

Constitution because the Governor's Executive Order No. 54 is unconstitutional on its face. The main role of the Executive Mayor is financial management of the county budget. He is not a health expert and powers are not granted to him by the Tennessee Constitution nor the United States Constitution to exercise such authority. Therefore, we hereby demand a restraining order be issued against Anthony Holt, Mayor of Sumner County, from attempting to enact such unconstitutional and illegal mandates against the citizens of Sumner County effective immediately.

3. We as citizens have rights, and those rights extend far beyond the powers of local governments. The Supreme Court has litigated issues like this many times and ruled in favor of plaintiffs. Some of those fundamental rights include freedom of religion, privacy, and the pursuit of life, liberty, and happiness which are unalienable rights mentioned in the Declaration of Independence. Forced face coverings have already been litigated by the ACLU, more specifically regarding the Islamic religion where government and businesses alike for quite some time were prohibiting practicing Muslims from exercising their religious freedoms of wearing face coverings in government buildings and places of business. The Supreme Court has held that such "mandates/rules" are indeed unconstitutional --- thus on the flip side of this coin, those of the Christian faith feel strongly that being forced to wear face coverings or health screenings is an egregious overreach of government.
4. No local government, elected official, public health official, law enforcement officer, care providers in public health facilities, or others who are acting as public officials can act under the color of law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States under Section 242 of Title 18 U.S.C. It is a direct violation of federal law and both Tennessee Constitution and U.S. Constitution for the Mayor of Sumner County to order such a mandate that violates citizens' rights by using arbitrary rules and exclusions, and using TCA 58-2-120 in an extortionary method to make citizens fear enforcement, but then declaring that he will not enforce it during private conversations with others. Sumner County Mayor, Anthony Holt, states that "This Order will be enforced" – however, Mr. Holt even admitted that there is no science to prove that wearing masks work, and that citizens do not have to follow the mandate because there are many exclusions. To date, this Order has not been enforced; therefore, making this mandate unnecessary and causing nothing but public fear and division. However, even these

“exclusions” carry within themselves many Constitutional violations. We find it very interesting that “religious” exemptions are not mentioned in this list, and this must be examined. Therefore, this executive order is unconstitutional on its face for many reasons, not backed by scientific facts/evidence, and is completely unconstitutional.

5. On July 3, Governor Lee’s Executive Order No. 54 claims to grant county mayors in 89 counties the authority to issue local mask requirements in the event of a significant rise in COVID-19 cases. On July 6, 2020, Sumner County Mayor, Anthony Holt, issued a Sumner County Executive Order directing the wearing of face masks in public places. Governor Lee’s unconstitutional executive order has led to the violation of citizens’ fundamental rights by allowing local mayors to willfully violate citizens’ rights. Executive Orders cannot be used arbitrarily to violate the rights of citizens. We would question why the governor issued an order to put the burden of responsibility upon local mayors, instead of issuing a state-wide mandate. Perhaps it is because he realizes the constitutional implications of such orders and does not want political blame upon himself. While this may be considered hearsay, it is up for speculation and nevertheless remains unconstitutional as the Governor does not carry this constitutional authority. Therefore, we hereby issue an immediate restraining order against the Executive Mayor Anthony Holt from using Governor Bill Lee’s unconstitutional Executive Order No. 54 as an excuse to violate the rights of the citizens of Sumner County. Pursuant to TCA 58-2-107, only the Governor is responsible for declaring a state of emergency, but still must not violate the Constitutional liberties of the citizens of this state and cannot delegate authority to other branches of government, including local mayors; whom also do not have the constitutional authority to make laws or mandates for citizens (Tennessee Constitution, Article II & III).
6. Furthermore, these mandates have now spread into other local government agencies such as the Sumner County Board of Education. One board member named Patricia Brown of District 9, was cited stating that “isolating children” who refuse to wear a mask should be a form of punishment within our schools. The video of Patricia Brown’s statements have been viewed over 65,000 times by upset parents within this county and state. It is obvious by public opinion that this has gone too far. On July 20, 2020, the plaintiff placed a phone call to the Sumner County Board of Education. During the discussion with the secretary of the Director, the plaintiff asserted his constitutional rights of himself and his children to be free from religious discrimination/segregation by refusing to do health screenings (more

specifically forehead temperature scanners) and wearing face coverings. When the secretary heard this, she asked “which religion” prohibits these things. The plaintiff informed the secretary that even asking such questions is a violation of the constitution (United States v. Seeger, 380 U.S. 163, 1965). Plaintiff also informed the School Board secretary that if teachers are conducting “health screenings and temperature scans” without a parent’s individual consent, then they are potentially in violation of other laws, such as practicing medicine without a license. Also, there are many parents in this county who are in split-parenting arrangements and their parenting plans/court orders specify that decisions should be made by both parents. If agreements cannot be made, the school must comply with the disagreeing parent until an agreement is reached between the parents. This can become a very lengthy and expensive process for all parties involved, which we as citizens hope to avoid. Therefore, we hereby demand that the Sumner County Board of Education immediately redact all policies/rules regarding mandated mask-wearing, health screenings, and temperature scans by un-licensed medical professionals and without the consent of parents. Making such a broad mandate/rule within our school system opens up the door for many legal complications and constitutional infringements of parents regarding their parental rights under the Tennessee Constitution and U.S. Constitution.

The Plaintiff seeks the entry of this petition, immediate injunctive relief, and restraining orders to be placed all governing authorities who have violated our constitutional rights.

STATEMENT OF FACTS

The plaintiff is a citizen of Sumner County. The plaintiff has had his rights violated by the Sumner County Government by being prohibited to enter into government buildings where tags/permits are issued and voting takes place after refusing to wear a mask and submit to unconstitutional health screenings at the front door of the buildings. Plaintiff and objecting citizens who are parents of children who attend Sumner County schools further have had their rights violated when the Sumner County Board of Education asserted that it has the authority to usurp the parental rights of citizens by enacting rules/policies of mandated face coverings and temperature health screenings by unlicensed people within the Sumner County school system without parental consent. The plaintiff seeks immediate injunctive relief by these government officials, the Sumner County Mayor’s Office, the Sumner County Board of Education, the City of

Gallatin, or any other local government official or public health official in this county from violating his basic fundamental liberties as guaranteed by the United States Constitution, The Tennessee Constitution, and Section 242 of Title 18 U.S.C.

ISSUES

- I. Whether the Governor or local mayors have the constitutional authority to make law or issue mandates, or delegate powers to other departments of government.
- II. Whether government has authority to violate the fundamental liberties of citizens and/or parents during a “public health emergency” or any other deemed public health concern.
- III. Whether the Court or local governments may interfere with a fit parent’s fundamental rights without a showing of harm to the child.
- IV. Whether the best interest analysis is permissible absent a finding of harm.
- V. Whether the historical application of the parenting statutes ignores the presumption that a fit parent acts in the best interests of their child.

LAW AND ARGUMENT

I. Whether the Governor or local mayors have the constitutional authority to make law or issue mandates, or delegate powers to other departments of government.

Tennessee Constitution, Article III does **NOT** give the Governor the power to issue Executive Orders which are binding upon the citizens. **In fact, Executive Orders are not mentioned anywhere in the entire *Tennessee Constitution*.** Arguably, the Governor, much like the President, may choose to issue Executive Orders, but if he does so, those Executive Orders will be binding **only** on those who work in the **Executive Department**. No Executive Order can apply to any general citizen of the State. [Note: The same principle holds true for a county executive, or mayor, as well as a city or town mayor --- they are not lawmakers, but only executives, who are charged only with carrying out the law, not making the law.]

Curiously, however, the Governor claims to have legislative authority to issue such Executive Orders of general application pursuant to **T.C.A. § 58-2-107 – such as Executive Order No. 54**. What does this section say?

TCA §58-2-107(a)(2). Pursuant to the authority vested in the governor under subdivision (a) (1), the governor may issue **executive orders, proclamations, and rules** and may amend or rescind them. **Such executive orders, proclamations, and rules have the force and effect of law**. [Emphasis added.]

So apparently, the Governor has Legislative authority to issue orders and rules that are to be treated and considered as law, right?

No. When the Tennessee **General Assembly** passed this law in 2000, **they exceeded their Constitutional authority by purporting to give the Governor legislative power**. And when, just a few weeks ago, the **Governor** accepted the power to issue orders, rules, and other such authorities that would be treated as laws, **he violated the *Tennessee Constitution***.

Tennessee Constitution – Article II. Distribution of Powers. The *Tennessee Constitution* is very clear: **No department of the Tennessee government may delegate any of its authority to another department of government:**

Section 1. The powers of the government shall be divided into **three distinct departments**: legislative, executive, and judicial.

Section 2. No person or persons belonging to **one of these departments shall exercise any of the powers properly belonging to either of the others**, except in the cases **herein** directed or permitted. [Emphasis added.] [**Note**: There is nothing else in the *Tennessee Constitution* which allows for emergency powers. In fact, the words *emergency, sudden, exigency*, or other similar words are not to be found in the *Tennessee Constitution*.]

Therefore, the General Assembly cannot delegate rule-making authority or law-making authority to the governor, nor can the governor delegate law-making authority to mayors.

T.C.A. 58-2-107(a) is blatantly and obviously unconstitutional. Both the General Assembly and the Governor (as well as mayors) swore an oath to **support** the *Tennessee Constitution*.

The U.S. Constitution – Building upon the principles of the Declaration of Independence, the people first formed State governments, and later, the State leaders proposed, and the people ratified, the forming of a federal government: the United States of America. Since the U.S. government was created by the people and the States (notice that the original plan was for people to have their legislative house, the House of Representative, and the State governments to have their legislative house, the Senate), the federal government has only those powers granted to it by the people and the States through the *U.S. Constitution*.

The powers granted to the federal government were included in a list. That list is contained in **Article I, Section 8**. That list has never been amended. The **Bill of Rights** is the first ten Amendments to the *U.S. Constitution*. These Amendments were ratified by the people and all thirteen states just 4 years after they ratified the *U.S. Constitution*. The Bill of Rights contains a list of topics which were **NOT** given to the federal government. The **Ninth Amendment** says that those **Rights** not listed in the *U.S. Constitution* are retained by the People. The **Tenth Amendment** says that the **Powers** not delegated to the federal government in the *U.S. Constitution* are reserved to the States and to the People.

The *U.S. Constitution* does not give Congress, the President, or the Courts the **Right** to regulate travel, the right to suspend business, the right to mandate health decisions for the people, or the right to issue quarantines. Therefore, those rights are retained by the People.

The *U.S. Constitution* does not grant to Congress, the President, or the Courts the **Power** to deprive citizens of their **unalienable Rights** which were given by their Creator, such as the freedom of assembly, the freedom of commerce, the freedom of self-employment, or the freedom of religious worship. Therefore, those rights are reserved to the people.

While Presidents may issue Executive Orders, those Orders are not law; Executive Orders have effect only within the Executive branch of Government. Said another way, **Executive**

Orders control only those who work in the Executive branch. The President cannot make law, just as the Courts cannot make law. Only the U.S. Congress may make laws, and Congress may only make laws related to the Article I, Section 8 activities, such as post offices, coining money, issuing patents, making rules for international waters, entering treaties with foreign governments, raising and supporting the military, governing U.S. territories, making rules for bankruptcies, making rules for U.S. citizenship, issuing declarations of war, controlling U.S.-owned property, and a few other areas. Depending upon how these topics are counted, there will only be about 20 areas.

Therefore, we can easily see that neither the U.S. Congress, the U.S. President, nor any U.S. Court has any authority to affect the general activities of the American public. They may issue opinions, they may give warnings, and they may give advice, but they cannot make law or give orders outside of the listed areas. Now, we all know that federal officials often do things that are not authorized. Quite honestly, it is done all of the time, right under the noses of an ignorant citizenry. But if they do it, it is an unauthorized invasion of the rights of the citizen. When someone exceeds his proper authority, it is called “*usurpation*.” **Usurpative acts are illegal. Usurpative laws are void.**

II. Whether parents have fundamental rights to the care, custody and control of their child.

The United States Supreme Court has stated “the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000). “Under federal law, privacy interests involving matters of marriage, procreation, and child rearing have been held to be ‘fundamental’ in nature.” *Planned Parenthood of Middle Tennessee v. Sundquist*, 38 S.W.3d 1, 11-12 (Tenn. 2000). This fundamental right is also encompassed within the right to privacy under state law. *See Hawk v. Hawk*, 855 S.W.2d 573 (Tenn. 1993); *see also Sundquist*, 38 S.W. at 10.

In *Hawk*, the Tennessee Supreme Court ruled “that parental rights constitute a fundamental liberty interest under Article I, Section 8 of the Tennessee Constitution.” 855 S.W.2d at 579. The Court reasoned that parental rights are part of the liberty secured by the right to privacy in the Tennessee Constitution, (*Id.*), and this right “fully protects the right of parents to care for their children without unwarranted state intervention.” *Id.*, (citing *Davis v. Davis*, 842 S.W.2d 588

(1993)). The Court stated: “Although often expressed as a ‘liberty’ interest, the protection of ‘childrearing autonomy’ reflects the Court’s larger concern with privacy rights for the family.” *Hawk*, 855 S.W.2d at 578. The Court unequivocally declared that “a parent is entitled to the custody, companionship, and care of the child” and “that the relations which exist between parent and child are sacred ones.” *Id.* at 577-78. “The right to the society of the child exists in its parents; the right to rear it, to its custody, to its tutorage, the shaping of its destiny, and all of the consequences that naturally follow from the relationship are inherently in the natural parents.” *Id.*

Accordingly, in the instant case, plaintiffs have a fundamental, constitutional right to the care, custody and control of their minor children without state or local government interference.

III. Whether the Local Government and/or Court may interfere with a parent’s fundamental rights without a showing of harm to the child.

Absent a threat of substantial harm to the child’s welfare, there is no sufficient justification for the “infringement on the fundamental right of parents to raise their children as they see fit.” *Hawk*, 855 S.W.2d at 577. “The requirement of harm is the *sole protection* that parents have against pervasive state interference in the parenting process.” *Id.* (emphasis added). Furthermore, the United States Supreme Court has held that a state cannot presume a parent is unfit or that a parent’s exercise of their rights is harmful to his child. *See Santosky v. Kramer*, 455 U.S. 745 (1982) (cannot presume a parent and child’s rights are divergent and that the parent’s exercise of their rights is thus harmful to the child); *see also Stanley v. Illinois*, 405 U.S. 645 (1972) (cannot presume a parent is unfit to have custody of their children). “In *Stanley v. Illinois*, 405 U.S. 645 (1972), th[e] [United States Supreme] Court held that the State of Illinois was barred, as a matter of both due process and equal protection, from taking custody of the children of an unwed father, absent a hearing and a particularized finding that the father was an unfit parent.” *Quilloin v. Walcott*, 434 U.S. 246, 247-48 (1978).

In the instant case, there is no scientific or healthcare evidence that children not wearing face masks poses a threat a minor child’s welfare. In fact, Mr. Holt’s Executive Order allows exclusions for children 12 years an under from wearing a face mask. This is because medical professionals have admitted that wearing of face coverings by children is not only unnecessary, but also poses a threat to their health in different ways. They have also admitted that children are much less susceptible to COVID-19 than adults or those with compromised immune systems. Absent a finding of harm, and absent the ability to presume it, the local government of Sumner

County, Sumner County Mayor Anthony Holt, and the Sumner County Board of Education lacks a compelling interest to interfere with parents' fundamental right to the care, custody, and control of their child and injunctive relief of these unconstitutional mandates/executive orders by the Sumner County Mayor's Office and rules/policies of the Sumner County Board of Education must be ordered. Furthermore, the City of Gallatin should be put on notice that enforcing such unconstitutional mandates by its police department would also constitute a violation of citizens' rights as guaranteed by the U.S. Constitution and Tennessee Constitution, as well as Section 242 of Title 18 U.S.C.

The *Hawk* Court made clear that "without a substantial danger of harm to the child, a court may not constitutionally impose its own subjective notions of the 'best interests of the child' when an intact, nuclear family with fit, married parents is involved." 855 S.W.2d at 579. It naturally follows that without a substantial danger of harm to the child, a court may not constitutionally impose its own subjective notions of the 'best interests of the child' when a fit parent's fundamental rights are involved. *See, e.g., Simmons v. Simmons*, 900 S.W.2d 682, 684 (Tenn. 1995).

The state has no interest in interfering with the parental rights of fit parents because such parents are presumed to act in their child's best interests. *Parham*, 442 U.S. at 602 (The "natural bonds of affection lead parents to act in the best interests of their children."); *see also Troxel*, 530 U.S. at 69 (applying the "presumption that a fit parent will act in the best interest of his or her child"). "The parents are trusted with the custody of the child upon the idea that under the instincts of parental devotion it is best for the child." *Hawk*, 855 S.W.2d at 577.

The state has little, if any, interest in caring for a child when the child's parent is fit. *See, e.g., Quilloin v. Walcott*, 434 U.S. 246, 248 (1978) ("[T]he State's interest in caring for the children is 'de minimis' if the [parent] is in fact a fit parent.") Accordingly, the state and local government has no lawful basis upon which to interfere with a fit parent's fundamental rights.

CONCLUSION

The local governments have no constitutional authority to violate the fundamental rights of citizens or parents by issuing mask mandates, health screenings, or any other action that would violate their rights or the Tennessee Constitution or United States Constitution.

Fit parents have a fundamental right to the care, custody and control of their minor children that cannot be interfered with absent a showing of harm. Absent that showing of harm, the Court

nor any other government agency cannot impose its own notions of what is in a child's best interests.

All men are endowed with God-given rights, such as life, liberty, and the pursuit of happiness. Please note that the list is not exhaustive: life, liberty, and the pursuit of happiness are only some of the unalienable Rights. Perhaps you can conceive of some other "self-evident" rights, such as the right to keep the profits of one's own labors, the right to associate (or for that matter disassociate) with anyone for any reason, or the right to choose one's own profession, or the right to choose whether or not they wear a mask.

Respectfully submitted this _____ day of July 2020,

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CERTIFICATE OF SERVICE

I hereby certify a true and exact copy of the foregoing Petition for immediate injunctive relief has been sent via facsimile transmission and/or via United States mail with sufficient postage attached to ensure delivery to the Sumner County Circuit Court Clerk.

This _____ day of July 2010.

Plaintiff Signature
