

## **WEBINAR OUTLINE**

### **Stop Masking Kids! Parents Suing School Districts by DailyClout**

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**Panel: Attorney James Ostrowski, Dr. Naomi Wolf  
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information without first seeking legal advice from counsel in the relevant jurisdiction.

- 42 USC 1983 allows people to file lawsuits in state or federal court when there is state action in violation of federal constitution rights.
- The defendant must be a state official or governmental body or agency—private actors are not bound by the Constitution with rare exceptions.
- 42 USC 1983 allows you to file an action for damages or declaratory or injunctive relief in state or federal court.
- Generally speaking, federal court is to be preferred. State court judges tend to be appointed by the very officials you will be suing and they are far less familiar with 1983 actions than federal judges are. In federal court, about half of the judges are appointed by each party so there is more diversity of thought there.
- You will file in the local federal district where the actions complained of took place. Each state is divided into districts which you can find on the internet.

- You start a lawsuit by filing a “complaint”; then having the court issue a summons, then having the summons served on the defendants.
- A party cannot serve papers so you will have to get a process server.
- You want to file a complaint as soon as possible as there are statutes of limitation in each state that cut off your fight to sue if you wait too long. Each state is different. In NY, the deadline is three years.
- General speaking, You have to serve the defendants in 90 days from the date of filing.
- There are several parts to a complaint. See the Template.
- The basic parts are as follows:
  - Jury demand
  - Jurisdictional allegations
  - A description of the parties
  - The basic facts of the complaint. Who did what to whom, when, where and why.
  - A complaint should be detailed but not too detailed. A pro se complaint will be given less scrutiny than a complaint drafted by an attorney.
  - After the facts, you need to state your “cause of action.”

- “Cause of action” is a term of art meaning the legal theory underlying your claim. Under 42 USC 1983, your cause of action can be based on the federal Constitution or federal statutes.
- The anti-mask lawsuit is based on a variety of constitutional provisions including:
  - First Amendment—Freedom of Speech
  - Fourth Amendment—Unlawful seizure—violation of personal integrity
  - Fifth Amendment—due process
  - Ninth Amendment—fundamental right to liberty
  - Fourteenth Amendment—equal protection, due process, fundamental rights
  - Guarantee of republican government—mask mandates must be passed by the legislature if at all.
- Claim for relief. You will demand all available relief—money damages, injunction, declaratory judgment, attorneys fees.
- Injunctions. As soon as possible after filing and service, make a motion for a preliminary injunction to ask the court to order the defendants to stop violating your rights pending the duration of the litigation (which could take years). A motion for an injunction has to show that you are likely to prevail on the merits of the case and to suffer irreparable harm if the motion

is not granted. The court could deny the motion, grant the mitt or order a hearing, a short trial where testimony would be taken.

- Court rules—print out and read, underline and memorize the Federal Rules of Civil Procedure, the local rules of your District Court and your judges own personal rules. These contain many important rules that can trip you up if you are unaware. For example, many judges have page limits and font requirements on briefs.
- Efiling—all the courts use efilng now. You may have to have the court file your papers until you get permission to file. You will also need a Pacer account to be able to view the docket when you need to.
- Lawyers—you can do a pro se lawsuit, try to find a public interest lawyer or approach a large firm and see if they will do it pro bono or for reduced rates. You may be able to crowd-fund to pay for a lawyer.
- After you file and serve the complaint, the state officials will hire either a government law firm or private lawyers paid by the hour.
- They will either file a motion to dismiss or an answer. If they move to dismiss, you have file an answering brief.

- Motions to dismiss allege that even if your facts are true, you have no valid legal cause for action. The judge will decide. If you lose, you can appeal to a Circuit Court of Appeal. There are 12 in the country. If they lose, they must file an answer and both parties can engage in discovery of facts through depositions, interrogatories and document demands.
- After discovery is complete, either side can move for summary judgment on the grounds that there are no triable issues of fact and the law is on their side.
- If this motion is granted, the losing side can appeal. If the motion is denied, a trial must take place.
- Since you asked for a jury, it will be a jury trial.
- If you get to the trial stage, it is recommended that you find a trial lawyer at that point as it is very hard for a pro se litigant to try the case.
- If you lose the trial, you can still appeal, once again to the Court of Appeals.
- An appeal involves filing an appendix of key documents, filing a brief, and arguing the case in front of a three-judge panel.
- If you lose the appeal, you can appeal to the Supreme Court, but they take very few cases, so don't count on that.
- Wholistic approach to strategy. Don't put all your stock in judges and litigation. Litigation should merely be one part of

an integrated strategic approach that should also include: educating the public, educating the media, posting your pleadings and doing online podcasts about them; have a press conference in front of the courthouse when you file your case; political action and direct action. When the courts reopen, make sure the courtroom is filled with supporters. I did this in an appeal in NY in 2019 and we won. Judges are sensitive to public opinion so all expressions of support are good.

- In a republic, courts are the not the last stop but it is important to make the courts rule on these fundamental issues so we know whether we can rely on the courts at all. Examples of direct action that can be used against the Lockdown include pulling your kids out of the schools and homeschooling and moving to a different state that allows more freedom of choice. Many thousands of people are already making these choices. You have a wide array of tactics and strategies and you should use all of them that will work. Strategy is a matter of pragmatism and trial and error. Do what works; avoid what doesn't.
- Keep in mind that courts are political and ideological. Their ideological biases are usually disguised as legalese. The vast majority of judges have a bias towards allowing progressive big government to work its magic. You can't hide from this or

ignore it. You need to confront it. I have argued in Second Amendment cases, for example, that the intermediate scrutiny test for judging gun regulations is not a constitutional principle at all but pure ideology masquerading as a legal principle.

- **Make your constitutional arguments come alive on the page and in oral argument.** As Learned Hand wrote: “Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it.”
- Other causes of action related to the Lockdown.
  - First Amendment retaliation—if you speak out publicly and are then targeted, you may have a claim for retaliation or selective prosecution.
  - Vaccine mandates can be challenged on the following grounds—“Constitutional substantive due process arguments alleging violations of fundamental rights of bodily privacy or bodily integrity; First Amendment-based arguments, including those involving the right to free speech and the right to free religious exercise; Fourth Amendment unreasonable search and seizure arguments; and Federal or state law violations, including arguments pursuant to the Americans with Disabilities Act (ADA), the Civil Rights Act

(CRA), and the federal Food, Drug, and Cosmetic Act (FDCA).” (Source: Network for Public Health Law).

- The whole area of the suppression of non-vaccine treatments for Covid and the intimidation of doctors and nurses to prevent them from speaking out on alternative treatments and therapies for Covid, is a fertile ground not only for litigation but for grand jury investigations. Grounds for civil action include First Amendment retaliation and interference with one’s occupation in violation of due process.

**Conclusion.** The Lockdown, in all its many aspects, was and is a crime against humanity. Litigation is one useful way to fight back against the Lockdown but it should be integrated with numerous other valuable strategies and tactics including political action, education, grand jury investigations, direct citizen action, boycotts, walkouts, convoys and strikes. We must not only end the Lockdown and compensate its victims if possible, but we need to make sure this never happens again by identifying, suing and even prosecuting the perpetrators.

Pro se litigation is difficult but not impossible. With a few exceptions, the legal profession has been largely AWOL in fighting back against the Lockdown. This means that pro se litigation will be the only means of redress for many citizens. We

hope this Webinar and the links and documents provided, will make pro se litigation or finding a public interest lawyer much easier. Thank you and good luck!