

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

**MATT SITTON and
MATTHEW BENNETT AND
ELIZABETH BENNETT**

PLAINTIFFS

5:21cv5146

V.

Case No. _____

**BENTONVILLE SCHOOL DISTRICT;
DR. DEBBIE JONES, Superintendent,
in her official capacity;
ERIC WHITE, School Board President,
in his official capacity;
KELLY CARLSON, Board Member,
in his official capacity;
BRENT LEAS, Board Member,
in his official capacity;
WILLIE COWGUR, Board Member,
in his official capacity;
JOE QUINN, Board Member,
in his official capacity; and
JENNIFER FADDIS, Board Member,
in her official capacity**

DEFENDANTS

NOTICE OF REMOVAL

Defendants, Bentonville School District (the “District”), Dr. Debbie Jones, Eric White, Kelly Carlson, Brent Leas, Willie Cowgur, Joe Quinn, and Jennifer Faddis (together, the “Defendants”), by their attorneys, Friday, Eldredge & Clark, LLP, remove the above-captioned action from the Circuit Court of Benton County, Arkansas, to the United States District Court for the Western District of Arkansas, Fayetteville Division, pursuant to 28 U.S.C. §§ 1331 and 1367, and state as follows:

1. On or about August 18, 2021, Plaintiffs, Matt Sitton, Matthew Bennett, and Elizabeth Bennett (“Plaintiffs”), filed a Verified Petition for Declaratory Judgment

(“Complaint”) and Motion for Temporary Restraining Order and Integrated Brief in Support (“TRO Motion”) against Defendants in the Circuit Court of Benton County, Arkansas, styled as *Matt Sitton, et al. v. Bentonville School District, et al.*, Case No. 04cv-21-1967 (the “State Court Action”). True and correct copies of the Complaint, TRO Motion, and all of the process, pleadings, orders, and documents from the State Court Action, are attached hereto collectively as **Exhibit 1**.

2. Plaintiffs appear to seek a declaration that Bentonville School District’s student mask policy is unconstitutional under the Fourteenth Amendment to the United States Constitution and Article 2, section 29 of the Arkansas Constitution because it violates their right to the care, custody, and management of their children. Compl. at 8. Plaintiffs also seek a permanent injunction prohibiting enforcement of the student mask policy. *Id.*

3. Defendants were served with the Summonses and Complaint on August 19, 2021. Thus, this Notice of Removal is timely filed in accordance with 28 U.S.C. § 1446(b).

4. The above-captioned matter may be removed by Defendants consistent with 28 U.S.C. §§ 1331, 1367, and 1441(c) on the basis of federal question and supplemental jurisdiction as indicated below.

5. This Court has original subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because the Plaintiffs’ claims arise “under the Constitution, laws, or treaties of the United States.” Specifically, Plaintiffs assert violation of their rights to due process under the Fourteenth Amendment to the United States Constitution.

6. Accordingly, because the jurisdictional prerequisites are met, this case is properly removable under 28 U.S.C. § 1331.

7. The Court may exercise supplemental jurisdiction over Plaintiffs' state constitutional claim pursuant to 28 U.S.C. §§ 1367 and 1441(c) because the state claim is "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." The same set of facts give rise to both the federal and state claims.

8. Additionally, the remedy that Plaintiffs seek would require Defendants to take actions contrary to federal policy and law. The Centers for Disease Control (CDC) recommends "universal indoor masking by all students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status."¹ The CDC further has issued an Order, requiring masks to be worn on school buses.²

9. In recent days, President Biden has ordered the Department of Education to take actions to allow school districts to implement mask policies, including "consideration of whether to take steps toward the initiation of possible enforcement actions under applicable laws."³ The Secretary of Education has stated that prohibiting implementation of school mask policies puts students at risk and "may infringe upon a school district's authority to adopt policies to protect students and educators as they develop their safe return to in-person instruction plans required by Federal law."⁴

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>

² Requirement for Persons To Wear Masks While on Conveyances and at Transportation Hubs, 86 Fed. Reg. 21, 8025 (Feb. 3, 2021); *see also* <https://www.cdc.gov/coronavirus/2019-ncov/travelers/face-masks-public-transportation.html> ("[P]assengers and drivers must wear a mask on school buses, including on buses operated by public and private school systems[.]")

³ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/08/18/ensuring-a-safe-return-to-in-person-school-for-the-nations-children/>

⁴ <https://oese.ed.gov/files/2021/08/21-006970-Letter-from-Secretary-Cardona-Arizona-final-signed.pdf>

10. Arkansas schools have received billions of dollars in federal funding under the American Rescue Plan (ARP) to help reopen schools. The ARP explicitly authorizes using these funds for “developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.” Pub. L. No. 117-2, 135 Stat. 4 § 2001(e)(2)(Q). As the Department of Education’s Interim Final Requirement makes clear, this specifically includes the CDC’s recommendation for universal indoor masking in K-12 schools. 86 Fed. Reg. 21195-01, 21200 (Apr. 22, 2021) (to be codified at 34 C.F.R. ch. II). The Secretary of Education has stated that the Department of Education “will take any necessary action to ensure that nothing interferes with a school district’s discretion to make these critical investments[.]”⁵

11. As such, resolution of this dispute involves matters of important federal law and policy.

12. Because the jurisdictional prerequisites are met, this case is properly removable pursuant to 28 U.S.C. §§ 1331, 1367, and 1441(c).

13. Venue is proper in the Western District of Arkansas, Fayetteville Division, pursuant to 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division corresponding to the place, Benton County, where the action is pending.

14. By virtue of this Notice of Removal, Defendants do not waive their right to respond to the Complaint and/or to assert any claims, defenses, or other motions.

⁵ <https://blog.ed.gov/2021/08/meeting-the-presidents-call-to-support-the-safe-and-sustained-reopening-of-schools/#more-30794>

15. This Notice of Removal will be served on all adverse parties consistent with 28 U.S.C. § 1446.

16. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Circuit Court of Benton County, Arkansas, pursuant to 28 U.S.C. § 1446.

17. Pursuant to 28 U.S.C. § 1446, this removal is on behalf of all Defendants, each of whom consents to the removal of the action.

WHEREFORE, Defendants, Bentonville School District, Dr. Debbie Jones, Eric White, Kelly Carlson, Brent Leas, Willie Cowgur, Joe Quinn and Jennifer Faddis, respectfully pray that this Court will consider this Notice of Removal, that this Court will make the proper orders to achieve the removal of the State Court Action to this Court, and that this Court will make such other orders as may be appropriate to effect the preparation and filing of a true record in this cause of action of all proceedings that may have been had in the State Court Action.

Dated: August 19, 2021

FRIDAY, ELDREDGE & CLARK LLP

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CERTIFICATE OF SERVICE

I, Katherine C. Campbell, do hereby certify that the foregoing is being filed with the Court and that the following individual(s) will receive a copy of same via e-mail and U.S. Mail, postage prepaid, on or about this 19th day of August, 2021:

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