

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

RICHARD SOUTHWELL, et al.

Plaintiffs

vs.

DANIEL J. MCKEE, et al.

Defendants

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C.A. No. PC2021-05915

DISMISSAL STIPULATION

In the above-entitled case, it is hereby agreed by the parties that the following entry be made: Plaintiffs, by and through their attorney, and Defendants, by and through their respective attorneys, pursuant to Rule 41(a)(1)(B) of the Superior Court Rules of Civil Procedure, hereby dismiss the above-captioned matter, with prejudice, each party to pay her/his/its/their own attorneys' fees and costs of suit. Pursuant to the terms of this dismissal, the parties have agreed:

1. In accordance with the Administrative Procedures Act, R.I. Gen. Laws §§ 42- 35-1 *et seq.* (the "Administrative Procedures Act"), the Rhode Island Department of Health ("RIDOH") shall seek public comment on a Proposed Permanent Regulation ("PPR"), the substance and form of which has been agreed upon by the parties to this action. The PPR will provide that if RIDOH were to prospectively require statewide face masks for all students in a K-12 setting to prevent the spread of an infectious disease, RIDOH would set forth the rationale for the statewide masking requirement through a statement made publicly available on the RIDOH website. RIDOH will initiate the regulatory process relative to the PPR within thirty (30) days of execution of this Dismissal Stipulation.

2. RIDOH represents that it has no present intention to require statewide face masks for students in K-12 schools. RIDOH will issue an updated memorandum to its August 24, 2023, "CCE Pre K12 Back to School Memo" within thirty (30) days of the execution of this Dismissal Stipulation.
3. All aspects of the PPR, including but not limited to public comment and promulgation, if any, shall be governed by the Administrative Procedures Act.
4. During a public comment session, one (1) hour shall be allotted for oral public comment from the Plaintiffs (after the general public has had an opportunity to offer its comments).
5. During a public comment session, two (2) hours shall be allotted for oral public comment from non-Plaintiffs whom the Plaintiffs ask to speak on their behalf (after the Plaintiffs have had an opportunity to offer their comments).
6. Nothing herein prevents or prohibits other persons or entities not associated with the Plaintiffs from presenting oral or written public comment in accordance with the Administrative Procedures Act.
7. Neither Plaintiffs, nor any person speaking on behalf of the Plaintiffs, have any greater legal interest in the promulgation of the PPR, if any, than any other Rhode Island citizen.
8. The decision whether to promulgate the PPR and the decision as to the language used in the PPR (if promulgated) shall be determined by RIDOH in accordance with the Administrative Procedures Act.
9. In consideration of Paragraphs 4 & 5, all Plaintiffs, whether participating in public comment or not, agree to dismiss the lawsuit entitled Southwell, et al. v. McKee, et al., C.A. No. PC 2021-05915 in its entirety, with prejudice.

10. The lawsuit entitled Southwell, et al. v. McKee, et al., C.A. No. PC 2021-05915 is dismissed in its entirety, with prejudice. No costs or fees assessed to any party.

11. This Dismissal Stipulation shall be effective at the moment that RIDOH issues the notice of public comment for the PPR.

Respectfully Submitted,

Plaintiffs,

By:

/s/ Gregory P. Piccirilli, Esquire #4582
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Cranston, RI 02921
gregory@splawri.com
401-578-3340

Defendant,

Rhode Island Department of Health,

By:

/s/ Julia Wyman, Esquire #9017
Executive Counsel
Rhode Island Department of Health
Executive Office of Health and Human Services
Three Capitol Hill, Room 404
Providence, RI 02908

Defendant,

Governor Daniel J. McKee, in his
official capacity as the
Governor of the State of Rhode Island

By:

/s/ Andrea Shea, Esquire #9702
Deputy Executive Counsel to the Governor
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Providence, Rhode Island 02903
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401-222-2080

Dated: January 5, 2024

CERTIFICATION

I, the undersigned, hereby certify that on this 8th day of January, 2024, I caused the within document to be e-filed and served via the State of Rhode Island judiciary e-filing service and that the same is available for viewing and downloading to all attorneys.

/s/ Matthew I. Shaw