

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION

ROBIN MCCARTHY and JOHN MCCARTHY,
individually and on behalf of L.M., a minor;
ALLISON SCOTT, individually and on behalf of
W.S., a minor; LESLEY ABRAVANEL and
MAGNUS ANDERSSON, individually and on
behalf of S.A. and A.A, minors; KRISTEN
THOMPSON, individually and on behalf of P.T.,
a minor; AMY NELL, individually and on behalf
of O.S., a minor; EREN DOOLEY, individually
and on behalf of G.D., D.D., and F.D., minors;
DAMARIS ALLEN, individually and on behalf E.
A., a minor; PATIENCE BURKE, individually
and on behalf of C.B., a minor; and PEYTON
DONALD and TRACY DONALD, individually
and on behalf of A.D., M.D., J.D., and L.D.,
minors,

Case No.: _____

Plaintiffs,

v.

GOVERNOR RON DESANTIS, in his official
capacity as Governor of the State of Florida;
RICHARD CORCORAN, in his official capacity
as Florida Commissioner of Education; FLORIDA
DEPARTMENT OF EDUCATION; and
FLORIDA BOARD OF EDUCATION,

Defendants.

_____/

COMPLAINT AND DEMAND FOR EMERGENCY INJUNCTIVE RELIEF

COME NOW, Plaintiffs, ROBIN MCCARTHY and JOHN MCCARTHY, individually
and on behalf of L.M., a minor; ALLISON SCOTT, individually and on behalf of W.S., a minor;
LESLEY ABRAVANEL and MAGNUS ANDERSSON, individually and on behalf of S.A. and
A.A, minors; KRISTEN THOMPSON, individually and on behalf of P.T., a minor; AMY NELL,
individually and on behalf of O.S., a minor; EREN DOOLEY, individually and on behalf of G.D.,

D.D., and F.D., minors; DAMARIS ALLEN, individually and on behalf of E. A., a minor; PATIENCE BURKE, individually and on behalf of C.B., a minor; and PEYTON DONALD and TRACY DONALD, individually and on behalf of A.D., M.D., J.D., and L.D., minors (collectively “Plaintiffs”), by and through their undersigned counsel, and pursuant to Florida Rules of Civil Procedure, file this Complaint and Demand for Emergency Injunctive Relief against Defendants, GOVERNOR RON DESANTIS, in his official capacity as Governor of the State of Florida; RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; and FLORIDA BOARD OF EDUCATION (collectively “Defendants”), and in support thereof state as follows:

Venue and Jurisdiction

1. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes.
2. Plaintiffs are residents of various Florida counties, which counties are subject to the underlying Executive Order.
3. Plaintiffs ROBIN MCCARTHY and JOHN MCCARTHY, individually and on behalf of L.M., a minor with severe asthma and who has been identified as a student with a disability, reside in Miami-Dade County, Florida.
4. Plaintiff ALLISON SCOTT, individually and on behalf of W.S., a minor, resides in Orange County, Florida.
5. Plaintiffs LESLEY ABRAVANEL and MAGNUS ANDERSSON, individually and on behalf of S.A. and A.A, minors, reside in Palm Beach County, Florida.
6. Plaintiff KRISTEN THOMPSON, individually and on behalf of P.T., a minor, resides in Alachua County, Florida.

7. Plaintiff AMY NELL, individually and on behalf of O.S., a minor, resides in Hillsborough County, Florida.
8. Plaintiff EREN DOOLEY, individually and on behalf of G.D., D.D., and F.D., minors, resides in Hillsborough County, Florida.
9. Plaintiff DAMARIS ALLEN, individually and on behalf of E.A., a minor, resides in Hillsborough County, Florida.
10. Plaintiff PATIENCE BURKE, individually and on behalf of C.B., a minor, resides in Pinellas County, Florida.
11. Plaintiffs PEYTON DONALD and TRACY DONALD, individually and on behalf of A.D., M.D., J.D., and L.D., minors, reside in Pinellas County, Florida.
12. Defendant GOVERNOR RON DESANTIS, in his official capacity as Governor of the State of Florida (“Governor DeSantis”), is the duly elected Governor of the State of Florida in which the supreme executive power is vested and “is responsible for meeting the dangers presented to this state and its people by emergencies.” Const. Art. IV, § 1, Fla. Const.; § 252.36(1)(a), Fla. Stat.
13. Governor DeSantis is the chief public official overseeing Florida’s coronavirus response, including during the current crisis which has witnessed an unprecedented surge in the positivity rate of infected individuals and dramatic increase in hospitalizations throughout the State.
14. Defendant RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education (“Commissioner Corcoran”), is Florida Commissioner of Education appointed by the State Board of Education to serve as the Executive Director of the Department of Education. *See* Const. Art. IX, § 1, Fla. Const.; § 20.15(1), Fla. Stat.

15. Along with the State Board of Education, Commissioner Corcoran is charged with assigning the divisions of the Department of Education with “such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination, efficiency, and effectiveness of education for students in K-20 education.” § 20.15(5), Fla. Stat.
16. Commissioner Corcoran is the education official who is acting to direct local school boards in Florida to decide to reopen schools without adherence to the constitutional mandate of maintaining safe and secure public schools.
17. Defendant FLORIDA BOARD OF EDUCATION (“Board of Education”) is the head of the Defendant FLORIDA DEPARTMENT OF EDUCATION (“Department of Education”) and the government body charged with supervision of the state’s public education system. *See* Art. IX, § 1, Fla. Const.; § 20.15(1), Fla. Stat.
18. Venue is proper in this Court under Florida law and acts giving rise to these claims occurred in all counties within the State.
19. This Court has jurisdiction pursuant to sections 26.012(2)(c) and 86.011, Florida Statutes.
20. Plaintiffs have satisfied all conditions precedent to bringing this action.
21. The cumulative amount in controversy exceeds \$30,000, exclusive of fees and costs.

Common Allegations

22. Florida finds itself as the nation’s hotspot for the present wave of the COVID-19 Delta variant.
23. Present positive COVID-19 tests and hospitalizations are at the highest point in the history of this pandemic in the State of Florida.

24. Medicine and science tell us that the Delta variant is vastly different from the original COVID-19 strain including transmissibility that mirrors chicken pox, a viral load more than 1,000 times the original COVID-19 strain, and vulnerability to the childhood population.
25. Hospitals throughout the state are nearing capacity for COVID-19 patients.
26. Neither vaccinated individuals nor children are immune from infection by or transmission of the COVID-19 Delta variant.
27. Both the Centers for Disease Control (“CDC”) and the American Academy of Pediatrics recommend mandatory masking in schools to arrest the spread of COVID-19.
28. In spite of this, Governor DeSantis entered Executive Order Number 21-175 entitled “Ensuring Parents’ Freedom to Choose—Masks in Schools” (“Executive Order”), attached hereto and incorporated herein as **Exhibit A**.
29. The Executive Order precludes individual county school districts from enacting mask mandates and penalizes “non-compliant” school boards by threatening to withhold state funds for violating rules or agency action relative to the Executive Order.
30. As a matter of law, public school on-site instruction and operations must be conducted safely; the Florida Constitution mandates that “[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools.” Art. IX, § 1(a), Fla. Const.
31. The Executive Order impairs the safe operation of schools and requires the courts to issue necessary and appropriate relief.
32. Florida students are entitled to safe schools under the law.

33. Plaintiffs bring this suit to safeguard the health and welfare of Florida public school students and the general public, including residents of all Florida counties following the failure to take the necessary steps to mitigate community spread of COVID-19.
34. Plaintiffs ROBIN MCCARTHY and JOHN MCCARTHY, individually and on behalf of L.M., a minor, will suffer particularized harm as their child will be denied the right to a safe school environment/education, losing his spot at his magnet school if he does not attend in-person, and L.M. has severe asthma and has been identified as a student with a disability.
35. Plaintiff ALLISON SCOTT, individually and on behalf of W.S., a minor, will suffer particularized harm for her child who cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm; online learning is not an option.
36. Plaintiffs LESLEY ABRAVANEL and MAGNUS ANDERSSON, individually and on behalf of S.A. and A.A, minors, will suffer particularized harm for their children who cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm.
37. Plaintiff KRISTEN THOMPSON, individually and on behalf of P.T., a minor, will suffer particularized harm for her child who cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm.
38. Plaintiff AMY NELL, individually and on behalf of O.S., a minor, will suffer particularized harm for her child who cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm.

39. Plaintiff EREN DOOLEY, individually and on behalf of G.D., D.D., and F.D., minors, will suffer particularized harm for her children who cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm, especially in light of the fact that G.D. has asthma.
40. Plaintiff DAMARIS ALLEN, individually and on behalf of E.A., a minor, will suffer particularized harm for her child as the presence of non-masked students and unvaccinated students within the school setting is an actual harm, especially in light of the fact that less than 10% of the parents and students wore masks at E.A.'s school open house/orientation events.
41. Plaintiff PATIENCE BURKE, individually and on behalf of C.B., a minor, will suffer particularized harm for her child who cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm, and opting for virtual school will result in the loss of a magnet school seat.
42. Plaintiffs PEYTON DONALD and TRACY DONALD, individually and on behalf of A.D., M.D., J.D., and L.D., minors, will suffer particularized harm as their children cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm.
43. Defendants, Governor DeSantis, Commissioner Corcoran, the Department of Education, and the Board of Education's arbitrary, dangerous, and unconstitutional actions, under the guise of parent choice, in the midst of the pandemic, create an imminent and actual threat to the public health, safety, and welfare of Florida's students.
44. An actual controversy currently exists between Plaintiffs and Defendants.

45. Absent the requested relief, Florida's students risk exposure according to medical professionals that will certainly lead to contracting COVID-19 and transmitting it to others.
46. Students will become sick and potentially die as a result of the failure to follow the mandatory masking requirements of the CDC and the American Academy of Pediatrics.

COUNT I: DECLARATORY JUDGMENT—VIOLATION OF FLORIDA
CONSTITUTION FOR UNSAFE SCHOOLS
Against all Defendants

47. Plaintiffs adopt and reincorporate the allegations in paragraphs 1-46, as if fully set forth herein.
48. This is an action for declaratory relief against Defendants.
49. There is a bona fide, actual, present, and practical need for this declaration.
50. This declaration deals with a present, ascertained or ascertainable state of facts, or present controversy as to a state of facts.
51. There is a privilege or right of Plaintiffs that is dependent upon the facts or law applicable to the facts.
52. There is an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.
53. This antagonistic and adverse interest is before the Court by proper process.
54. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. *See State Farm Mut. Auto. Ins. Co. v. Marshall*, 618 So. 2d 1377, 1380 (Fla. 5th DCA 1993), disapproved on other grounds, 630 So. 2d 179, 182 (Fla. 1994).
55. Plaintiffs are in doubt as to the constitutionality of the Executive Order based upon their rights under the Florida Constitution.

56. Section 86.011, Florida Statutes, gives the circuit courts of this state jurisdiction and the power “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”

57. Article IX, Section 1(a) of the Florida Constitution provides:

Section 1. Public education.—

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education . . .

(Emphasis added.)

58. The Florida Constitution requires that state entities and public officials, who are charged with overseeing the funding and operations of public education, ensure that Florida’s schools operate safely.

59. Defendants cannot legally deny students, public school staff, their family members, and the public with whom they come in contact within the public school system their basic human needs for health and safety.

60. Plaintiffs seek a declaratory judgment determining that the State Government Defendants have failed to abide by the requirements of the Florida Constitution by enacting the Executive Order that precludes county school boards from enacting mandatory masking.

61. The Emergency Order will cause further spread of the COVID-19 virus to Plaintiffs, their families, and the general public.

62. Further, the Emergency Order fails to consider unique local circumstances, resources, and health data, as required by health experts.

63. While it might be safe to reopen in some districts across the state without a mask requirement, it is not safe to physically open schools in others, including Leon County and other crisis areas of Florida such as Duval, Pinellas, Hillsborough, Broward, Miami-Dade, Palm Beach, and Orange Counties.
64. Medicine and science must dictate such decisions.
65. An actual controversy currently exists between Plaintiffs and Defendants.
66. Plaintiffs are in doubt as to their rights under the Florida Constitution relative to the Executive Order.
67. The relief sought is not merely giving of legal advice by the Court or the answer to questions propounded from curiosity.
68. There is a substantial likelihood that Plaintiffs will prevail on the merits of this action.
69. As a proximate result of Defendants' actions, Plaintiffs continue to suffer irreparable damages for which monetary damages are inadequate.
70. Plaintiffs are wrongfully being denied safe schools which constitutes irreparable harm for the purpose of declaratory relief.
71. Absent the requested relief, schools across the state will reopen on-site instruction in an unsafe manner and to the injury and detriment of all Florida citizens; a declaration is needed from this Court to protect the community from the Executive Order.

WHEREFORE, Plaintiffs seek a declaration from this Court that the Executive Order and related actions or threatened actions to enforce it violate the Florida Constitution and any additional relief the Court deems equitable, just, and proper.

**COUNT II: DECLARATORY JUDGMENT— VIOLATION OF FLORIDA
CONSTITUTION FOR HOME RULE
Against all Defendants**

72. Plaintiffs adopt and reincorporate the allegations in paragraphs 1-71, as if fully set forth herein.
73. This is an action for declaratory relief against Defendants.
74. There is a bona fide, actual, present, and practical need for this declaration.
75. This declaration deals with a present, ascertained or ascertainable state of facts, or present controversy as to a state of facts.
76. There is a privilege or right of Plaintiffs that is dependent upon the facts or law applicable to the facts.
77. There is an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.
78. This antagonistic and adverse interest is before the Court by proper process.
79. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. *See State Farm Mut. Auto. Ins. Co. v. Marshall*, 618 So. 2d 1377, 1380 (Fla. 5th DCA 1993), disapproved on other grounds, 630 So. 2d 179, 182 (Fla. 1994).
80. Plaintiffs are in doubt as to the constitutionality of the Executive Order based upon their rights under the Florida Constitution.
81. Article 9, Section 4 of the Florida Constitution, states: “The school board shall operate, control and supervise all free public schools within the school district.”
82. As such, local school boards, elected by local citizens, have the power to operate, control and supervise public schools in the district under home rule powers.

83. Plaintiffs seek a declaratory judgment determining that the State Government Defendants have failed to abide by the requirements of the Florida Constitution by enacting the Executive Order that precludes county school boards from enacting mandatory masking.
84. The Emergency Order will cause further spread of the virus to Plaintiffs, their families, and the general public.
85. Further, the Emergency Order fails to consider unique local circumstances, resources, and health data, as required by health experts.
86. While it might be safe to reopen schools without a mask mandate in some districts across the state, it is not safe to physically open schools in others, including Leon County and other crisis areas of Florida such as Duval, Pinellas, Hillsborough, Broward, Miami-Dade, Palm Beach, and Orange Counties.
87. Medicine and science must dictate such decisions.
88. An actual controversy currently exists between Plaintiffs and Defendants.
89. Plaintiffs are in doubt as to their rights under the Florida Constitution relative to the Executive Order.
90. The relief sought is not merely giving of legal advice by the Court or the answer to questions propounded from curiosity.
91. There is a substantial likelihood that Plaintiffs will prevail on the merits of this action.
92. As a proximate result of Defendants' actions, Plaintiffs continue to suffer irreparable damages for which monetary damages are inadequate.
93. Plaintiffs are wrongfully being denied safe schools which constitutes irreparable harm for the purpose of declaratory relief.

94. Absent the requested relief, schools across the state will reopen on-site instruction in an unsafe manner and to the injury and detriment of all Florida citizens; a declaration is needed from this Court to protect the community from the Executive Order.

WHEREFORE, Plaintiffs seek a declaration from this Court that the Executive Order and related actions or threatened actions to enforce it violate the Florida Constitution and any additional relief the Court deems equitable, just, and proper.

**COUNT III: DECLARATORY JUDGMENT—EXECUTIVE ORDER UNDERMINES
SCHOOLS' SAFETY AND MAKES ARBITRARY AND CAPRICIOUS DEMANDS ON
PUBLIC SCHOOLS IN VIOLATION OF THE FLORIDA CONSTITUTION**

Against all Defendants

95. Plaintiffs adopt and reincorporate the allegations in paragraphs 1-94, as if fully set forth herein.

96. This is an action for declaratory relief against Defendants.

97. There is a bona fide, actual, present, and practical need for this declaration.

98. This declaration deals with a present, ascertained or ascertainable state of facts, or present controversy as to a state of facts.

99. There is a privilege or right of Plaintiffs that is dependent upon the facts or law applicable to the facts.

100. There is an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

101. This antagonistic and adverse interest is before the Court by proper process.

102. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. *See State Farm Mut. Auto. Ins. Co. v. Marshall*, 618 So. 2d 1377, 1380 (Fla. 5th DCA 1993), disapproved on other grounds, 630 So. 2d 179, 182 (Fla. 1994).

103. Plaintiffs are in doubt as to the constitutionality of the Executive Order.
104. Section 86.011, Florida Statutes, gives the circuit courts of this state jurisdiction and the power “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”
105. Article I, Section 9 of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law[.]”
106. If a statute or government order is arbitrary and capricious, it violates due process rights guaranteed by the Florida Constitution. *See State v. Saiez*, 489 So. 2d 1125, 1128 (Fla. 4th DCA 1986).
107. Plaintiffs seek a declaration that the Executive Order is arbitrary and capricious.
108. The Executive Order bans all county school boards from enacting mandatory masking.
109. The Executive Order is unreasonable, inconsistent, and arbitrary and capricious.
110. The Executive Order fails to provide the constitutional and clear, logical guidance.
111. Further, Plaintiffs are being denied the right to rely on their locally-elected school board officials because the State Government Defendants are usurping their constitutional functions.
112. Parents and public school employees have a right to rely on their elected officials to make decisions safeguarding their health and the health and safety of their families.
113. Defendants’ efforts usurp local judgment and individual school districts are permitted home rule powers in this context.
114. An actual controversy currently exists between Plaintiffs and Defendants.

115. Defendants' mandate wrongfully assumes that state authorities can better determine the local health risks and educational needs of students and teachers than the local officials that were elected for that purpose.
116. This is an arbitrary and capricious government action and violates due process.
117. The decisions as to how and when to safely reopen schools are subject to the discretion of school boards and should be based on current and accurate information and in cooperation with each counties' public health authorities.
118. The declaration involves the rights of Plaintiffs and is dependent upon the facts herein as applied to the Florida Constitution and above statutes.
119. Plaintiffs have a present interest in the subject matter.
120. Defendants' antagonistic and adverse interests are all before the Court.
121. The relief sought is not merely giving of legal advice by the Court or the answer to questions propounded from curiosity.
122. There is a substantial likelihood that Plaintiffs will prevail on the merits of this action.
123. As a proximate result of Defendants' actions, Plaintiffs continue to suffer irreparable damages for which monetary damages are inadequate.

WHEREFORE, Plaintiffs seek a declaration from this Court that the Executive Order is arbitrary and capricious and therefore, violates the Florida Constitution and any additional relief the Court deems equitable, just, and proper.

**COUNT IV: DECLARATORY JUDGMENT—EXECUTIVE ORDER EXCEEDS
THE AUTHORITY OF THE DEPARTMENT OF EDUCATION AND VIOLATES
THE FLORIDA CONSTITUTION
Against all Defendants**

124. Plaintiffs adopt and reincorporate the allegations in paragraphs 1-123, as if fully set forth herein.

125. This is an action for declaratory relief against Defendants.
126. There is a bona fide, actual, present, and practical need for this declaration.
127. This declaration deals with a present, ascertained or ascertainable state of facts, or present controversy as to a state of facts.
128. There is a privilege or right of Plaintiffs that is dependent upon the facts or law applicable to the facts.
129. There is an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.
130. This antagonistic and adverse interest is before the Court by proper process.
131. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. *See State Farm Mut. Auto. Ins. Co. v. Marshall*, 618 So. 2d 1377, 1380 (Fla. 5th DCA 1993), disapproved on other grounds, 630 So. 2d 179, 182 (Fla. 1994).
132. Plaintiffs are in doubt as to the constitutionality of the Executive Order.
133. Section 86.011, Florida Statutes, gives the circuit courts of this state jurisdiction and the power “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”
134. Article I, Section 9 of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law[.]”
135. If a statute or government order is arbitrary and capricious, it violates due process rights guaranteed by the Florida Constitution. *See State v. Saiez*, 489 So. 2d 1125, 1128 (Fla. 4th DCA 1986).

136. Plaintiffs seek a declaration that the Executive Order exceeds the authority of the Department of Education and the subject matter of public health matters, such as masking in schools, is appropriately within the authority of the Florida Department of Health under section 1003.22(3), Florida Statutes.
137. The Executive Order bans all county school boards from enacting mandatory masking.
138. This Order addresses the spread of COVID-19.
139. Defendants' efforts usurp the mandate of the Florida Department of Health under these circumstances.
140. An actual controversy currently exists between Plaintiffs and Defendants.
141. The declaration involves the rights of Plaintiffs and is dependent upon the facts herein as applied to the above statutes.
142. Plaintiffs have a present interest in the subject matter.
143. Defendants' antagonistic and adverse interests are all before the Court.
144. The relief sought is not merely giving of legal advice by the Court or the answer to questions propounded from curiosity.
145. There is a substantial likelihood that Plaintiffs will prevail on the merits of this action.
146. As a proximate result of Defendants' actions, Plaintiffs continue to suffer irreparable damages for which monetary damages are inadequate.

WHEREFORE, Plaintiffs seek a declaration from this Court that the Executive Order exceeds the authority of the Department of Education and the subject matter of public health matters, such as masking in schools, is appropriately within the authority of the Florida Department of Health under section 1003.22(3), Florida Statutes, and the Executive Order and is arbitrary and

capricious, and therefore, violates the Florida Constitution and any additional relief the Court deems equitable, just, and proper.

COUNT V: DECLARATORY JUDGMENT– DEPARTMENT OF HEALTH RULE
64DER21-12
Against Commissioner Corcoran, the Department of Education, and the Board of
Education

147. Plaintiffs adopt and reincorporate the allegations in paragraphs 1-146, as if fully set forth herein.
148. This is an action for declaratory relief against Defendants.
149. There is a bona fide, actual, present, and practical need for this declaration.
150. This declaration deals with a present, ascertained or ascertainable state of facts, or present controversy as to a state of facts.
151. There is a privilege or right of Plaintiffs that is dependent upon the facts or law applicable to the facts.
152. There is an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.
153. This antagonistic and adverse interest is before the Court by proper process.
154. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. *See State Farm Mut. Auto. Ins. Co. v. Marshall*, 618 So. 2d 1377, 1380 (Fla. 5th DCA 1993), disapproved on other grounds, 630 So. 2d 179, 182 (Fla. 1994).
155. Plaintiffs are in doubt as to the constitutionality of the Florida Department of Health Rule 64DER21-12 (“Rule”) based upon their safe school rights under the Florida Constitution. *See Notice of Emergency Rule, Department of Health, Rule No.: 64DER21-12*, incorporated herein and attached as **Exhibit B**.

156. In short, this Rule states that districts must allow students to opt out of masking if they so choose.
157. This Rule is contrary to the CDC’s and the American Academy of Pediatrics’ standards of mandatory masking and does not create a safe school environment in the present COVID-19 pandemic.
158. Section 86.011, Florida Statutes, gives the circuit courts of this state jurisdiction and the power “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”
159. Article IX, Section 1(a) of the Florida Constitution provides:

Section 1. Public education.—

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education . . .

(Emphasis added.)

160. The Florida Constitution requires that state entities and public officials, who are charged with overseeing the funding and operations of public education, ensure that Florida’s schools operate safely.
161. Defendants cannot legally deny students, public school staff, their family members, and the public with whom they come in contact within the public school system their basic human needs for health and safety.
162. Plaintiffs seek a declaratory judgment determining that the State Government Defendants have failed to abide by the requirements of the Florida Constitution by enacting the Rule that precludes county school boards from enacting mandatory masking.

163. The Rule will cause further spread of the COVID-19 virus to Plaintiffs, their families, and the general public.
164. Further, the Rule fails to consider unique local circumstances, resources, and health data, as required by health experts.
165. While it might be safe to reopen in some districts across the state without a mask requirement, it is not safe to physically open schools in others, including Leon County and other crisis areas of Florida such as Duval, Pinellas, Hillsborough, Broward, Miami-Dade, Palm Beach, and Orange Counties.
166. Medicine and science must dictate such decisions.
167. An actual controversy currently exists between Plaintiffs and Defendants.
168. Plaintiffs are in doubt as to their rights under the Florida Constitution relative to the Rule.
169. The relief sought is not merely giving of legal advice by the Court or the answer to questions propounded from curiosity.
170. There is a substantial likelihood that Plaintiffs will prevail on the merits of this action.
171. As a proximate result of Defendants' actions, Plaintiffs continue to suffer irreparable damages for which monetary damages are inadequate.
172. Plaintiffs are wrongfully being denied safe schools which constitutes irreparable harm for the purpose of declaratory relief.
173. Absent the requested relief, schools across the state will reopen on-site instruction in an unsafe manner and to the injury and detriment of all Florida citizens; a declaration is needed from this Court to protect the community from the Rule.

WHEREFORE, Plaintiffs seek a declaration from this Court that the Rule and related actions or threatened actions to enforce it violate the Florida Constitution and any additional relief the Court deems equitable, just, and proper.

COUNT VI: EMERGENCY INJUNCTIVE RELIEF
Against All Defendants

174. Plaintiffs adopt and reincorporate the allegations to paragraphs 1-173, as if fully set forth herein.
175. Section 26.012(3), Florida Statutes, gives the circuit courts of this state jurisdiction and the power to issue injunctions.
176. Plaintiffs have a clear legal right to be free from significant threats to public health, including outbreaks of infectious diseases.
177. Plaintiffs seek an injunction to prohibit all named Defendants from taking actions to unconstitutionally preclude local school districts from mandatory masking.
178. In-person instruction requires prolonged close indoor contact between students and school employees.
179. There is currently no ability to provide for adequate physical distancing, PPE use, hygiene practices, contact tracing, and other safety measures.
180. The spread of COVID-19 that will result from the unsafe reopening of schools during the surge is not limited to students, teachers, school administrators, or school staff and will undoubtedly spread to their families and communities.
181. Instead of controlling the community spread, as they have a legal duty to do, Defendants' threatened actions will increase positivity rates, hospitalizations, and deaths and put added stress on healthcare resources that are already running dangerously low because of the current surge in COVID-19.

182. Defendants' actions would unreasonably interfere with Floridians' right to public health and safety, and will cause special harm and endangerment to Plaintiffs and their families as they will be directly exposed to the virus on a daily basis if all brick and mortar schools are reopened in August without a mask requirement in place.
183. Absent an injunction from this Court, the reopening of schools in just a few short days will create an unsafe and unsecure environment for students, employees, and the community at large.
184. The community spread that will inevitably result from the unsafe reopening of schools without a mask mandate will yield unfortunate and avoidable increases in disease, long-term health complications, and deaths across Leon County and the State of Florida.
185. Florida's students, teachers, and other school employees and their families are at a particularly high risk if schools reopen in August, as the state is now the national epicenter of the pandemic.
186. Students, school employees, and other communities across the state are also extremely vulnerable to this disease as its spread continues to increase throughout Florida.
187. Plaintiffs have a substantial likelihood of success on the merits.
188. Without an injunction, Plaintiffs and millions of students, and the community at large will be put at an unnecessarily increased risk of physical injury, illness, and potentially death from the COVID-19 virus.
189. Employees and students should not have to risk injury or death by being required to report to schools without mandatory mask requirements; indeed, the Florida Constitution guarantees their safety and condemns needless harm.

190. If Defendants are not enjoined from their actions, including mandating the physical reopening of schools without banning mask mandates, Plaintiffs face irreparable harm in the form of unquantifiable physical injury resulting from the Delta variant upon children that cannot be vaccinated..
191. The virus will continue to spread and result in severe illness, long-term and unpredictable health complications and, in some cases, death.
192. The threatened injury to the lives of Plaintiffs and to Florida residents outweighs any possible harm to Defendants.
193. Plaintiffs' injuries cannot be compensated adequately by damages or otherwise remedied at law. This is not an issue that can be cured with money.

WHEREFORE, Plaintiffs seek an order enjoining all named Defendants from unnecessarily and unconstitutionally enforcing the Executive Order and any additional relief this Court deems equitable, just, and proper.

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EXHIBIT A

to

**Plaintiffs' Complaint and
Demand for Emergency
Injunctive Relief**

STATE OF FLORIDA

OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 21-175 (Ensuring Parents' Freedom to Choose – Masks in Schools)

WHEREAS, a right to normal education is imperative to the growth and development of our children and adolescents; and

WHEREAS, last summer, at my direction, Florida's Department of Education ordered schools to be open for in-person instruction for five days per week to ensure the continued well-being of students and families; and

WHEREAS, schools – including those that did not require students to be masked – did not drive community transmission of COVID-19; and

WHEREAS, despite recent Centers for Disease Control and Prevention (CDC) "guidance," forcing students to wear masks lacks a well-grounded scientific justification; indeed, a Brown University study analyzed COVID-19 data for schools in Florida and found no correlation with mask mandates; and

WHEREAS, masking children may lead to negative health and societal ramifications; and

WHEREAS, studies have shown that children are at a low risk of contracting a serious illness due to COVID-19 and do not play a significant role in the spread of the virus; and

WHEREAS, forcing children to wear masks could inhibit breathing, lead to the collection of dangerous impurities including bacteria, parasites, fungi, and other contaminants, and adversely affect communications in the classroom and student performance; and

WHEREAS, there is no statistically-significant evidence to suggest that counties with mask requirements have fared any better than those without mask requirements during the 2020-2021 school year; and

WHEREAS, on April 29, 2021, Florida Surgeon General Dr. Scott Rivkees issued a Public Health Advisory stating that continuing COVID-19 restrictions on individuals, including long-term use of face coverings, pose a risk of adverse and unintended consequences; and

WHEREAS, on June 29, 2021, I signed into law H.B. 241, the Parents' Bill of Rights, which prevents the state, its subdivisions, or any governmental institution, from infringing on the fundamental rights of a parent to direct the upbringing, education, health care, or mental health of a minor child without demonstrating that such action is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by less restrictive means; and

WHEREAS, pursuant to Florida law, all parents have the right to make health care decisions for their minor children; and

WHEREAS, many school districts are scheduled to begin classes on August 10, 2021, which is less than two weeks away, and within four weeks virtually all public schools across Florida will be underway; therefore immediate action is needed to protect the fundamental right of parents to make health and educational decisions for their children; and

WHEREAS, Section 1003.22(3), Florida Statutes, mandates the Florida Department of Health to adopt rules, in consultation with the Florida Department of Education, governing the control of preventable communicable diseases, including procedures for exempting children from immunization requirements; and

WHEREAS, Florida's State Board of Education, the chief implementing and coordinating body of public education in Florida, has the authority to adopt rules pursuant to Sections

120.536(1), 120.54, and 1001.02, Florida Statutes, and may delegate its general powers to the Commissioner of Education; and

WHEREAS, pursuant to Section 1008.32(4), Florida Statutes, if the State Board of Education determines that a district school board is unwilling or unable to comply with the law, the State Board shall have the authority to, among other things, withhold the transfer of state funds, discretionary grant funds, discretionary lottery funds, or any other funds specified as eligible for this purpose by the Legislature until the school district complies with the law or state board rule and declare the school district ineligible for competitive grants; and

WHEREAS, given the historical data on COVID-19 and the ongoing debate over whether masks are more harmful than beneficial to children and to school environments in general, we should protect the freedoms and statutory rights of students and parents by resting with the parents the decision whether their children should wear masks in school; and

WHEREAS, we should equally and uniformly protect the freedoms and rights of students and parents across the state.

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution, and all other applicable laws, promulgate the following Executive Order, to take immediate effect:

Section 1. I hereby direct the Florida Department of Health and the Florida Department of Education, working together, to immediately execute rules pursuant to section 120.54, Florida Statutes, and take any additional agency action necessary, using all legal means available, to ensure safety protocols for controlling the spread of COVID-19 in schools that:

- A. Do not violate Floridians' constitutional freedoms;
- B. Do not violate parents' right under Florida law to make health care decisions for their minor children; and

C. Protect children with disabilities or health conditions who would be harmed by certain protocols such as face masking requirements.

Section 2. Any action taken pursuant to Section 1 above shall at minimum be in accordance with Florida's "Parents' Bill of Rights" and protect parents' right to make decisions regarding masking of their children in relation to COVID-19.

Section 3. The Florida Commissioner of Education shall pursue all legal means available to ensure school districts adhere to Florida law, including but not limited to withholding state funds from noncompliant school boards violating any rules or agency action taken pursuant to Section 1 above.

Section 4. This does not prohibit the Florida Legislature from exploring legislation to further protect the fundamental rights of students and parents to be free from excessive, harmful regulation in schools.

Section 5. This Executive Order is effective immediately.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 30th day of July, 2021.


RON DESANTIS, GOVERNOR

ATTEST:


SECRETARY OF STATE

2021 JUL 30 PM 3:45
DEPARTMENT OF STATE
TALLAHASSEE, FL

FILED

EXHIBIT B

to

**Plaintiffs' Complaint and
Demand for Emergency
Injunctive Relief**

Notice of Emergency Rule

DEPARTMENT OF HEALTH

Division of Disease Control

RULE NO.: RULE TITLE:

64DER21-12 Protocols for Controlling COVID-19 in School Settings

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Because a recent increase in COVID-19 infections, largely due to the spread of the COVID-19 delta variant, coincides with the imminent start of the school year, it is imperative that state health and education authorities provide emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. Accordingly, pursuant to its authority to adopt rules governing the control of preventable communicable diseases in public schools, *see* section 1003.22(3), Florida Statutes, the Florida Department of Health, after consultation with the Department of Education, hereby promulgates an emergency rule regarding COVID-19 protocols in public schools to encourage a safe and effective in-person learning environment for Florida's schoolchildren during the upcoming school year; to prevent the unnecessary removal of students from school; and to safeguard the rights of parents and their children.

This emergency rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to ensure safety protocols for controlling the spread of COVID-19 in schools that (1) do not violate Floridians' constitutional freedoms; (2) do not violate parents' rights under Florida law to make health care decisions for their minor children; and (3) protect children with disabilities or health conditions who would be harmed by certain protocols, such as face masking requirements. The order, which is incorporated by reference, directs that any COVID-19 mitigation actions taken by school districts comply with the Parents' Bill of Rights, and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19."

Because of the importance of in-person learning to educational, social, emotional and mental well-being, removing healthy students from the classroom for lengthy quarantines should be limited at all costs. Under Florida law, parents have a fundamental right to direct the upbringing, education, health care, and mental health of their minor children and have the right to make health care decisions for their minor children. HB 241, Ch. 2021-199, Laws of Fla. In furtherance of the Florida Department of Health's authority to adopt rules governing the control of preventable communicable diseases—and because students benefit from in-person learning—it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to allow for in-person education for their children. Removing children from school poses a threat to developmental upbringing and should not occur absent a heightened showing of illness or risk of illness to other students.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule is necessary in light of the recent rise in COVID-19 cases in Florida and the urgent need to provide COVID-19 guidance to school districts before the upcoming school year commences. Given that a majority of schools will resume in-person learning for the 2021-2022 school year within the next four weeks, there is insufficient time to adopt the rule through non-emergency process.

SUMMARY: Emergency rule 64DER21-12 sets forth the procedures for controlling COVID-19 in school settings. **THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS:** Carina Blackmore, Florida Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1703, (850)245-4732.

THE FULL TEXT OF THE EMERGENCY RULE IS:

64DER21-12 Protocols for Controlling COVID-19 in School Settings

(1) GENERAL PROTOCOLS AND DEFINITION. The following procedures should be instituted to govern the control of COVID-19 in public schools:

(a) Schools should encourage routine cleaning of classrooms and high-traffic areas.

(b) Students should be encouraged to practice routine handwashing throughout the day.

(c) Students should stay home if they are sick.

(d) Students may wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.

(e) For purposes of this rule, "direct contact" means cumulative exposure for at least 15 minutes, within six feet.

(2) PROTOCOLS FOR SYMPTOMATIC OR COVID-19 POSITIVE STUDENTS. Students experiencing any symptoms consistent with COVID-19 or who have received a positive diagnostic test for COVID-19 should not attend school, school-sponsored activities, or be on school property until:

(a) The student receives a negative diagnostic COVID-19 test and is asymptomatic; or

(b) Ten days have passed since the onset of symptoms or positive test result, the student has had no fever for 24 hours and the student's other symptoms are improving; or

(c) The student receives written permission to return to school from a medical doctor licensed under chapter 458, an osteopathic physician licensed under chapter 459, or an advanced registered nurse practitioner licensed under chapter 464.

(3) PROTOCOLS FOR STUDENTS WITH EXPOSURE TO COVID-19. Students who are known to have been in direct contact with an individual who received a positive diagnostic test for COVID-19 should not attend school, school-sponsored activities, or be on school property until:

(a) The student is asymptomatic and receives a negative diagnostic COVID-19 test after four days from the date of last exposure to the COVID-19 positive individual; or

(b) The student is asymptomatic and seven days have passed since the date of last exposure to the COVID-19 positive individual.

(c) If a student becomes symptomatic following exposure to an individual that has tested positive for COVID-19, the student should follow the procedures set forth in subsection (2), above.

(4) PROTOCOL FOR STUDENTS WITH PRIOR COVID-19 INFECTION. A student who has received a positive diagnostic test for COVID-19 in the previous 90 days and who is known to have been in direct contact with an individual who has received a positive diagnostic test for COVID-19 is not subject to the protocols set forth in subsection (3), so long as the student remains asymptomatic. If a student with a previous COVID-19 infection becomes symptomatic, the student should follow the procedures set forth in subsection (2), above. This subsection applies equally to students that are fully vaccinated for COVID-19.

(5) TESTING. Any COVID-19 testing of minors at school requires informed written consent from a parent or legal guardian.

(6) NON-DISCRIMINATION. Students whose parents or legal guardian have opted them out of a mask or face covering requirement shall not be subject to any harassment or discriminatory treatment, including but not limited to:

(a) Relegation to certain physical locations;


(b) Isolation during school activities; or

(c) Exclusion from any school-sponsored events or activities.

Rulemaking Authority 1003.22(3) FS. Law Implemented 1003.22(3) FS. History—New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE:



Scott A. Rivkees, MD
State Surgeon General

8/6/21

Date