

SUPREME COURT OF SOUTH CAROLINA

Richland County School District 2 v. Lucas

Opinion No. 28063 (S.C. Sept. 30, 2021) · No. 2021-000892 · Decided September 30, 2021

SUMMARY

The South Carolina Supreme Court held that Appropriations Act Provisos 1.108 and 1.103 are constitutional. Proviso 1.108 prohibits K-12 public schools from using funds appropriated or authorized under the Act to announce or enforce mask mandates, while Proviso 1.103 governs funding for virtual education exceeding a specified enrollment threshold. The court rejected challenges based on the one-subject rule, local authority, equal protection, and the constitutional right to a free public education, and declined to issue advisory guidance.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Beatty; Justice Kittredge; Justice Hearn; Justice Few; Justice James
JURISDICTION	South Carolina
DECIDED	September 30, 2021
DOCKET	2021-000892
DISPOSITION	other
PROCEDURAL POSTURE	Original-jurisdiction declaratory judgment action in which petitioners sought declarations that Provisos 1.108 and 1.103 of the 2021-2022 South Carolina Appropriations Act were invalid and requested guidance concerning mask mandates and virtual education.
STANDARD OF REVIEW	The court presumed the challenged enactments constitutional unless their repugnance to the constitution was clear and beyond a reasonable doubt. For equal protection, the court required a showing that similarly situated persons received disparate treatment.
PRECEDENTIAL VALUE	Published South Carolina Supreme Court opinion; precedential.
PARTIES	Richland County School District 2, Malika Stokes, individually and on behalf of her children v. James H. "Jay" Lucas, Harvey S. Peeler Jr., Molly Spearman

TOPICS

constitutional law

statutory interpretation

preemption

home rule

equal protection

PRACTICE AREAS

constitutional law

education law

state and local government law

appropriations law

QUESTIONS PRESENTED

1. Whether Provisos 1.108 and 1.103 violated the South Carolina Constitution's one-subject rule.
2. Whether Proviso 1.108 permitted a school district to implement and enforce a mask mandate using funds other than those appropriated or authorized by the 2021-2022 Appropriations Act.
3. Whether Provisos 1.108 and 1.103 improperly invaded the authority of local school boards or conflicted with local mask ordinances.
4. Whether Provisos 1.108 and 1.103 denied students equal protection of the law.
5. Whether Provisos 1.108 and 1.103 violated students' constitutional right to a free public education.
6. Whether the court had authority to provide advisory guidance concerning the school district's options and obligations regarding masks and virtual education.

HOLDINGS

1. Proviso 1.108 is constitutional, complies with the one-subject rule, does not violate the Home Rule Act, and preempts conflicting local mask ordinances.
2. Proviso 1.108 prohibits the school district from using funds appropriated or authorized under the 2021-2022 Appropriations Act to announce or enforce a mask mandate in its K-12 schools; the court did not reject the possibility that other funds could be used for those purposes.
3. Proviso 1.103 is constitutional and does not deprive students of their constitutional right to a free public education.
4. The equal protection challenge fails because petitioners did not show that similarly situated students received disparate treatment, and the provisos apply equally to all students and public K-12 schools.
5. The court lacked authority to issue advisory guidance concerning the school district's options and obligations regarding facemasks and virtual education.

KEY QUOTATIONS

“Proviso 1.108 manifestly sets forth the intent of the legislature to prohibit mask mandates funded by the 2021-2022 Appropriations Act in K-12 public schools.” (Section III)

“It is elementary that the courts of this State have no jurisdiction to issue advisory opinions.” (Section IV)

“We do not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly.” (Section VI)

FACTUAL BACKGROUND

Proviso 1.108 barred K-12 public schools from using funds appropriated or authorized by the 2021-2022 Appropriations Act to require, announce, or enforce mask mandates. Proviso 1.103 permitted school districts to offer virtual education for up to five percent of their student populations without affecting state funding and reduced funding for students above that threshold. Richland County School District 2 had not required students to wear masks but claimed that local mask ordinances and the funding provisions placed it in an untenable position; parent petitioner Malika Stokes alleged that one of her severely asthmatic children needed virtual education although the relevant district was at capacity.

PROCEDURAL HISTORY

The Supreme Court of South Carolina granted petitioners' request to hear the declaratory judgment action in its original jurisdiction. Petitioners challenged the constitutionality and interpretation of two appropriations-act provisos and sought advisory guidance regarding their options and obligations. The court upheld both provisos, rejected the constitutional and other challenges, and declined to issue advisory guidance.

DISPOSITION

other

CASES CITED

- Wilson v. City of Columbia, Op. No. 28056 (S.C. Sup. Ct. filed Sept. 2, 2021)
- Town of Hilton Head Island v. Morris, 324 S.C. 30, 484 S.E.2d 104 (1997)
- Doe v. State, 421 S.C. 490, 808 S.E.2d 807 (2017)
- Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 528 S.E.2d 647 (1999)
- Booth v. Grissom, 265 S.C. 190, 217 S.E.2d 223 (1975)
- Keyserling v. Beasley, 322 S.C. 83, 470 S.E.2d 100 (1996)

OPINION

PER CURIAM.

THE STATE OF SOUTH CAROLINA In The Supreme Court Richland County School District 2 and Malika Stokes, in her individual capacity and on behalf of her children "J.S., J.S., and J.C.", Petitioners, v. James H. "Jay" Lucas, Speaker of the South Carolina House of Representatives; Harvey S. Peeler Jr., President of the South Carolina Senate; Molly Spearman, Superintendent of Education, Respondents.

Appellate Case No. 2021-000892 ORIGINAL JURISDICTION Opinion No. 28063 Heard August 31, 2021 – Filed September 30, 2021 JUDGMENT DECLARED Carl L. Solomon, of Solomon Law Group, LLC, of Columbia, and Skyler B. Hutto, of Williams & Williams, of Orangeburg, for Petitioner Richland County School District 2. W. Allen Nickles III, of Nickles Law Firm, LLC, of Columbia, for Petitioner Malika Stokes.

Susan P. McWilliams, Michael A. Parente, and Emily R. Wayne, all of Nexsen Pruet, LLC, of Columbia, for Respondent James H. "Jay" Lucas. Kenneth M. Moffitt, Sara S. Parrish, and John P. Hazzard V, all of Columbia, for Respondent Harvey S. Peeler Jr. Cathy L. Hazelwood and V. Henry Gunter Jr., both of Columbia, for Respondent Molly Spearman. Attorney General Alan McCrory Wilson, Solicitor General Robert D. Cook, and Deputy Solicitor General J. Emory Smith Jr., all of Columbia, for Amicus Curiae the Attorney General.

PER CURIAM: We granted Petitioners' request to hear this declaratory judgment action in our original jurisdiction. Petitioners ask this Court to declare that Provisos 1.108 and 1.103 of the 2021-2022 Appropriations Act¹ are invalid.

We hold the provisos are constitutional, and we reject the remaining challenges to the validity of the provisos. I. Proviso 1.108—enacted into law on June 22, 2021, and directed to the South Carolina Department of Education for South Carolina's kindergarten through 12th grade (K-12) public schools—provides: (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. Proviso 1.103 states: (SDE: Public School Virtual Program Funding) For Fiscal Year 2021-22, school districts shall be permitted to offer a virtual education program for up to five percent of its student population based on the most recent 135 day ADM [(average daily membership)]count without impacting any state funding.

The Department of Education 1 H. 4100, 124th Leg., 1st Reg. Sess. (S.C. 2021), available at https://www.scstatehouse.gov/sess124_2021-2022/appropriations2021/tap1b.htm. shall establish guidelines for the virtual program and parameters students must meet in order to participate in the virtual program. School districts must submit their plans for the virtual program to the State Board of Education for approval.

For every student participating in the virtual program above the five percent threshold, the school district will not receive 47.22% of the State per pupil funding provided to that district as reported in the latest Revenue and Fiscal Affairs revenue per pupil report pursuant to Proviso 1.3. This amount shall be withheld from the EFA [(Educational Facilities Authority)] portion of the State Aid to Classrooms district allocation and, if necessary, the state minimum teacher salary schedule portion of State Aid to Classrooms.

II. Although the School District has not required its students to wear masks in its education facilities, it claims Proviso 1.108 conflicts with local laws² regarding mask requirements in schools and places the School District in an untenable position.

In addition, Petitioners claim the School District has reached the five 2 Both Richland County (the County) and the City of Columbia (the City) enacted emergency ordinances requiring masks in K-12 schools. The City's ordinances were declared void by this Court in *Wilson v. City of Columbia*, Op. No. 28056 (S.C. Sup. Ct. filed Sept. 2, 2021) (Howard Adv. Sh. No. 31 at 9).

Based on City of Columbia, Richland County subsequently indicated it would not enforce its ordinance as of Sept. 2, 2021. See Updates to the County's Face Mask Ordinance, Richland Cnty. S.C., <https://www.richlandcountysc.gov/facemasks> (last visited Sept. 23, 2021).

However, both the City and the County have since enacted new ordinances that require masks in K-12 schools. See Columbia, S.C., Ordinance 2021-078 (Sept. 8, 2021), [https://www.columbiasc.net/uploads/headlines/09-08-2021/mask-ordinance-no-2021-078/Ordinance%202021-](https://www.columbiasc.net/uploads/headlines/09-08-2021/mask-ordinance-no-2021-078/Ordinance%202021-078%20enactment%20of%20certain%20ordinances%20related%20to%20COVID-19.pdf)

[078%20enactment%20of%20certain%20ordinances%20related%20to%20COVID-19.pdf](https://www.columbiasc.net/uploads/headlines/09-08-2021/mask-ordinance-no-2021-078/Ordinance%202021-078%20enactment%20of%20certain%20ordinances%20related%20to%20COVID-19.pdf); Richland County, S.C., An Emergency Ordinance Requiring the Wearing of Face Masks to Help Alleviate the Spread of COVID 19, Specifically the Recent Surge in the Delta Variant (Sept.

15, 2021), https://www.richlandcountysc.gov/Portals/0/Departments/PublicInformationOffice/Docs/9_14_21%20mask%20ordinance.pdf. The validity of those ordinances is not before us. percent cap for virtual enrollment and does not wish to risk losing state funds by exceeding the cap in Proviso 1.103.

The School District asks for guidance on its options and obligations regarding facemasks and virtual education. Petitioner Malika Stokes is the parent of three minor children who reside in Orangeburg County School District, one of whom (J.S.) is severely asthmatic.

Although J.S.'s pediatrician recommended he be allowed to attend school virtually, the school district is at capacity for virtual schooling. Petitioners contend (1) Provisos 1.108 and 1.103 violate the one-subject rule of article III, section 17 of the South Carolina Constitution; (2) the plain language of Proviso 1.108 permits the School District to implement and enforce mask mandates in its education facilities if the School District does so with funds not appropriated or authorized in the 2021-2022 Appropriations Act; (3) Provisos 1.108 and 1.103 improperly invade the authority of local school boards; and (4) Provisos 1.108 and 1.103 deny equal protection to students and violate their constitutional right to free public education.

We address these argument below. III. In *Wilson v. City of Columbia*, we held "Proviso 1.108 manifestly sets forth the intent of the legislature to prohibit mask mandates funded by the 2021-2022 Appropriations Act in K-12 public schools." Op. No. 28056 (S.C. Sup. Ct. filed Sept. 2, 2021) (Howard Adv. Sh. No. 31 at 10).

We also rejected the City's constitutional challenge to the proviso. *Id.* at 14. We held Proviso 1.108 does not violate the one-subject rule, as it "reasonably and inherently relates to the raising and

spending of tax monies." Id. at 15 (quoting *Town of Hilton Head Island v. Morris*, 324 S.C. 30, 35, 484 S.E.2d 104, 107 (1997)).

We further rejected the argument that Proviso 1.108 violates the Home Rule Act³ because Home Rule does not grant local governments the authority to effectively overrule a legislative enactment by the General Assembly. Id. at 17-18.

Finally, we held the proviso preempted the conflicting local ordinances. Id. at 18. For the reasons we set forth in *City of Columbia*, we respectfully reject Petitioners' challenges to the provisos. IV. Petitioners also argue both provisos deprive children of their constitutional right to a free public education and equal protection of the law. This Court will presume 3 S.C.

Code Ann. §§ 5-7-10 to -310 (2004 & Supp. 2020). an act is constitutional unless its "repugnance to the constitution is clear and beyond a reasonable doubt." *Doe v. State*, 421 S.C. 490, 501, 808 S.E.2d 807, 813 (2017) (quoting *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999)).

The general presumption of validity can be overcome only by a clear showing the act violates the constitution. Id. Article I, section 3 of the South Carolina Constitution prohibits the denial of equal protection of the law. Success on an equal protection claim requires "a showing that similarly situated persons received disparate treatment." Id. at 504, 808 S.E.2d at 814.

In this case, there is no evidence that any students are receiving disparate treatment. Indeed, there cannot be any argument of disparate treatment, as the provisos apply equally to all students and all public K-12 schools.

Accordingly, Petitioners' equal protection argument is without merit. As to Petitioners' argument that the provisos violate the constitutional guarantee of a free education for all children, article XI, section 3 of the South Carolina Constitution provides: "The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable."

Petitioners contend the provisos limit the options available to school districts to ensure a free education to all children and condition the right to a free education on assuming the unnecessary risk of serious illness or even death. Proviso 1.108 does not limit a student's right to a free education or prohibit students from wearing masks.

The reduction in funding for excess virtual education set forth in Proviso 1.103 does not limit a school district's ability to provide virtual education. Instead, it reflects the reduced cost associated with providing an education virtually instead of in the physical classroom.

We hold the provisos do not deprive students of their constitutional right to a free education. The School District also asks this Court for guidance as to its options and obligations regarding facemasks and virtual education.

We have no authority to do so. "It is elementary that the courts of this State have no jurisdiction to issue advisory opinions." *Booth v. Grissom*, 265 S.C. 190, 192, 217 S.E.2d 223, 224 (1975). V. Finally, the School District asks this Court to declare Proviso 1.108 does not prevent it from (1) apportioning its budget so that any mask requirement is funded by federal or local funds, (2) functionally announcing and enforcing a mask requirement without using any funding whatsoever, and (3) designating an employee or series of employees to enforce mask requirements who would be paid exclusively with federal or local funds.

We repeat that Proviso 1.108 prohibits the use of funds appropriated or authorized by the 2021-2022 Appropriations Act to announce or enforce a mask mandate. As we noted in *City of Columbia*, we do not reject the possibility that funds not appropriated or authorized by that act may be used to announce or enforce a mask mandate. VI.

As we emphasized in *City of Columbia*, our role in this dispute is limited, and "[w]e do not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly." *Keyserling v. Beasley*, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996).

We reaffirm our holding in *City of Columbia* that Proviso 1.108 is valid and enforceable. As we held in *City of Columbia*, Proviso 1.108 prohibits the School District from using funds appropriated or authorized under the 2021-2022 Appropriations Act to announce or enforce a mask mandate in its K-12 schools.

We do not reject the possibility that other funds might be used to do so. We also hold Proviso 1.103 is constitutional. We decline to give the School District advisory guidance as to its options and obligations regarding virtual education. JUDGMENT DECLARED. BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.