

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY**

Matt Schweder,)
)
 Larry Nichols, Joshua Nichols,)
)
 Wesley Anglin,)
 Frank Anglin and Maggie Anglin,)
)
 Robin Harbolt,)
)
 Charles w. (Jeep) Burton,)
)
 Kenneth L. Kearns II, and)
)
 JANE AND JOHN DOES 1-100,)
)
 Plaintiffs,)
)
 vs.)
)
 GOVERNOR ANDREW GRAHAM BESHEAR)
)
 KENTUCKY DEPARTMENT OF PUBLIC)
 HEALTH COMMISSIONER)
 STEVEN J. STACK,)
)
 CABINET FOR HEALTH AND FAMILY)
 SERVICES SECRETARY)
 ERIC C. FRIEDLANDER)
)
 JANE AND JOHN DOES 1-20,)
)
 Defendants.)

Case No.: 3:21-cv-00019-GFVT

PLAINTIFF'S SUPPLEMENTAL NOTICE

Come now Plaintiffs, by and through counsel, and respectfully request this Court to take judicial notice of the following action taken by Defendant Beshear, in contempt of Boone

Circuit Court and in direct contravention to the arguments and affirmative representations made by Defendant's Counsel before this Honorable Court on June 23.

In Defendants' Response to Plaintiffs Motions, (received by this Court as a Motion for Preliminary Injunction), Defendants stated that Plaintiffs' pleading was ***"meritless" because it contests public health measures that "have been lifted"***. Further, Defendants asserted that the mask mandates ***had been*** lifted and so the Plaintiffs' case was moot.

In their oral arguments on June 23, Defendant's Counsel doubled down on this false affirmative representation, alleging to this Court that mask mandates were a thing of the past.

Defendants were so bent on convincing the Court that mask mandates were a thing of the past that they requested the extraordinary relief of asking that this Court halt all further proceedings. *"Defendants respectfully request that in addition to denying the motions, the Court stay any further proceedings in this case so that Plaintiffs may not waste Defendants' and the Court's time with further frivolous pleadings while the motion to dismiss is pending."*

Despite Defendants' emotionally charged accusations and vehement protestations that masking is over, Defendant Beshear issued another Executive Masking Order yesterday, arguably the most dystopian and draconian yet. The fact that emergency measures were in fact not a thing of the past, was actually reiterated in the language of the executive order (*see* Exhibit A) which stated:

The novel coronavirus (COVID-19) is a respiratory disease that has contributed to the deaths of nearly 615,000 Americans and 7,387 Kentuckians over the past 17 months.

Under the powers provided by the Kentucky Constitution and Kentucky Revised Statutes, including KRS Chapter 39A, I declared by Executive Order 2020-215 on March 6, 2020, that a State of Emergency exists in the Commonwealth.

Plaintiffs dispute nearly every single fact presented in this order and point out to the Court that, to Plaintiffs' knowledge, the only method by which the "delta variant" can be diagnosed is through genetic sequencing which take substantial time and effort and cannot be done on large numbers of people quickly. Rather, the utter nonsense being promulgated by the Defense is based on conjecture – not hard science. Finally, Plaintiffs note the admission by the Defense that the vaccines do not work ("fully vaccinated people with Delta variant breakthrough infections can spread the virus to others.") and look forward to demonstrating the illegitimacy of nearly everything else they have claimed.

The Order, which one can hardly imagine was spontaneously delivered, as opposed to pre-meditated, mandates *universal masking* for all school children above the age of two, subject to certain limited exceptions. This newest Order demonstrates the Defendants' flagrant and towering contempt for science, the Judicial Branch of our Government, the rule of law, and the health of the children of Kentucky. It must be noted that Defendants created a law (which they never rolled back) couched as an emergency administrative regulation that makes it a misdemeanor if anyone fails to follow his masking mandate and authorizing any uniformed police officer to arrest without warrant anyone that they witness "failing to cover the face" as mandated.

Further, Plaintiffs request that this Court consider the likelihood that this draconian Mandate was likely under contemplation a mere 18 days prior, as Defendants' were representing to this Court that Plaintiffs pleading was *frivolous, meritless, threadbare, faulty, a waste of time, outlandish, lack any merit whatsoever, based entirely on unsupported conjecture, baseless, and that Plaintiffs claims have "gotten worse since the Complaint was filed,*

all because Plaintiffs had the temerity to suggest that mandated masking was not a thing of the past and that the partial rollback represents a situation *capable of repetition yet evading review*.

WHEREFORE, Plaintiffs request that this Honorable Court take Judicial Notice of (1) this Order, (2) the proximity of the Executive Mandate in time to the hearing in which Defendants assured this Court that masking was over, and (3) the settled science contravening this mandate, which is laid out in the Boone Circuit Order, of record in this matter.

RESPECTFULLY SUBMITTED this 8th day of August 2021.

BY: /s/ Michael A. Hamilton
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Notice was delivered electronically on August 11, 2021.

/s/ Michael A. Hamilton