

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

State of South Carolina, ex rel Alan Wilson, Attorney General. Petitioner,

v.

City of Columbia. Respondent.

COMPLAINT

State of South Carolina, ex rel Alan Wilson, Attorney General (State), brings this action seeking a declaration by this Court that two City of Columbia mask ordinances for public schools are in conflict with State law and are invalid.

PARTIES

1. Attorney General Alan Wilson brings this action for the State of South Carolina as its chief legal officer in order to challenge municipal ordinances that conflict with State law as to mask requirements for public schools.

2. The City of Columbia is the municipality of the State of South Carolina that adopted the ordinances at issue.

JURISDICTION AND VENUE

3. The jurisdiction of this Court is founded upon Rule 245, SCACR, S.C. Code Ann §14-3-310 and S.C. Const. art. V, §5. Additionally, jurisdiction is founded on the South Carolina

Uniform Declaratory Judgments Act, §15-53-10, et seq.

CONTROLLING STATUTE

4. The Appropriations Act, Act No. 94, Part 1B, §1.108, 2021 S.C. Acts, of the provisos for the South Carolina Department of Education directs as follows: “(SDE: Mask Mandate Prohibition) No school district, or any of its schools, may use any funds appropriated or authorized pursuant to this act to require that its students and/or employees wear a facemask at any of its education facilities. This prohibition extends to the announcement or enforcement of any such policy.” Although this statute is controlling, other authority is set forth below.

ORDINANCES AT ISSUE

7. City of Columbia Ordinance 2021-069 (Exhibits to Petition, p. 1), ratifies the Mayor’s Declaration of Emergency by Ordinance 2021-068 (Exhibits, p. 3) and provides in part, as follows.

facial coverings shall be required by all faculty, staff, children over the age of two (2), and visitors, in all buildings at public and private schools or daycares whose purpose is to educate and/or care for children between the ages of two (2) and fourteen (14) to slow the spread of the novel Coronavirus and the disease COVID- 19 within the City limits.

ALLEGATIONS REGARDING ORDINANCES

10. On August 6, 2020, the Honorable Harvey Peeler, Jr., President of the Senate, and the Honorable Jay Lucas, Speaker of the House, wrote the Attorney General on August 6, 2021, stating, in part, as follows:

We believe Proviso 1.108 is clear and unambiguous. It prohibits face-covering mandates in public schools no matter where in the state they are located. Further, there is nothing about this proviso that indicates local government has authority to amend, augment or even ignore the policy set forth by the State. We also believe that any directive properly enacted by the General Assembly serves as the general law of the State

of South Carolina.

The actions taken by Columbia City Council at the request and direction of Mayor Benjamin are in clear and deliberate violation of the plain meaning of the proviso.

We would respectfully request that your office review the action of the City of Columbia and if you believe it necessary, take appropriate action on behalf of the State of South Carolina and the statewide policy adopted by Proviso 1.108.

Exhibits, p. 8.

11. The Attorney General wrote the Honorable Stephen K. Benjamin, Mayor of Columbia, and City Council members on August 11 stating, in part, as follows: Exhibits p. 9.

It is the opinion of my office that these ordinances [2021-068 and 2021-069] are in conflict with state law and should either be rescinded or amended. Otherwise, the city will be subject to appropriate legal actions to enjoin their enforcement. Encouragement of facemask wearing by city officials and even requirements for facemasks in city buildings and other facilities would not be in violation of the proviso. Also, parents, students, and school employees may choose to wear facemasks anywhere at any time.

My office has previously opined that budget provisos have the full force and effect of state law throughout the fiscal year for which a budget is adopted. . . .

While the proviso [1.108] does not mention municipalities, it is clear from both a plain reading of its language and from the intent expressed by legislative leaders that the General Assembly does not believe that school students or employees should be subject to facemasks mandates. While we appreciate the efforts of city leaders around the state to protect their populace from the spread of the COVID-19 virus and variants of it, these efforts must conform to state law.

17. The City responded to the Attorney General on August 11, 2021 stating, in part, as follows:

In the matter at hand, the issue is whether a Proviso that acts as a “Mask Mandate Prohibition” for schools and school districts, is germane to fiscal issues, raising and spending taxes, which is the sole purpose of the appropriations act? The clear answer, using the sound logic of our Supreme Court is that it is not. A mask mandate prohibition is clearly not a matter that is germane to fiscal issues which is the only issue allowed to be taken up in the general appropriations act and therefore it is unconstitutional and unenforceable.

Exhibits, p. 11.

FOR A FIRST CAUSE OF ACTION

19. The above paragraphs are incorporated by reference as fully as if set forth herein.
20. The above ordinances of the City directly conflict with and are barred by Proviso 1.108.
21. Although the City provisos state that the City will provide masks to the schools, the responsibility for ensuring compliance will fall on the schools, themselves, and will require the use of public funds via school personnel and other school resources in violation of Proviso 1.108.
22. Proviso 1.108 is presumed to be constitutional. *S.C. Dep't of Soc. Servs. v. Michelle G.*, 407 S.C. 499, 506, 757 S.E.2d 388, 392 (2014)(“all statutes are presumed constitutional and, if possible, will be construed to render them valid.’). ‘[A] legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt.’”). The City must comply with Proviso 1.108 absent a declaration of a court of law that the law is unconstitutional. Therefore, Ordinances 21-068 and 21-069 are void and unenforceable.
23. Proviso 1.108 does not violate S.C. Const. art. III, §17 as “it reasonably and inherently relates to the raising and spending of tax monies.” *Town of Hilton Head Island v. Morris*, 324 S.C. 30, 35, 484 S.E.2d 104, 107 (1997)

FOR A SECOND CAUSE OF ACTION

22. The above paragraphs are incorporated by reference as fully as if set forth herein.

23. Apart from Proviso 1.108, the above ordinances exceed the authority of the City of Columbia under State law and conflict with the authority of school districts as well as the General Assembly. *See, eg.*, S.C. Code Ann. §59-19-90 (general powers and duties of school trustees); *Moye v. Caughman*, 265 S.C. 140, 143, 217 S.E.2d 36, 37 (1975)(“public education is not the duty of the counties, but of the General Assembly.”).

WHEREFORE, Petitioner State ex rel Wilson respectfully requests that this Court declare Ordinances 2021-068 and 2021-069 invalid under State law and provide for such other relief as it deems just and proper.

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August 19, 2021

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