

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
 BIRMINGHAM DIVISION**

VANN DUSTIN,)	
SMITH SHELLY WHITLOCK,)	
Plaintiffs,)	
)	
V.)	Case No.: CV-2021-000161.00
)	
HOMEWOOD BOARD OF)	
EDUCATION,)	
Defendant.)	

**Order on Plaintiffs' Application for Temporary Restraining Order and
 Preliminary Injunction**

Before the Court is Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction filed against the Homewood City Schools Board of Education (the "Board") on August 10, 2021 pursuant to Rule 65 of the Alabama Rules of Civil Procedure. A hearing was held on August 11, 2021, where all parties were represented and made oral argument. After due consideration of the parties' oral arguments and written submissions, the Court denies Plaintiffs' Application.

On July 30, 2021, the Alabama Department of Public Health ("ADPH") issued Back to School Guidance 2021-2022. ("ADPH Guidance"). This guidance contains the most recent recommendations from the Centers for Disease Control and Prevention ("CDC") related to COVID-19 and set forth that universal masking

is among the “best CDC strategies for students to remain in the classroom, even if exposed to a positive COVID-19 case.” The Jefferson County Department of Health agreed. On August 10, 2021, on recommendation of the Superintendent, the Board adopted a resolution approving the masking protocol.

The ADPH Guidance provides that “[u]nvaccinated individuals who are identified as a close contact and do not meet the K-12 indoor classroom student exemption criteria must quarantine.” The K-12 exemption criteria excludes from the “close contact” definition any student within 3 to 6 feet of an infected student where both students were engaged in consistent and correct use of well-fitting masks; *and* other K–12 school prevention strategies (such as universal and correct mask use, physical distancing, increased ventilation) were in place in the K–12 school setting.

Plaintiffs sought a temporary restraining order and preliminary injunction to enjoin the Board from implementing the Protocol.

The elements for the issuance of a temporary restraining order and a preliminary injunction are the same. *Lott v. Eastern Shore Christian Center*, 908 So. 2d 922, 927 (Ala. 2005). “[T]he grant of a preliminary injunction is an extraordinary remedy,” *Petroleum Equip. Tool Co. v. State Bd. of Health*, 567 So. 2d 328, 330 (Ala. Civ. App. 1990), and should be issued “only when the party seeking the injunction demonstrates the following four elements: (1) that without

the injunction the plaintiff will suffer immediate and irreparable injury; (2) that the plaintiff has no adequate remedy at law; (3) that the plaintiff is likely to succeed on the merits of the case; and (4) that the hardship imposed upon the defendant by the injunction would not unreasonably outweigh the benefit to the plaintiff.” *White v. John*, 164 So. 3d 1106, 1116–17 (Ala. 2014) (quoting *Barber v. Cornerstone Cmty. Outreach, Inc.*, 42 So. 3d 65, 78 (Ala. 2009) (internal quotation marks omitted)).

Plaintiffs are not entitled to either a temporary restraining order or a preliminary injunction because they have not met their burden of establishing the four requisite elements.

First, Plaintiffs have not offered evidence to show that they will suffer immediate and irreparable injury. Additionally, the evidence indicates that the Plaintiffs may avoid the facial covering requirement by opting for the Board’s virtual learning alternative.

Second, Plaintiffs have not offered facts or even argued that they have no adequate remedy at law.

Third, the Court additionally finds that the Board has the statutory authority to implement a facial covering requirement, *see* Ala. Code § 16-11-9, and it has lawfully and appropriately done so based on the recommendations of the CDC, the ADPH, and the JCDH. With this in mind, Plaintiffs have not established a reasonable likelihood of success on the merits.

Lastly, Plaintiffs have not established that injunctive relief in their favor would outweigh the burden on the Board or that it would serve the public interest. To the contrary, enjoining the requirement of facial coverings could result in an increase of mandatory quarantines related to COVID-19 exposure, which would be a greater burden on the Board and the public that outweighs the benefit of Plaintiffs' preference to attend in-person school without a facial covering.

Accordingly, Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction is hereby denied.

DONE this 12th day of August, 2021.

/s/ CAROLE C. SMITHERMAN
CIRCUIT JUDGE