

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

<b>DUSTIN VANN,</b>	)
<b>Plaintiff</b>	)
<b>SHELLY WHITLOCK SMITH</b>	)
<b>Plaintiff</b>	)
	)
<b>v.</b>	)
<b>HOMEWOOD BOARD OF EDUCATION</b>	)
<b>Defendant</b>	)

)CASE NO. CV-202100161

**AMENDED COMPLAINT**  
**ADDITIONAL COUNT**

**COUNT TWO**

**PETITION FOR DECLARATORY JUDGMENT**  
**UNDER CODE OF ALABAMA SECTIONS 6-6-220 THROUGH 232**

COMES NOW Dustin Vann and Shirley Whitlock Smith, as Plaintiff Petitioners, by and through their attorney of record, William H. McGowen III, in the above styled action, and bring this PETITION FOR DECLARATORY JUDGMENT and request this Honorable Court to enter an ORDER stating:

“POWER TO ACT CAN ONLY ARISE FROM SPECIFIC JUDICIAL OR STATUTORY AUTHORITY IF FUNDAMENTAL PROTECTED, RIGHTS ARE AFFECTED. ONLY THROUGH DUE PROCESS CAN A PROPOSED ACT BE AUTHORIZED.”

and

“THE ASSERTION OF IMPLIED POWER BY A COLLECTIVE GOVERNMENTAL BODY IS VOID IF ITS ADMINISTRATION REQUIRES INDIVIDUALS TO TRESPASS YPON ANY FUNDAMENTAL RIGHT OF A CITIZEN OR CHILD.”

In support of this Petition, the Plaintiff Petitioners submit to this Honorable Court the following reasons for the requested ORDER:

1. Process includes balancing of rights. Power to act comes with parameters, extent and limitation. Both must be assessed in deriving clarity. Clarity is confirmed as specificity.

2. Responsibility falls upon the actors. Actors guided by responsible analysis of extent and limitation only then can receive confirmation. Authoritative action lacking confirmation is irresponsible.
3. Actions inconsistent with ethics must responsibly analyzed within written law. Answers provide clarity not confirmed by specificity.
4. Actors here are individuals at multiple levels. Protection of those with no voice is paramount. While children of all ages need protection, those younger and more vulnerable need more.
5. Teachers herein are actors. Their authority comes with extent and limitation. Specificity protects teachers from illegal acts.
6. Teachers need specificity from their instructions. Instructions requiring acts claimed by implication of power must be judged carefully. Decisions of acquiescence must be judged harshly.
7. Acts of power manifest personally. The actor must prevent individual subjects from becoming a individual victims.
8. Teachers protect children from abuse. No law empowers teachers to abuse.
9. Abuse can be recognized and is specifically protected by law.
10. Actors are guided by law and must understand ramifications completely.
11. Acts based in implied authority are not authorized and must be judged singularly. With responsibility comes accountability.
12. Administrators guide teachers from a position of perceived authority. Authority is guided by contract, defined extent, and defined limitation.
13. Definition of the source of authority must be specific. Powers not confirmed by specificity lack protection.
14. Acts not authorized bring responsibility.
15. There can be no victims.
16. Parents need not seek confirmation of their authority as it pertains to their children.
17. Parents' authority can be confirmed by accompanying their child to school and advise potential actors of its full extent.
18. Prevention of abuse requires no process. Protection should be immediate. Limits of assertion may be judged through process.

19. Actors are not protected following notice of reality from a parent.
20. Administrators consider exemptions, religious and medical, only as a result of assumed authority.
21. Parents need not claim exemption. They need only assert and exert authority.
22. Teachers must recognize they are being instructed to abuse children. Parents must protect their children.
23. Protection is not limited by process. Matters of abuse should be resolved at the time of imposition.
24. To reiterate, authority is limited by specificity. Specificity is determined by process.
25. No authority interrupting basic rights can be gained by implication.
26. Authority asserted by implication is illegal.
27. Individual actors must be guided by reason. Acts of authority with no basis only arise from failure of analysis.
28. Analysis of the power of the collective is distracting and needless.
29. Protection of children is a responsibility.
30. Parents are the protectors.
31. The assertion of implied power by a collective governmental body is void if its administration requires individuals to trespass upon any fundamental right of a citizen or a child.
32. The powers of a City Board of Education are specifically addressed in “**Code of Alabama Section 16-11-9, Powers generally:** “*The city board of education is hereby vested with all the powers necessary or proper for the administration and management of the free public schools within such city....*”
33. The responsibility for the administration of the board policy is not clear.
34. The collective governmental body, the Homewood Board of Education, has not clearly articulated the potential consequences of the administrative acts of the administrators, communicated to the administrators as requirements.
35. The result of the collective governmental body, the Homewood Board of Education, not clearly articulating the potential consequences of the administrative acts to the administrators, subjects those individuals to the individual and personal responsibility for their acts of trespass.

36. The individual members of the collective governmental body, the Homewood Board of Education, are responsible for subjecting the individuals administering the policy to individual and personal responsibility for their acts of trespass.
37. The policy communicated to the citizens of Homewood, being currently administered by the Superintendent of the Homewood School System, the Principals of the respective schools, and the teachers and administrators of the respective schools has resulted in the following acts of trespass: (Trespass is defined as an unlawful interference with one's person, property, or rights. Trespass is doing of unlawful act or of lawful act in unlawful manner to injury of another's person or property.)
- a. Requiring children to wear masks constitutes abuse, a direct trespass upon the child. More than sufficient data has been derived from studies confirming that children wearing masks is detrimental to their health.
  - b. Failure to acknowledge completely a parent's right to withhold consent for their child to wear a mask is a direct trespass as to the parent. The right of parents to make decisions to protect the health and well-being of their children is not altered by the policy of the collective.
  - c. The implementation and administration of a medical countermeasure policy by individuals not licensed as Doctors evaluating the health benefits and potential negative results with the parents of the child is not authorized by law.
  - d. Any administrative response to a child's claim of right not to consent to the medical countermeasure is not authorized by law and thereby constitutes abuse.
  - e. Forcing a child to wear a mask is a criminal act under the Illegal Criminal Trials provisions of the United States Code of Federal Regulations.
  - f. The United States Government provides guidance in 21 C.F.R. Section 50.24 et seq., Illegal Clinical Trial, to States, municipalities, and businesses relative to the legal requirements for the promulgation of medical countermeasures during a public health emergency stating a "belief" that face masks limit the spread of SARS CoV2. To date, not a single study has confirmed that a mask prevented the transmission of, or the infection by SARS CoV-2.

g. A more complete analysis of 21 C.F.R. Section 50.24 et seq., Illegal Clinical Trial is appropriate at this time.

h. 21 C.F.R. Section 50.24 et seq., Illegal Clinical Trial provides:

**It is unlawful to conduct medical research (even in the case of emergency) without a series of steps taken to:**

**-Establish the research with a duly authorized and independent institutional review board;**

**-Secure informed consent of all participants including a statement of risks and benefits; and,**

**-Engage in consultation with the community in which the study is to be conducted.**

i. The Homewood School Board has forced upon the healthy population of Homewood an unlawful clinical trial in which the Homewood School Board and its members are extrapolating epidemiologic data. No informed consent has been sought or secured for any of the “medical countermeasures” forced upon children in the Homewood School System and no independent review board – as defined by the statute – has been empaneled.

j. Through April 2020, the official recommendation by the *Journal of the American Medical Association* was unambiguous.

*“Face masks should not be worn by healthy individuals to protect themselves from acquiring respiratory infection because there is no evidence to suggest that face masks worn by healthy individuals are effective in preventing people from becoming ill.”*

(<https://jamanetwork.com/journals/jama/fullarticle/2762694>)

Part of that lack of evidence in fact showed that cloth facemasks actually increased influenza-linked illness.

(<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4420971/>)

k. In contravention to established science, the Homewood School Board and its individual members have violated the legal requirements for the

promulgation of medical counter measures during a public health emergency based upon their stated “belief” that face masks limit the spread of SARS CoV-2 with reckless disregard of the fact that no confirmed evidence exists that a mask prevents the transmission of, or the infection by SARS CoV-2.

- l. The Homewood School Board policy mandating the use of facemasks in order for children to attend school is not only a product of willfully ignoring established science but is engaging in what amounts to a school population clinical trial. This conclusion is reached by the fact that facemask use and COVID-19 incidence are being reported in scientific opinion pieces promoted by the United States Centers for Disease Control and Prevention, the Alabama Department of Public Health and others. (<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>)
- m. Social distancing of up to 6 feet has also been promoted as a means of preventing person-to-person transmission of influenza-like viruses. While one study hypothesized that infection could happen in a 6 foot range, the study explicitly states that person-to-person transfer was not tested and viability of the virus at 6 feet was not even a subject of the investigation.<sup>33</sup> That did not stop the misrepresentation of the study to be used as the basis for an unverified medical counter measure of social distancing. To date, no study has established the efficacy of social distancing to modify the transmission of SARS CoV-2.
- n. In contravention to established science, States, municipalities, businesses, and the Homewood Board of Education, have violated the legal requirements for the promulgation of medical counter measures during a public health emergency stating a “belief” that social distancing of a healthy population limits the spread of SARS CoV-2. To date, not a single study has confirmed that social distancing of any population prevented the transmission of, or the infection by SARS

CoV-2.

- o. It is unlawful under the **Federal Trade Commission Act, 15 U.S.C. § 41 et seq.**, to advertise that a product or service can prevent, treat, or cure human disease unless you possess competent and reliable scientific evidence, including, when appropriate, well- controlled human clinical studies, substantiating that the claims are true at the time they are made. As a result, every party promoting the use of face masks is violating the FTC Act.
- p. All of these laws have been broken.
- q. All relevant authorities in the United States including the Homewood School Board must cease and desist the use of facemasks until the matters above are rectified.

**WHEREFORE**, PLAINTIFFS request that this Honorable Court:

- (a) enter an ORDER stating:

“POWER TO ACT CAN ONLY ARISE FROM SPECIFIC JUDICIAL OR STATUTORY AUTHORITY IF FUNDAMENTAL PROTECTED, RIGHTS ARE AFFECTED. ONLY THROUGH DUE PROCESS CAN A PROPOSED ACT BE AUTHORIZED.”

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- (b) award all costs of court incurred in this cause to the PLAINTIFFS to be paid by the Defendant,
- (c) grant such other and further relief as this Honorable Court deems proper.

Respectfully Submitted,

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William H. McGowen III(MCG031)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of August, 2021, I filed the foregoing with the Clerk of Court in Jefferson County by using the electronic filing system, to the following:

Anne Knox Averitt and Anne R. Yuengert  
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//s William H. McGowen III(MCG031)  
William H. McGowen III(MCG031)