <sup>9</sup>
- 30) It seems quite clear the Defendants-Petitioners in this cause are seeking intervention from our courts of review to create the law of the case on an interlocutory basis, and this Court should refuse to do so until such time as all parties have fully and completely vetted the matters in the lower courts.

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<sup>9</sup> Should this Court accept this interlocutory appeal and find some reversible matter, then what? Even under an expedited basis, it would likely only leave a few weeks left in the school year around the time this Court might enter a ruling. The TRO wasn't the legal mechanism which caused 700+ schools to change their policies. Would the Governor, or ISBE, go back to threatening the funding of hundreds of school districts in an attempt to force compliance once again? How many of those districts would push back? One can only imagine the sheer chaos which would transpire across this state should hundreds of school districts attempt to force masks back on these children after all they will have went through these past several weeks transitioning back to normal lives. Given there would only be a few weeks left in the school year, and given there is obviously no public health emergency today based on the real data, refusing to address this matter on an interlocutory basis will allow the trial court to finalize this matter on the merits, and then return back to the courts of review over the summer so that finality can be brought about before the children return to school next fall.

31) Given the gravity of the issues surrounding the propriety of actions by the executive and the state agencies in response to COVID, this Honorable Court should continue to deny review of these matters on an interlocutory basis, or at a minimum, not stay the TRO, or expedite the proceedings, and allow full briefing on the question of whether to accept the appeal.

For these reasons, the Plaintiff-Respondents pray for an order as follows:

- a) Deny the Defendants-Petitioners request for expedited consideration;
- b) In the alternative, Deny the Defendants-Petitioners petition for leave to appeal outright, or in the alternative, enter a briefing schedule granting the Plaintiffs-Respondents full opportunity for which to provide a responsive pleading to the request for leave to appeal.

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**CERTIFICATE OF FILING AND SERVICE**

STATE OF ILLINOIS        )  
   ) SS.  
 COUNTY OF BOND         )

Under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that on February 25, 2022, I electronically filed the foregoing Response to Petitioners Motion for Expedited Consideration for Leave to Appeal with the Clerk of the Court for the Supreme Court of Illinois, by using the Odyssey EFileIL system.

I further certify that the other participants in this Case, named below, are not registered service contacts on the Odyssey eFileIL system, and thus will be served by transmitting a copy to all primary and secondary e-mail addresses of record designated by those participants on February 25, 2022.

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Under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Thomas G. DeVore

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