

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JACOB DOYLE CORMAN, III,
Individually and as a parent of two
minor school children; **JESSE
WILLS TOPPER**, individually and
as a parent of two minor school
children; **CALVARY BAPTIST
CHURCH; HILLCREST
CHRISTIAN ACADEMY; JAMES
AND MICHELLE REICH**,
individually and as parents of three
minor school children; **ADAM AND
CHELSEA McCLURE**, individually
and as parents of one minor
special needs school child,
VICTORA T. BAPTISTE,
individually and as a parent of two
special needs school children,
JENNIFER D. BALDACCI,
individually and as a parent of one
school child; **KLINT NEIMAN and
AMANDA PALMER**, individually
and as parents of two minor school
children,

Petitioners,

v.

**ACTING SECRETARY OF THE
PENNSYLVANIA DEPARTMENT
OF HEALTH**,

Respondent.

No.: 294 MD 2021

ORIGINAL JURISDICTION

PETITIONERS' APPLICATION
FOR SPECIAL RELIEF IN THE
FORM OF AN EMERGENCY
PRELIMINARY INJUNCTION
UNDER PA.R.A.P. 1532

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JACOB DOYLE CORMAN, III, individually and as a parent of two minor school children; **JESSE WILLS TOPPER**, individually and as a parent of two minor school children; **CALVARY ACADEMY; HILLCREST CHRISTIAN ACADEMY; JAMES AND MICHELLE REICH**, individually and as parents of three minor school children; **ADAM AND CHELSEA McCLURE**, individually and as parents of one minor special needs school child, **VICTORA T. BAPTISTE**, individually and as a parent of two special needs school children, **JENNIFER D. BALDACCI**, individually and as a parent of one school child; **KLINT NEIMAN and AMANDA PALMER**, individually and as parents of two minor school children,

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ACTING SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF HEALTH,

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PETITIONERS' APPLICATION FOR SPECIAL RELIEF IN THE FORM OF AN EMERGENCY PRELIMINARY INJUNCTION UNDER PA.R.A.P. 1532

INTRODUCTION

Petitioners file the within Application for Special Relief in the Form of An Emergency Injunction Pursuant to Pa.R.A.P. 1532 to enjoin the Acting Secretary of the Pennsylvania Department of Health, Alison V. Beam (the "**Secretary of Health**"), from enforcing her August 31, 2021 Order, effective September 7, 2021, entitled, "Order of the Acting Secretary of the Pennsylvania Department of Health Directing Face Coverings in School Entities" (the "**Order**").

BACKGROUND

1. As set forth more fully in Petitioners' Petition for Review, filed contemporaneously with the within Application for Special Relief, Petitioners seek an emergency injunction to enjoin and prevent the Secretary of Health's Order from taking effect in this Commonwealth.

2. Section 2 - General Masking Requirement of the Order states, "[e]ach teacher, child/student, staff, or visitor working, attending, or visiting a School Entity shall wear a face covering, regardless of vaccination status, except as set forth in Section 3." See Petition for Review Ex. A, p. 4.

3. There is no rule or regulation that exists within the Commonwealth of Pennsylvania that provides for a mask mandate.

4. Despite there being no rule or regulation that exists within the Commonwealth of Pennsylvania that provides for a mask mandate, the Secretary of Health's Order imposes a mask mandate set to begin in four (4) days on September 7, 2021.

INJUNCTIVE RELIEF

5. Stated in summary form, the prerequisites of a preliminary injunction are: 1) the injunction is necessary to prevent immediate and irreparable harm not compensable by money damages; 2) greater injury will result from refusing the injunction than from granting it; 3) the injunction restores the parties to the status quo; and 4) the activity sought to be restrained is actionable and the petitioners' right to relief is clear.

6. Petitioners meet all the elements for entering a preliminary injunction in this case.

7. First, an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages because Petitioners are under a threat of immediate and irreparable harm as the Secretary of Health's Order goes into effect in a matter of four (4) days.

8. Petitioners allege clear immediate and irreparable harm in each of their respective affidavits incorporated as if fully set forth at length herein as Exhibit "1."

9. If the Secretary of Health's Order is allowed to stand the respective children of the Petitioners may:

- a. be denied their right to a free appropriate public education;
- b. be deprived of their right to an education in a non-public facility;
- c. have their education disrupted by an illegal Order;
- d. be prevented from exercising their decision to not wear a mask;
- e. be prevented from entering the school of their choice in the manner of their choosing;
- f. be subjected to a last minute change in the way and manner they will receive their education;
- g. be forced to wear masks in their Sunday School classes while exercising their religious freedom; and
- h. significantly alter how educational programming will occur in schools.

10. If the Secretary of Health's Order is allowed to stand each school Petitioner faces chaos on Tuesday, September 7, 2021 in that numerous

parents and children have advised that they will refuse to wear masks in school.

11. In addition the school Petitioners have no policies regarding the exclusion of children from school absent the wearing of facemasks and there is insufficient time for the boards of school directors to meet to even consider such policies.

12. Second, greater injury will result from refusing the injunction than granting it due to each of the averments contained in Petitioners' affidavits.

13. If the injunction is refused, each school district is forced to alter their original plans to return to school on the eve of the beginning of the year.

14. Third, Petitioners' request seeks to preserve the status quo of the decisions made by each of their respective individual school district as to prevent the harm contained in each of the averments in their affidavits.

15. If the Secretary of Health's Order is allowed to stand the status quo will be completely disrupted and will create the chaotic implementation of the Order on September 7, 2021.

16. Fourth, and for all the reasons as set forth in the Petition for Review, Petitioners' are likely to prevail on the merits of the underlying claims in this case.

17. Based upon the foregoing, Petitioners seek an Order granting a preliminary and/or permanent injunction to enjoin the Secretary of Health from issuing such Order as is the subject of this Petition and further enjoining the Secretary of Health from attempting to enforce the provisions of such Order.

18. Notice is being provided to Respondent and a request for an immediate hearing is included with Petitioners' Application for Special Relief.

WHEREFORE, Petitioners seek a preliminary and/or permanent injunction to enjoin the Secretary of Health from issuing such Order as is the subject of this Petition and further enjoining the Secretary of Health from attempting to enforce the provisions of such Order.

Respectfully Submitted,

DILLON, MCCANDLESS, KING,
COULTER & GRAHAM, L.L.P.

Dated: September 3, 2021

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