

**THE CIRCUIT COURT OF JACKSON COUNTY  
SIXTEENTH JUDICIAL CIRCUIT OF MISSOURI**

THE STATE OF MISSOURI ex rel.  
ERIC S. SCHMITT,

*Plaintiff,*

v.

QUINTON LUCAS, in his official  
capacity as Kansas City Mayor;

KANSAS CITY, MISSOURI HEALTH  
DEPARTMENT; and

JIM READY, in his official capacity as  
Director of the Kansas City, Missouri  
Regulated Industries Division,

*Defendants.*

No. \_\_\_\_\_

**PETITION**

1. On July 25, 2021, Kansas City Mayor Quinton Lucas said it was not necessary for Kansas City to have a mask mandate at that time: “I think every mayor of a major city in America right now is wondering if it’s a time to return to mandates. We have thought at this point thus far that it is not necessary for Kansas City.” *Transcript: Kansas City Mayor Quinton Lucas on “Face the Nation,”* CBS NEWS, July 25, 2021, available at <https://www.cbsnews.com/news/transcript-kansas-city-mayor-quinton-lucas-on-face-the-nation-july-25-2021/> (responding to the question, “You talked about compulsion. Over in St. Louis they’re reinstating the mask mandates in some instances. Are you rethinking that

as- as the Delta variant spreads? And how does the mask mandate question coincide and conflict with the message you're trying to pass about getting vaccinated?").

2. Just two days later, on July 27, 2021, in a dizzying reversal, Mayor Lucas announced on Twitter that he would impose a mask mandate on Kansas City.

3. Mayor Lucas and the other Defendants have not identified any COVID-19 data that changed between July 25, 2021, when Mayor Lucas said that a mask mandate was not needed in Kansas City, and July 27, 2021, when he suddenly said that a mask mandate was needed in Kansas City.

4. There is no evidence that Defendants considered the underlying data, science, and evidence that fail to justify issuing a mask mandate at this time.

5. The Defendants' mandate is a continuation of a series of arbitrary, capricious, unlawful, and unconstitutional COVID-19 related restrictions. There is no reason to allow such orders to continue.

6. Mayor Lucas has admitted that COVID-19 orders are political decisions and not purely medical or scientific decisions. *Kansas City Mayor Addresses Challenges of Adapting to Mask Revisions*, NPR (May 19, 2021), available at <https://www.npr.org/2021/05/19/998137134/kansas-city-mayor-addresses-challenges-of-adapting-to-mask-revisions> ("Q: Well, this is - I really appreciate that description because you're reminding us we would like to think this is purely a medical or scientific decision, but it's also a political one. LUCAS: You know, it really is.").

7. Mayor Lucas should have heeded the wisdom of St. Joseph Mayor Bill McMurray when he was asked if he would unilaterally issue a city mask mandate: "I have

to underscore, I'm the mayor, I'm not the monarch. I can't just decree." Heather Hollingsworth, *Mask order fights brew in Kansas City, St. Louis area*, ASSOCIATED PRESS (July 28, 2021), available at <https://apnews.com/article/health-coronavirus-pandemic-michael-brown-st-louis-52f5141021f2fbaa98f1ce71c4de3945>.

8. Missouri Attorney General Eric S. Schmitt seeks to protect the liberty and constitutional rights of the people of Missouri.

9. Attorney General Schmitt brings this action to prevent unlawful, unconstitutional, arbitrary, capricious, and unreasonable conduct by Kansas City Mayor Quinton Lucas; the Kansas City, Missouri Health Department; and Director of the Kansas City, Missouri Regulated Industries Division Jim Ready ("Defendants").

#### **JURISDICTION AND VENUE**

10. This Court has jurisdiction under Mo. Const. art V, § 14(a), § 536.150, RSMo, §§ 527.010 et seq., RSMo, and other applicable law.

11. Venue is proper in this Court under § 508.010.2(2) RSMo.

#### **PARTIES**

12. Plaintiff State of Missouri is a sovereign State of the United States of America.

13. Eric S. Schmitt is the 43rd Attorney General of the State of Missouri. Attorney General Schmitt is authorized to "institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such

action may be necessary; and he may also appear and interplead, answer or defend, in any proceeding or tribunal in which the state's interests are involved.” § 27.060, RSMo.

14. Attorney General Schmitt sues to vindicate Missouri's sovereign interest in controlling the exercise of sovereign power over individuals and entities within its borders; Missouri's sovereign interest in ensuring the enforcement of Missouri law within Missouri's borders; and Missouri's quasi-sovereign and *parens patriae* interest in the freedom, health, and physical, psychological, educational, and economic well-being of a significant segment of its populace. This interest includes, but is not limited to, preventing the spread of the COVID-19 virus within the state as well as protecting the health and welfare of the State's residents from arbitrary and capricious policies.

15. Attorney General Schmitt sues to vindicate Missouri's sovereign interest in ensuring that its municipal authorities do not exercise authority vested in them under state law in a fashion that violates the Missouri Constitution or Missouri law.

16. Attorney General Schmitt sues to vindicate Missouri's interest in ensuring that the children of the State receive an appropriate education.

17. Quinton Lucas is the Mayor of Kansas City. He is sued in his official capacity.

18. The Kansas City, Missouri Health Department (“KCHD”) is an agency of Kansas City acting under the direction of Defendant Lucas. KCHD constitutes a “local public health agency” under Missouri Department of Health and Senior Services’ regulation 19 CSR 20-20.010(27).

19. Kansas City has not publicly announced the new Director of the KCHD after former director Rex Archer retired.

20. Jim Ready (“Ready”) serves as the Director of the Kansas City Regulated Industries Division and is charged with enforcing the City’s Mask Mandate. He is sued in his official capacity.

### **FACTUAL ALLEGATIONS**

21. Missouri incorporates by reference the allegations in all preceding paragraphs.

22. Kansas City is a charter city of the State of Missouri.

#### **I. The Mask Mandate**

23. According to the City’s Mask Mandate, “an individual in an indoor place of public accommodation must properly wear a face covering or mask while performing an activity involving close contact or proximity to co-workers or the public where six feet of separation is not feasible.” Order 21-01, signed July 30, 2021, attached as Exhibit A (“Mask Mandate”) Section 2.A.

24. The Mask Mandate indicates that Defendants were concerned with potential litigation over the order, and made exceptions that demonstrate the arbitrary and capricious nature of the order.

25. The Mask Mandate defines “places of public accommodation,” which was not a defined term in the City’s previous COVID-19 orders.

26. According to the Mask Mandate, “A ‘place of public accommodation’ means

any place or business offering or holding out to the general public goods, services, privileges, facilities, advantages or accommodations for the peace, comfort, health, welfare, and safety of the general public. Public accommodation shall not include a private club or a place of public accommodation owned or operated on behalf of a religious corporation, association, or society.” Ex. A, Mask Mandate, Section 1.B.2.

27. Defendants acted arbitrarily and capriciously by not exempting other indoor public accommodations, such as those exemptions for private clubs and religious organizations.

28. The Mask Mandate also exempts “[a]ny interaction or gathering where parties have knowledge all persons present are fully vaccinated by federally-approved vaccine(s).” Ex. A, Mask Mandate, Section 2.B.6.

29. Although announced on July 27, 2021, the Mask Mandate was not signed until July 30, 2021, and did not become effective until August 2, 2021.

30. The Mask Mandate indicates it is subject to the requirements of § 67.265, RSMo. Ex. A, Mask Mandate, at 2.

31. Under the Mask Mandate, the Director of Health, the Director of Regulated Industries, the Chief of the Kansas City Police Department, and the Chief of the Kansas City Fire Department are authorized to enforce the order. Specifically, they may enter property and seek show-cause orders against individuals or businesses who violate the order. *See* Ex. A, Mask Mandate, Section 4.

## II. Justification for the Mask Mandate

32. In a July 28, 2021, press release, Mayor Lucas identified three reasons for imposing a new mask mandate beginning August 2, 2021: (1) recommendations from the Centers for Disease Control, the Kansas City Health Department, and other unidentified health leaders regarding wearing masks in indoor public accommodations regardless of vaccination status; (2) a reported 15% increase in hospitalizations over the past week; and (3) a reported 39% full vaccination rate in Kansas City. Press Release, *Mayor Lucas Announces Reinstatement of Indoor Mask Mandate*, July 28, 2021, available at <https://www.kcmo.gov/city-hall/city-officials/mayor-quinton-lucas/mayor-lucas-press/press-releases/mayor-lucas-announces-reinstatement-of-indoor-mask-mandate>.

33. In the order instituting a mask mandate, signed July 30, 2021, the City identified the same three reasons identified in the press release, as well as two additional reasons, for a total of five reasons: (4) “another wave of new COVID-19 cases” and “hot spots in southwest Missouri and north central Missouri, locations frequented by Kansas Citians;” and (5) the number of cumulative COVID-19 cases and cumulative deaths in Kansas City metro-wide and those purporting to be the totals for the United States as a whole. *See* Ex. A, Mask Mandate, at 1-2.

34. Although the City claims that the CDC “confirmed 194,000,000 total cases and 4,160,000 deaths nation-wide,” the CDC’s actual numbers are far lower: 34,972,532 total cases and 611,061 deaths. CDC, COVID Data Tracker, available at [https://covid.cdc.gov/covid-data-tracker/#cases\\_totalcases](https://covid.cdc.gov/covid-data-tracker/#cases_totalcases) (last visited on August 3, 2021).

35. In the Mask Mandate, the City did not provide any explanation for what changed between July 25, 2021, when Mayor Lucas said that a mask mandate was not needed in Kansas City, and July 30, 2021, when Mayor Lucas signed the Mask Mandate.

36. At the time of Mayor Lucas' July 25, 2021, announcement that a mask mandate was not needed in Kansas City, the CDC recommended that individuals who were not fully vaccinated and aged 2 or older should wear a mask in indoor public places. CDC, Your Guide to Masks, updated June 29, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>.

37. Between July 25, 2021 and July 27, 2021, the CDC did not change its guidance for mask wearing by unvaccinated individuals.

38. Between July 25, 2021 and July 30, 2021, the CDC did not change its guidance for mask wearing by unvaccinated individuals.

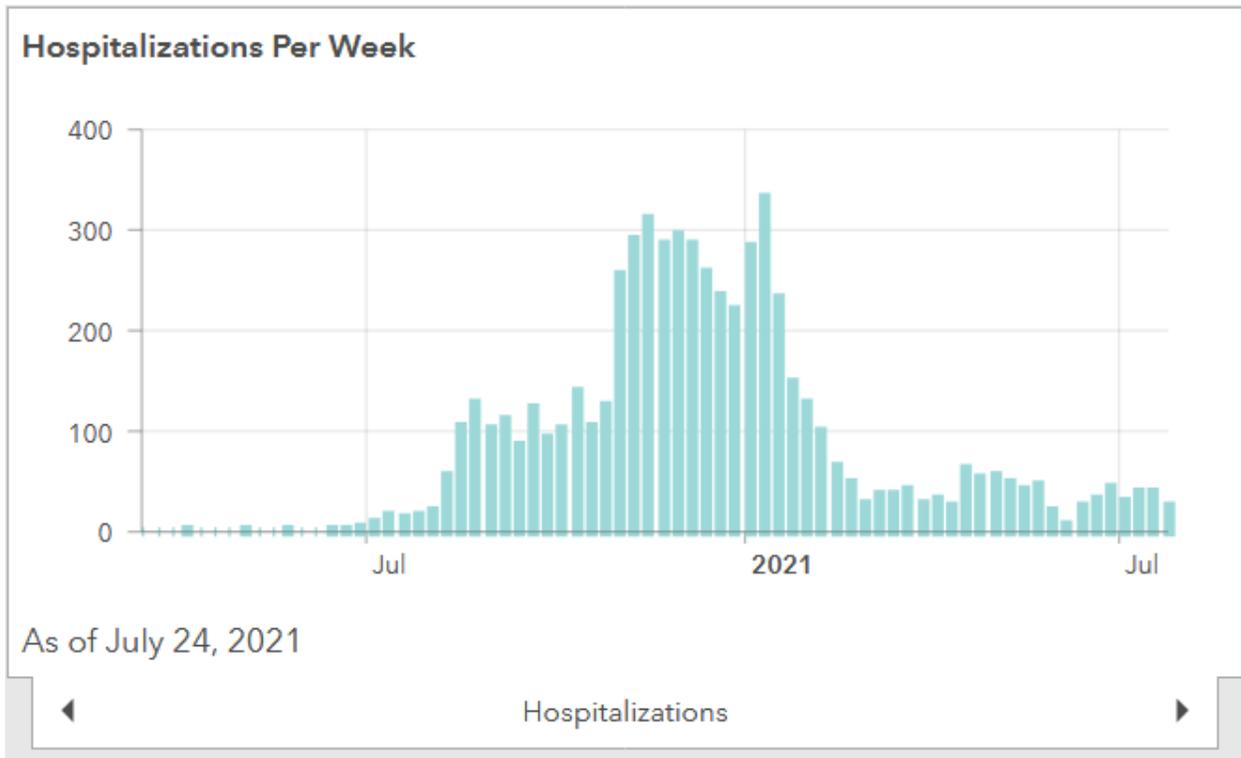
39. At the time of Mayor Lucas' July 25, 2021, announcement that a mask mandate was not needed in Kansas City, the Kansas City, Missouri Health Department and other Kansas City area health leaders recommended that unvaccinated individuals should wear a mask while visiting indoor public places, crowded outdoor settings, and for activities with close contact with others who are not fully vaccinated. Glenn E. Rice and Katie Moore, *Ten Kansas City area health agencies ask the unvaccinated to mask up as COVID-19 surges*, THE KANSAS CITY STAR (July 16, 2021), available at <https://www.kansascity.com/news/coronavirus/article252839108.html>.

40. Between July 25, 2021 and July 27, 2021, the Kansas City, Missouri Health Department did not change its guidance for mask wearing by unvaccinated individuals.

41. Between July 25, 2021 and July 30, 2021, the Kansas City, Missouri Health Department did not change its guidance for mask wearing by unvaccinated individuals.

42. As of the time of this filing, the data in the online KCMO COVID-19 Dashboard presented data as of July 24, 2021. The KCMO COVID-19 Dashboard reports that total cases, case rate, total deaths, and death rate are updated every business day, while all other metrics are updated on Wednesday for the prior week (Sunday-Saturday).

43. At the time of Mayor Lucas' July 25, 2021, announcement that a mask mandate was not needed in Kansas City, according to Kansas City's COVID-19 dashboard, hospitalizations per week in Kansas City as of July 24, 2021 appeared as follows:



Source: KCMO COVID-19 Dashboard, as of July 24, 2021, <https://kcmo.maps.arcgis.com/apps/dashboards/a9cb1fa166aa44de99dab0b946b08799> (last visited August 3, 2021).

44. Specifically, Kansas City’s COVID-19 dashboard showed that, as of July 24, 2021, hospitalizations per week the week of July 24, 2021 were the lowest in more than one month, and the third-lowest number of hospitalizations per week since Kansas City lifted its previous COVID-19 health order and mask mandate on May 14, 2021:

Date	Hospitalizations per week
5/15/21	43
5/22/21	46
5/29/21	20
6/5/21	8
6/12/21	25
6/19/21	32
6/26/21	44
7/3/21	30
7/10/21	40
7/17/21	39
7/24/21	25

Source: KCMO COVID-19 Dashboard, as of July 24, 2021, <https://kcmo.maps.arcgis.com/apps/dashboards/a9cb1fa166aa44de99dab0b946b08799> (last visited August 3, 2021).

45. The City of Kansas City does not make available on its COVID-19 dashboard any hospitalization data more recent than July 24, 2021, or hospitalization data on a daily basis.

46. In his interview on CBS’ “Face the Nation,” Mayor Lucas believed that a mask mandate was not necessary at that time and pointed out that “[a]s the secretary of

commerce just noted, 97% of the cases that we're seeing in hospitals are from those who are unvaccinated." *Transcript: Kansas City Mayor Quinton Lucas on "Face the Nation,"* CBS NEWS (July 25, 2021), available at <https://www.cbsnews.com/news/transcript-kansas-city-mayor-quinton-lucas-on-face-the-nation-july-25-2021/>.

47. At the time of Mayor Lucas' July 25, 2021 announcement that a mask mandate was not needed in Kansas City, 38.8% of Kansas City's population was fully vaccinated. Anna Sporre, *Kansas City vaccination rates 'painfully low', Mayor Lucas says on Face the Nation*, THE KANSAS CITY STAR (July 25, 2021), available at <https://www.kansascity.com/news/coronavirus/article253013233.html>.

48. In his July 28, 2021 press release, Mayor Lucas reported 39% full vaccination rate in Kansas City. Press Release, *Mayor Lucas Announces Reinstatement of Indoor Mask Mandate*, July 28, 2021, available at <https://www.kcmo.gov/city-hall/city-officials/mayor-quinton-lucas/mayor-lucas-press/press-releases/mayor-lucas-announces-reinstatement-of-indoor-mask-mandate>.

49. Between July 25, 2021, and July 27, 2021, the fully vaccinated rate in Kansas City only increased.

50. Between July 25, 2021, and July 30, 2021, the fully vaccinated rate in Kansas City only increased.

51. The three reasons Mayor Lucas gave for imposing a new mask mandate on unvaccinated individuals did not materially change between July 25, 2021, when Mayor Lucas announced that a mask mandate was not needed in Kansas City, and July 27, 2021, when Mayor Lucas announced he would impose a mask mandate in Kansas City.

52. The Mask Mandate does not define a “hot spot,” which cities are considered “hot spots,” the number of Kansas Citians that have visited those “hot spots” during the time they were “hot spots,” or the number of Kansas Citians that have tested positive for COVID-19 after visiting a “hot spot.”

53. The Mask Mandate provides only overall totals of COVID-19 cases and deaths for Kansas City metro-wide and purportedly for the United States.

54. The Mask Mandate does not provide any recent COVID-19 case or death information for Kansas City.

55. At the time of Mayor Lucas’ July 25, 2021, announcement that a mask mandate was not needed in Kansas City, Kansas City’s online data dashboard showed that, as of July 24, 2021, no COVID-19 deaths were reported in the previous week:

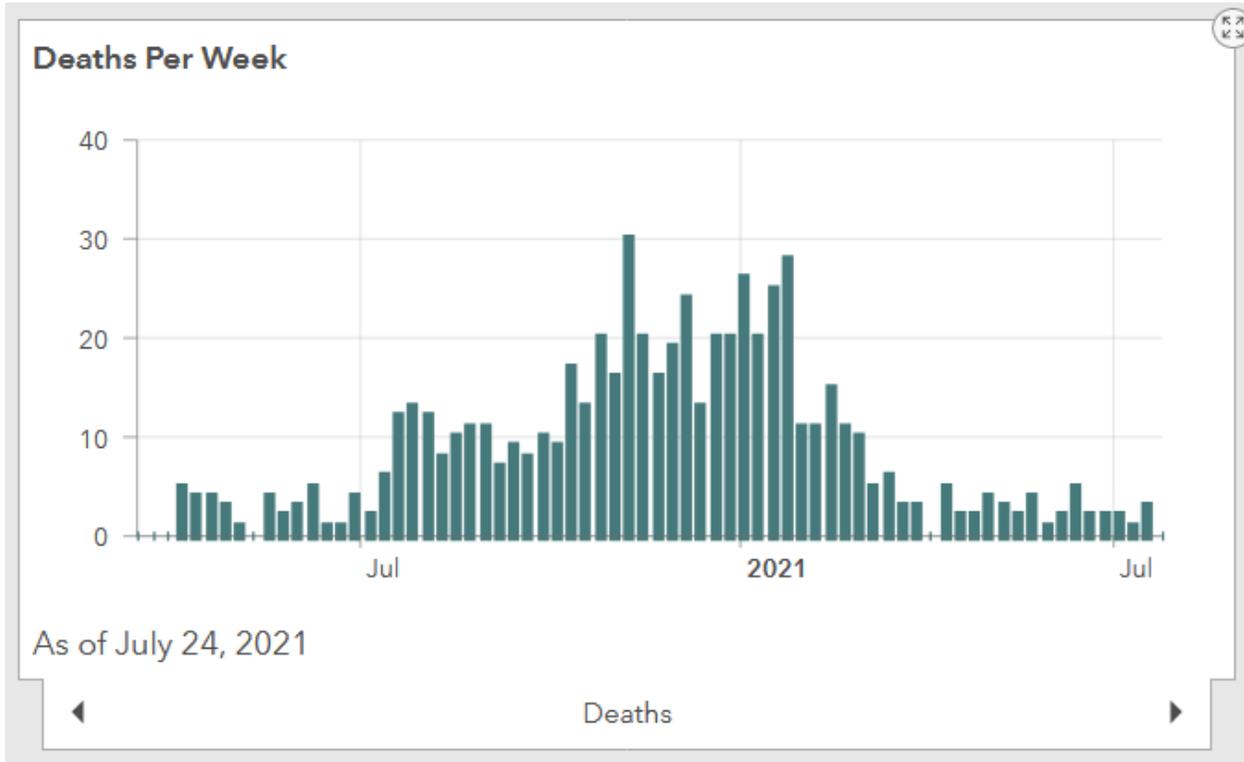


Source: KCMO COVID-19 Dashboard, as of July 24, 2021,

<https://kcmo.maps.arcgis.com/apps/dashboards/a9cb1fa166aa44de99dab0b946b08799>

(last visited August 3, 2021).

56. At the time of Mayor Lucas' July 25, 2021, announcement that a mask mandate was not needed in Kansas City, according to Kansas City's online data dashboard, deaths per week in Kansas City as of July 24, 2021 appeared as follows:



Source: KCMO COVID-19 Dashboard, as of July 24, 2021, <https://kcmo.maps.arcgis.com/apps/dashboards/a9cb1fa166aa44de99dab0b946b08799> (last visited August 3, 2021).

57. Specifically, Kansas City's online data dashboard showed that, as of July 24, 2021, deaths per week from July 1 through July 24 were the lowest of any month since March 2020, as reported by Kansas City:

Date	Deaths per week
7/3/21	2

7/10/21	1
7/17/21	3
7/24/21	0

Source: KCMO COVID-19 Dashboard, as of July 24, 2021, <https://kcmo.maps.arcgis.com/apps/dashboards/a9cb1fa166aa44de99dab0b946b08799>

(last visited August 3, 2021).

58. The five reasons Mayor Lucas gave for imposing a new mask mandate on unvaccinated individuals did not materially change between July 25, 2021, when Mayor Lucas announced that a mask mandate was not needed in Kansas City, and July 30, 2021, when Mayor Lucas signed the mask mandate for Kansas City.

59. Defendants have not justified the imposition of a mask mandate on unvaccinated individuals.

60. On July 27, 2021, the CDC updated its guidance to recommend that fully vaccinated individuals wear a mask indoors in public if located in an area of substantial or high transmission. CDC, When You've Been Fully Vaccinated, July 27, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>.

61. Kansas City's COVID-19 dashboard does not report the number of elderly and others who may be at higher risk if they contract COVID-19 in Kansas City who are fully vaccinated.

62. Kansas City's COVID-19 dashboard does not report the number of fully vaccinated individuals who have tested positive for COVID-19 after they became fully vaccinated, or of those, the number who then require hospitalization or die from COVID-19.

63. According to Mayor Lucas, as of July 25, 2021, no more than 3% of COVID-19 hospitalizations in Kansas City were of fully vaccinated individuals.

64. Kansas City's COVID-19 dashboard does not report the number of individuals who have tested positive for COVID-19 after contracting it from a fully vaccinated individual.

65. Kansas City's COVID-19 dashboard does not separately report the number of unvaccinated individuals in Kansas City who have antibodies due to a previous case of COVID-19.

66. Defendants have not justified the imposition of a mask mandate on fully vaccinated individuals.

67. Similarly, Defendants imposed the mask mandate on schoolchildren, ignoring that those children are less likely to get COVID-19, less likely to get seriously ill if they do get it, and are less likely to transmit the disease while, at the same time, suffering disproportionately from masking requirement.

### **III. Authorization**

68. The Mask Mandate does not identify any legal authority on which it relies. Mayor Lucas, not a Public Health Authority, signed the Mask Mandate. *See* Ex. A, Mask Mandate, at 4.

69. Any restrictions the mandate imposes cannot be “unconstitutional, unlawful, unreasonable, arbitrary, or capricious . . . . § 536.150.1, RSMo. Government action is arbitrary, capricious, and unreasonable when it is based on *post hoc* rationalization, when it fails to consider an important part of the problem it is addressing, and when it fails to

consider less restrictive alternatives before infringing on citizens' liberty. *See, e.g., Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1905, 1909 (2020); *Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015). “[A]n agency which completely fails to consider an important aspect or factor of the issue before it may also be found to have acted arbitrarily and capriciously.” *Barry Serv. Agency Co. v. Manning*, 891 S.W.2d 882, 892 (Mo. App. W.D. 1995) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). In addition, agencies must consider whether there are less restrictive policies that would achieve their goals. *See Regents of the Univ. of Calif.*, 140 S. Ct. at 1912 (quoting *State Farm Mut. Auto.*, 463 U.S. at 51).

70. The Defendants have a history of transgressing statutory and constitutional bounds in the COVID-19 orders they have issued.

71. The Defendants' Mask Mandate is no different. It exceeds Defendants' statutory and constitutional authority and trample the rights of their citizens.

**COUNT ONE – DECLARATION THAT THE MASK MANDATE IS SUBJECT TO § 67.265, RSMo**

72. Missouri incorporates by reference the allegations in all preceding paragraphs.

73. Missouri seeks a declaration that the Mask Mandate is subject to the requirements of § 67.265, RSMo.

74. There is an emergency order declared pursuant to chapter 44, RSMo.

75. The Mask Mandate acknowledges that the City's emergency order runs parallel with the State of Missouri's emergency declaration.

76. The Mask Mandate is an “order” as defined by § 67.265.1, RSMo.

77. The Mask Mandate is an order that “directly or indirectly closes, partially closes, or places restrictions on the opening of or access to any one or more business organizations, churches, schools, or other places of public or private gathering or assembly, including any order, ordinance, rule, or regulation of general applicability or that prohibits or otherwise limits attendance at any public or private gathering . . . .” § 67.265.1(1), RSMo.

78. The Mask Mandate places restrictions on access to “business organizations, churches, schools, or other places of public or private gathering or assembly,” § 67.265.1(1), RSMo, because it limits access to those entities only to masked individuals or to individuals who fall under an exception to the mask requirement.

79. Second, the Mask Mandate will indirectly close those “business organizations, churches, schools, or other places of public or private gathering or assembly,” § 67.265.1(1), RSMo, that wish to provide personal choice to their customers about whether they wear a mask or not. Furthermore, the Mask Mandate will also close those entities where masking is impossible or so uncomfortable as to be impossible.

80. Indeed, the Mask Mandate specifically provides that those charged with enforcing the order can “enter all property necessary” to enforce the order and discontinue or remove trades or professions that violate the order. *See* Ex. A, Mask Mandate, Section 4.

81. The Mask Mandate suggests the Defendants also believe the City is subject to the requirements of § 67.265, RSMo, since the now-retired health director and the deputy

health director claim to have provided a report to the City Council pursuant to § 67.265, RSMo.

82. As a result, the Mask Mandate is subject to § 67.265, RSMo, and expires after thirty days absent authorization by a majority vote of Kansas City’s governing body.

**COUNT TWO – DECLARATION THAT THE MASK MANDATE IS  
ARBITRARY AND CAPRICIOUS AS APPLIED TO SCHOOLCHILDREN,  
§ 536.150.1, RSMo**

83. Missouri incorporates by reference the allegations in all preceding paragraphs.

84. The State of Missouri challenges the validity of the Mask Mandate, and seeks a declaration that it is “unreasonable, arbitrary, or capricious.” § 536.150.1, RSMo. The Mask Mandate is not subject to administrative review. *Id.*

85. The Mask Mandate imposes a duty on all elementary schoolchildren (defined as all children who are of the age to attend K-12 school) in Kansas City to wear a mask with few exceptions when they are at school. The Mask Mandate is therefore an agency decision that determines “legal rights, duties, or privileges.” § 536.150.1, RSMo.

86. The schoolchildren of Kansas City are not validly subject to the Mask Mandate because it is “unreasonable, arbitrary, or capricious,” § 536.150.1, RSMo, for a number of reasons.

87. First, the masking requirement for schoolchildren is unreasonable, arbitrary, and capricious. Schoolchildren are generally not at risk of serious illness even if they get COVID-19, thus reducing the need for harsher non-pharmaceutical intervention. *See, e.g.,* Marty Makary, Opinion, *The Flimsy Evidence Behind the CDC’s Push to Vaccinate*

*Children*, WALL ST. J. (July 19, 2021) (“Our report found a mortality rate of zero among children without a pre-existing medical condition such as leukemia.”). On information and belief, Defendants failed to consider that fact in deciding to promulgate the Mask Mandate.

88. Second, on information and belief, Defendants failed to consider a number of important factors relating to masking for schoolchildren:

- a. To start, the Mask Mandate fails to account for the fact that children are less likely to contract COVID-19 and that, if they do contract it, display less severe symptoms. *See, e.g.*, Nicholas G. Davies, *Age-Dependent Effects in the Transmission and Control of COVID-19 Epidemics*, 26 NATURE MED. 1205, 1205 (2020) (concluding that susceptibility of infection in those under twenty is half that for those over twenty and that those under twenty do not manifest clinical symptoms as often). That suggests that children are also less likely to transmit the virus, *see id.* at 1208–09, which appears to be the consensus position.<sup>1</sup> There is thus a much less pressing need for masking among young children. That includes within schools. One

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<sup>1</sup> *See, e.g.*, Eun Young Cho et al., Letter to the Editor, *Interpreting Transmissibility of COVID-19 in Children*, 26 EMERGING INFECTIOUS DISEASES 3106, 3107 (2020) (interpreting data); Patrick Boyle, *Kids, School, and COVID-19: What We Know—and What We Don’t*, AAMC (Nov. 5, 2020), <https://bit.ly/3kQDvyG> (“Several studies have found that children transmit the virus, but perhaps not as often as adults, especially in younger age groups. It’s not clear why.”); Eli Somekh et al., *The Role of Children in the Dynamics of Intra Family Coronavirus 2019 Spread in Densely Populated Areas*, 39 PEDIATRICS INFECTIOUS DISEASE J. 202, 203–04 (2020) (noting studies indicating that children are less likely to get COVID-19, and finding similar results).

study found “an infection rate of 0.13% among students and 0.24% among staff” after analyzing in-school infection data from over 47 states. Patrick Boyle, *Kids, School, and COVID-19: What We Know—and What We Don’t*, AAMC (Nov. 5, 2020). Rather, schools are more likely to be affected by COVID-19 rates in the community than be sites of super-spreader events. *See id.*<sup>2</sup>

- b. But while the risks schoolchildren face from COVID-19, as well as the risk that they transmit the virus, are relatively low, there is a significant cost to forcing them to mask. For one, masks hinder “verbal and non-verbal communication.” Jonas F. Ludvigsson, Editorial, *Little Evidence for Facemask Use in Children Against COVID-19*, 110 ACTA PAEDITRICA 742, 742 (2021); *see* Connor Harris, *Do We Need Mask Mandates?*, CITY J. (Mar. 22, 2021), <https://www.city-journal.org/do-we-need-mask-mandates> (“Some child development researchers also worry that widespread mask-wearing may hamper children’s linguistic and emotional

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<sup>2</sup> *See also, e.g.*, CDC, *Science Brief: Transmission of SARS-CoV-2 in K-12 Schools and Early Care and Education Programs—Updated* (updated July 9, 2021), <https://bit.ly/3rxQeaR>; *Questions and Answers on COVID-19: Children Aged 1–18 Years and the Role of Schools Settings*, European Centre for Disease Prevention & Control (updated Jan. 25, 2021), <https://bit.ly/3j3yHDJ>. *But see* Zoe Hyde, Perspectives, *COVID-19, Children and Schools: Overlooked and at Risk*, 213 MED. J. AUSTL. 444, 446 (2020) (arguing that schools play a bigger role in transmission than assumed, but conceding that “[w]hether young and older children transmit the virus similarly is unknown and requires urgent clarification”).

development.”); *see also* John T. Brooks, et al., *Effectiveness of Mask Wearing to Control Community Spread of SARS-CoV-2*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, Feb. 10, 2021, at 7 (finding that “children were less accurate with faces that wore a mask compared to faces that were not covered”). And the same risks associated with mask use in adults are present with respect to children—namely, that the masks may create a false sense of security and that failing to properly wear face masks over their nose and mouths and that touching the masks will eliminate, if not exceed, any benefit achieved by having students wear masks. *See id.*

- c. There are also common-sense concerns with having schoolchildren wear a face mask all day while at school, such as general discomfort. *See Harris, supra* (“In a self-selected survey of German schoolchildren, more than half of the participants reported headaches.”). Similarly, mask requirements also takes up instructional time as teachers police mask compliance, take mask breaks outdoors, send students to get masks, and punish students for failing to comply.
- d. Finally, children with special needs may find it especially difficult to wear masks but may not be able to take advantage of any of the exceptions in the Mask Mandate. The mandate thus jeopardizes their ability to be in public places under the Mask Mandate. *See The*

*Challenge of Face Masks*, ORG. FOR AUTISM RES. (Nov. 12, 2020), <https://bit.ly/3eVYRa3>. While the Mask Mandate’s exempts those who are not able to wear a mask in Section 2.B.2, that exemption is vague, and arguably very narrow. It is therefore unclear whether it would exempt all special needs children—for example, all of those on the autism spectrum. *See id.*

89. On information and belief, Defendants failed to consider those factors in applying the Mask Mandate to schoolchildren. They therefore failed to engage in reasoned decision-making, and, as a result, subjected schoolchildren in Kansas City to an unnecessary, burdensome, and harmful mask mandate.

90. For those reasons, the Mask Mandate is unreasonable, arbitrary, and capricious and the schoolchildren of Kansas City should not be subject to it.

**COUNT THREE – DECLARATION THAT THE MASK MANDATE IS UNLAWFUL AS TO SCHOOLCHILDREN, § 536.150.1, RSMo**

91. Missouri incorporates by reference the allegations in all preceding paragraphs.

92. The State of Missouri challenges the validity of the Mask Mandate, and seeks a declaration that it is “unlawful” and therefore the people of Kansas City cannot be lawfully subjected to it. § 536.150.1, RSMo. The Mask Mandate is not subject to administrative review. *Id.*

93. By law, local health authorities may create and enforce only orders “adequate . . . to prevent the spread of [a] disease and other measures considered by

the . . . local health authority as appropriate disease control measures based upon the disease . . . .” 19 C.S.R. § 20-20.040.2(G).

94. For the reasons discussed in Count Two, the Mask Mandate is not an appropriate disease control measure for schoolchildren and is not adequate to prevent the spread of COVID-19 in that group.

95. For those reasons, the Mask Mandate is an unlawful order and the schoolchildren of Kansas City should not be subject to it.

**COUNT FOUR – DECLARATION THAT THE MASK MANDATE IS  
ARBITRARY AND CAPRICIOUS, § 536.150.1, RSMo**

96. Missouri incorporates by reference the allegations in all preceding paragraphs.

97. The State of Missouri challenges the validity of the Mask Mandate, and seeks a declaration that it is “unreasonable, arbitrary, or capricious.” § 536.150.1, RSMo. The Mask Mandate is not subject to administrative review. *Id.*

98. The Mask Mandate imposes a duty on all citizens in Kansas City to wear a mask with few exceptions when they are in a public space. It therefore is an agency decision that determines “legal rights, duties, or privileges.” § 536.150.1, RSMo.

99. The citizens of Kansas City are not validly subject to the Mask Mandate because it is “unreasonable, arbitrary, or capricious,” § 536.150.1, RSMo, for a number of reasons.

100. To start, the Mask Mandate clearly fails the requirement of reasoned decision-making. It provides no discussion of how the mandate addresses the harms it

identifies and for their particular community. The Mask Mandate therefore suggests that the Defendants failed to grapple at all with a large swath of relevant science, data, statistics, studies, or alternatives.

101. The Mask Mandate is arbitrary and capricious because it fails to account for over a year of data that showed the previous Kansas City restrictions were less effective than counties that had no restrictions.

102. The Mask Mandate is arbitrary and capricious because it requires vaccinated individuals to wear masks, unless they know all persons present are fully vaccinated, despite all the data showing that vaccinated individuals face minor risk from the virus. The Mask Mandate fails to address this issue.

103. On information and belief, Defendants failed to consider whether the Mask Mandate—because it treats vaccinated individuals like unvaccinated ones—discourages people from receiving the vaccine by implying that vaccines have limited efficacy. *Cf.* Rachel Holloway et al., *Updated Preparedness and Response Framework for Influenza Pandemics*, MORBIDITY & MORTALITY WEEKLY REPORT, Sept. 26, 2014, at 6 (saying vaccine availability is a consideration when determining what actions to take during a pandemic).

104. For those reasons, the Mask Mandate is unreasonable, arbitrary, and capricious and the people of Kansas City should not be subject to it.

**COUNT FIVE – DECLARATION THAT THE MASK MANDATE IS  
UNLAWFUL, § 536.150.1, RSMo**

105. Missouri incorporates by reference the allegations in all preceding paragraphs.

106. The State of Missouri challenges the validity of the Mask Mandate, and seeks a declaration that it is “unlawful” and therefore the people of Kansas City cannot be lawfully subjected to them. § 536.150.1, RSMo. The Mask Mandate is not subject to administrative review. *Id.*

107. By law, local health authorities may create and enforce only orders “adequate . . . to prevent the spread of [a] disease and other measures considered by the . . . local health authority as appropriate disease control measures based upon the disease . . . .” 19 C.S.R. § 20-20.040.2(G).

108. For the reasons discussed in Count Four, the Mask Mandate is not an appropriate disease control measure and is not adequate to prevent the spread of COVID-19.

109. For those reasons, the Mask Mandate is an unlawful order and the people of Kansas City should not be subject to it.

**COUNT SIX – DECLARATION THAT THE MASK MANDATE IS  
UNCONSTITUTIONAL AS VOID FOR VAGUENESS, § 536.150.1, RSMo**

110. Missouri incorporates by reference the allegations in all preceding paragraphs.

111. The State of Missouri challenges the validity of the Mask Mandate, and seeks a declaration that the Mask Mandate is “unconstitutional” and therefore the people of

Kansas City cannot be lawfully subjected to it. § 536.150.1, RSMo. The Mask Mandate is not subject to administrative review. *Id.*

112. The Missouri Constitution prohibits government restrictions that are unconstitutionally vague. “The test in enforcing the doctrine is whether the language conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.” *Feldhaus v. State*, 311 S.W.3d 802, 806 (Mo. banc 2010). And “[t]here must be sufficient guidance provided by the statute so as to avoid arbitrary and discriminatory applications.” *State v. Stokely*, 842 S.W.2d 77, 81 (Mo. banc. 1992).

113. The Mask Mandate is vague on where it applies. The Mask Mandate requires face coverings “while performing an activity involving close contact or proximity to co-workers or the public where six feet of separation is not feasible.”

- a. The Mask Mandate is vague on whether it applies if an individual is standing still, sitting still, or otherwise not performing an activity.
- b. The Mask Mandate is vague on whether it applies if an individual is performing an activity involving close contact or proximity to family members or other relatives, but not co-workers or the public.
- c. The Mask Mandate is vague on whether it applies in indoor places of public accommodation where six feet of separation is feasible. For example, the Mask Mandate says that it applies to “grocery and retail stores, special events, and public transit” categorically and without reference to whether six feet of separation is feasible. Thus, the Mask Mandate’s terms means it does,

and does not, apply when separation is feasible in those locations—for example, if, another person is not in the same aisle or section of a grocery or retail store, or a person is the only rider on a public bus.

- d. The Mask Mandate does not define what health conditions permit an individual to avoid wearing a mask, or even provide exemplars beyond suggesting (without being clear the suggestion is part of the exemption) that the health condition must be “substantial impairment to their health and well-being upon medical, behavioral, or legal direction.” Furthermore, what constitutes “direction” is not defined. As a result, the order is vague and vests too much discretion in officials to make on-the-spot determinations of whether a health condition falls within the exemptions scope or whether the person has received qualifying direction.
- e. What is “actively engaged in consuming food or drink” is also not defined in the order. But the scope of that exception is also incredibly vague. It is unclear, for example, whether it requires masking between bites or sips, or whether it permits people to remain unmasked throughout the meal, or something in between.
- f. The lack of clear terms is especially troublesome given the wide latitude those charged with enforcing the Mask Mandate have to “deem an action carried on or engaged in by any person in the City detrimental to public health.” Ex. A, Mask Mandate, Section 4.

114. For those reasons, the Mask Mandate is unconstitutional and the people of Kansas City should not be subject to it.

**COUNT SEVEN – DECLARATION THAT THE MASK MANDATE WAS  
UNLAWFULLY ISSUED AND IS INVALID**

115. Missouri incorporates by reference the allegations in all preceding paragraphs.

116. The Mask Mandate was improperly issued.

117. The authority to issue public health orders arises from regulations promulgated by the Missouri Department of Health and Senior Services. *See* 19 C.S.R. § 20-20.040(2)(G).

118. Under 19 C.S.R. § 20-20.040(2)(G), only the “local health authority, the director of [the State Department of Health and Senior Services], or the director’s designated representative” may issue public health orders.

119. Under 19 C.S.R. § 20-20.010(26), the “local health authority” “is the city or county health officer, director of an organized health department or of a local board of health within a given jurisdiction. In those counties where a local health authority does not exist, the health officer or administrator of the Department of Health and Senior Services district in which the county is located shall serve as a local health authority.”

120. On information and belief, Mayor Lucas is not the local health authority under 19 C.S.R. §§ 20-20.010(26), .040(2)(G).

121. Mayor Lucas is not the director of the State Department of Health and Senior Services.

122. On information and belief, Mayor Lucas is not the director's representative.

123. Mayor Lucas issued the Mask Mandate. *See Ex. A, Mask Mandate, at 4.*

124. Therefore, the Mask Mandate was not issued by a person authorized to issue such orders, and it is therefore invalid and unlawful.

### **CONCLUSION**

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. Declare that Defendants' Mask Mandate is unconstitutional, unlawful, arbitrary, capricious, unreasonable, and invalid under Missouri law as to schoolchildren (Counts Two and Three); declare that Defendants' Mask Mandate is unconstitutional, unlawful, arbitrary, capricious, unreasonable, and invalid under Missouri law (Counts Four, Five, and Six); declare that the Mask Mandate was unlawfully issued and is invalid (Count Seven);
- b. Grant relief by injunction, certiorari, mandamus, prohibition, or other appropriate action, providing that Defendants' Mask Mandate is unconstitutional, unlawful, arbitrary, capricious, unreasonable, and invalid under Missouri law as to schoolchildren (Counts Two and Three); grant relief by injunction, certiorari, mandamus, prohibition, or other appropriate action, providing that Defendants' Mask Mandate is unconstitutional, unlawful, arbitrary, capricious, unreasonable, and invalid under Missouri law (Counts Four, Five, and Six); grant relief by injunction, certiorari, mandamus, prohibition, or other appropriate action,

providing that the Mask Mandate was unlawfully issued and is invalid  
(Counts Seven);

- c. Declare that Defendants' Mask Mandate is subject to § 67.265, RSMo,  
(Count One);
- d. Enter a final judgment in Plaintiff's favor on all Counts in this Complaint;  
and
- e. Grant such other and further relief as the Court deems just and proper  
under the circumstances.

Dated: August 3, 2021

Respectfully submitted,

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