

DRAFT

SAMPLE COMPLAINT TO END MASK MANDATES FOR K-12 SCHOOLS

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UNITED STATES DISTRICT COURT
_____ DISTRICT OF [STATE]

JANE DOE, as parent and natural guardian of [child—initials only]
JOHN DOE, as parent and natural guardian of [child—initials only]

Plaintiffs,

COMPLAINT

_____ CV _____

_____, individually and in her official capacity as the Governor of the State of _____,
_____, individually and in her official capacity as the Commissioner of Health for the State of _____,
, individually and as Commissioner of the _____ State Education Department,
_____, individually and as the Superintendent of the _____ School District,
_____, individually and as County Executive of _____ County,
_____, individually and as Commissioner, _____ County Department of Health

Defendants.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the Plaintiffs hereby demand a jury trial of all issues so triable.

The plaintiffs, by their attorney, [OR, PRO SE]¹, for their complaint, allege as follows:

INTRODUCTION

¹ If pro se, all plaintiffs must sign the complaint.

1. The purpose of this lawsuit is to seek an **IMMEDIATE** end to the barbaric practice of abusing our young people by forcing them to wear facemasks all day long in K-12 government schools.
2. These mandates damage their health and well-being and their liberty, autonomy and security and serve no valid medical or scientific purpose.
3. _____ is one of a small minority of states (12) and countries (only seven) that mandate that young children wear masks.
4. The clear ideological bias of these 12 states towards one political party shows that these mandates are not based on *medical* science but on *political* science.
5. This shows that mask mandates are not scientific but rather political and ideological in nature.
6. Since Covid-19 first struck the country, the government has responded with an endless series of failed policies backed by lies and distortions that have failed to stop the virus but have unleashed massive and irreparable harm on the population.
7. No segment of the population, however, has suffered more than our youth.
8. Young people are both at low risk for Covid-related illness and have had no legal or political ability to resist the draconian means imposed on them to allegedly protect older and more vulnerable populations from Covid.
9. For two years, the welfare of young people has been sacrificed in the vain attempt to protect older Americans with co-morbidities from Covid, yet these efforts have all failed, so the suffering of our young people through lockdowns, isolation, quarantine and now mask mandates, has been for nought as Covid rates are higher than ever after all these harsh measures have been installed.

10. Currently, with respect to young people, Covid-19 is less dangerous than most flus. Irrational fear has caused governments to impose restrictions on young people's freedom. Masks cause physical, psychological, and sociological harm to children. They suppress necessary facial cues that are critical for children to communicate and to comprehend communication.
11. Masks are not very useful in stopping the spread of Covid-19, but they do, however, inhibit and abridge speech, damage health and impose pain, suffering and humiliation on students.
12. So now, a group of children, through their parents, seek help from this Court. In particular, they plead with the Court to enjoin Defendants from unilaterally mandating that children wear masks all day in school. The masks have made the children sick, stunted their intellectual and social growth and most importantly violated their freedom of speech and association and their right to liberty. Therefore, plaintiffs invoke the jurisdiction of this Court and seek its wisdom, protection, and justice.

JURISDICTION & VENUE

13. Plaintiffs bring a civil rights action pursuant to 42 U.S.C. § 1983 and § 1988 for deprivations of plaintiffs' rights guaranteed by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution as well as the Guarantee Clause and federal statutes and regulations.
14. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343(a)(3), 1343(a)(4) and by 42 U.S.C. § 1988, which provides for original jurisdiction in the Court of all suits brought pursuant to 42 U.S.C. § 1983.

15. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 because the causes of action arise under the Constitution and laws of the United States.
16. Venue properly lies in the _____ District of [STATE] pursuant to 28 U.S.C. § 1391(b)(1&2) because a substantial part of the events giving rise to these claims occurred in this judicial district.

PARTIES

17. Plaintiffs are parents of children who are subjected to the defendants' various mask requirements.
18. They on behalf of their children bring this suit to seek relief from this mandate because it violates their rights under the First, Fourth, Fifth, Ninth and Fourteenth Amendments, the Guarantee Clause and federal statutes and regulations..
19. _____ is the father of _____ who attends _____ School in the _____ School District in Niagara County.
20. [FOR EACH PLAINTIFF, DESCRIBE ANY ILL EFFECTS OF SPECIFIC CHILDREN AND ANY SPECIFIC HARASSMENT OR DISCIPLINARY ACTIONS TAKEN.]
21. _____ is the father of _____ who attends _____ School in the _____ School District in Niagara County.
22. _____ is the father of _____ who attends _____ School in the _____ School District in Niagara County.
23. All plaintiffs are suing in their personal and representative capacities.
24. Defendant KATHLEEN HOCHUL, is the Governor of the State of New York and is sued individually and in her official capacity as the Governor of the State of New York.
25. Her office is in Albany, New York (Albany County).

26. As Governor of the State of New York, defendant KATHLEEN HOCHUL“ shall take care that the laws are faithfully executed.” N.Y. Const., Art. IV, §3. As such, the Governor is responsible for the administration and enforcement of the laws, which she conducts through various officers, agents, and employees.
27. The Governor exercises direct supervisory control over the Health department and its Commissioner and the Education Department and its Commissioner and she can hire or fire them in her discretion.
28. The Governor has made it clear in numerous public statements that, though the Health Department issues the mask mandates, they do what they are told to do by the Governor.
29. Defendant MARY T. BASSETT, is sued individually and in her official capacity as the Commissioner of Health for the State of New York with offices throughout the state.
30. Bassett is unelected and politically unaccountable to the citizens of New York.
31. Bassett issued a regulation mandating that primary and secondary school children (i.e., grades k-12) wear masks during school hours with certain limited exceptions for eating and playing wind instruments.
32. Defendant BETTY A. ROSA is sued individually and as Commissioner of the New York State Education Department with offices in Albany, New York.
33. _____ is the Superintendent of the _____ School District and as such, is responsible for enforcing and /or issuing orders and mandates requiring students to wear masks. He is also responsible for making sure that court orders are respected and enforced and for mask-related disciplinary policies and procedures.
34. Each defendant is sued individually and in his or her official capacity.

FACTUAL ALLEGATIONS RELATED TO ALL CAUSES OF ACTION

35. The plaintiffs are students who are currently forced to wear facemasks nearly six hours a day while attending school in this state. School attendance is compulsory in this state with a few exceptions not relevant here.
36. Thus, the plaintiffs cannot opt out of this mandate.
37. Each of the defendants has promulgated and/or enforced mask mandates binding on the plaintiffs.
38. Alternatively, each defendant stands ready to impose or reimpose mask mandates in the event that a mandate imposed by another defendant either expires or is struck down by court order.
39. For example, when State Supreme Court Justice Thomas Rademaker struck down the state mask mandate on January 24, 2022, defendant Poloncarz publicly reminded everyone, including students, that his mandate is still in effect in Erie County.
40. Additionally, each defendant could seek to reimpose mandates on the basis of CDC recommendations, to coerce families into “vaccinating” their children, or to secure federal grants, even though the CDC's own authority to issue mandates is dubious.
41. In an article in the New York Post, the Governor stated she would look at “vaccination” rates among children in determining whether to support the lifting of the mask mandate. (Feb. 4, 2022).
42. Thus, to avoid being whipsawed in an atmosphere where politics, not science, reigns, and the ground is constantly shifting beneath the public’s feet, each defendant is a necessary party if complete and permanent relief against these onerous mandates is to be obtained.
43. Each plaintiff must wear a mask all day at school as a result of the mandates issued and enforced by the defendants and, as a result, they have had difficulty communicating and

receiving communication. Moreover, many of them have suffered from physical symptoms including headaches and psychological effects such as anxiety.

44. [EXPLAIN THE MASK MANDATE YOU WISH TO OVERTURN, FOR EXAMPLE:]

45. The rule currently in effect was issued by the defendant Mary T. Bassett on January 31, 2021 and states as follows in relevant part:

“Accordingly, based on the foregoing findings of necessity, I hereby issue the following masking requirements:

Face Covering/Masking Requirements

3. P-12 school settings:

a. After careful review and consideration of CDC Recommendations for face coverings/masks in school settings, I hereby adopt such recommendations, imposing them as requirements, where applicable, until this determination is modified or rescinded. Accordingly, universal masking of teachers, staff, students, and visitors to P-12 schools over age two and able to medically tolerate a face covering/mask and regardless of vaccination status, is required until this determination is modified or rescinded. Such requirement is subject to applicable CDC-recommended exceptions.

b. In accord with the general adoption of universal masking in P-12 settings, that requirement is extended to any gathering on school grounds which addresses or implements educational matters where students are or may reasonably be expected to be present. In the event that officials presiding over public meetings implicated by this directive are unable to guarantee compliance with such masking requirements, they are advised to implement full virtual access to public meetings in accord with the September 2021 amendment to the New York State Open Meetings Law.

c. This determination does not provide for the implementation of “mask breaks” during the school day, nor does it provide for an exception to the masking requirement on the basis of minimal social distancing in classrooms. This is in accordance with CDC guidance recommending universal masking in schools to keep children in school without risking close contact exposure and subsequent quarantines.”

46. The rule appears to be in effect until at least February 10, 2022. See, Section 7(d).

However, some press reports state the mandate will last until February 21, at least.

Buffalo News, Feb 2, 2022.

GENERAL HARM TO ALL STUDENTS FORCED TO WEAR MASKS

47. Masked students are unable to learn by watching lips to see how sounds are formed as well as connecting speech with emotions because masks hide facial expressions.
48. Facial expressions are a form of communication.
49. Face masks suppress and conceal facial expressions.
50. Thus, mandating school children to wear masks in an environment where communication – both sending and receiving – is an essential part of learning abridges plaintiffs' children's First Amendment rights.
51. Facial expressions refer to certain movements or conditions of the facial muscles that facilitate the nonverbal communication of some thought, emotion, or behavior.
52. Facial expression is the main channel a person uses to decode emotional states or reactions of others to a message, and facial expressions generally mirror the intensity of a person's thoughts and feelings.
53. Covering the lower half of the face of both teacher and pupil reduces the ability to communicate.
54. Being able to see facial expressions is not merely a luxury; it is a psychological necessity to establish healthy emotional growth and development and communication.
55. Indeed, non-verbal communication is a critical way in which children communicate and learn in school.
56. Much communication is nonverbal.
57. This is especially true given a child's more limited vocabulary; thus, non-verbal communication is vital to children being able to express themselves.
58. The most substantial part of a person's non-verbal communication is expressed through a person's face, including their mouth region.

59. Thus, non-verbal communication and facial expressions in particular are some of the essential means in which children learn.
60. Therefore, without being able to observe the lower half of someone's face (i.e. their teachers and peers) children fail to effectively learn.
61. Moreover, non-verbal communication occurs in a dynamic and synergistic fashion through children observing their teacher's facial expressions, as well as children being able to observe each other's facial expressions.
62. Without this form of communication, children are not only adversely impacted developmentally as they do not learn appropriate facial and social cues, but neurophysiologically do not develop the neurons that are essential for empathy and compassion.
63. In particular, children lose the experience of mimicking expressions, an essential tool of nonverbal communication.
64. This loss has a pronounced detriment upon children.
65. Positive emotions such as laughing and smiling become less recognizable, and negative emotions get amplified as a result.
66. Consequently, bonding between teachers and students suffers.
67. This lack of bonding further inhibits communication between teachers and students, and hence impacts students' ability to learn.
68. Students refrain from speaking and are slow to learn in such an environment.
69. Covering the lower half of the face of children in the classroom setting is also damaging from a Social Learning Theory perspective. In particular, masks damage, inhibit and abridge a child's ability to learn how to effectively communicate. Given that masks cause

this deficit in developing communication skills, ultimately, mask mandates damage, inhibit and abridge the ability of a child to communicate.

70. To begin with, it is a generally accepted scientific principle that humans are a hard-wired social species reliant on social cues for our optimal social-emotional growth and development.
71. It is axiomatic that children learn and develop by mimicking adult models (i.e., teachers).
72. This is an essential tool in learning and developing non-verbal communication.
73. However, absent those facial cues, a child will be stunted in their ability to recognize smiling and laughter as positive emotions and, as a consequence, negative emotions will be amplified.
74. Education of children, especially young children, includes learning how to effectively perceive emotions, respond to emotions, and communicate emotions.
75. Mask wearing significantly inhibits this education because the lower half of the face is covered.
76. Indeed, positive emotions exhibited by laughing and smiling are less recognizable with mask wearing, as are negative emotions like being angry or sad.
77. When teaching children how to interpret feelings and emotions, and how to learn empathy and compassion, facial expressions are critical.
78. With a mask however, the child is unable to imitate and match feelings and facial expressions and thus learn them.
79. With children being largely prevented from perceiving these emotions of their peers, as well as their teachers, they do not learn how to respond to emotions, perceive them, or communicate the emotions themselves.

80. Nonverbal children on the autism spectrum rely on facial expressions even more than other children.
81. When a child is unable to express themselves verbally, like nonverbal children, they rely on facial expressions and gestures to communicate a want or need.
82. When such a child is wearing a mask, their sole or primary way of communication is stripped from them.
83. They are thus unable to effectively express a mood, a want, or a need to their teacher or to another student.
84. It is paramount to address oral motor, articulation, feeding, auditory, and aural goals with special needs children.
85. These goals are unable to be addressed however with a mask on a child.
86. Some of these special needs children are entitled to PROMPT (Restructuring Oral Muscular Phonetic Targets) therapy, which includes the child touching their face, lips, cheeks, chin, and nose, in order to assist in placement of articulators for speech sounds.
87. As a result of mask wearing, these children are essentially denied certain highly effective and necessary therapies, like PROMPT therapy.
88. Indeed, children cannot imitate an oral motor exercise (lingual elevation, for example) with a mask on. This skill could be used for placement or for feeding. Children who are entitled to feeding therapy are unable to work on lip closure with a mask on.
89. Masks invariably create a degree of muffled speech.
90. This impacts the child's ability to hear, especially children who are hearing impaired.

91. If the child is not receiving clear sounds from the teacher or proper pronunciation and enunciation, the child does not learn how to pronounce or enunciate what the teacher is saying.
92. Some children, including very young children, are depressed, anxious, and are dealing with difficult home environments, such as neglect and abuse.
93. With facial expressions being substantially concealed by the masks, the child is not able to effectively communicate to their peers or their teachers what they are feeling.
94. This only compounds the problem that masks pose to a child's education. Children present these feelings and emotions to their teachers and peers in substantial part through facial expression (which is even more true with non-verbal children or children who have certain other special needs).
95. Because half of the child's face is covered by a mask, the child's emotional state is not ascertained by the teacher and a conversation is never had regarding how the child is feeling or what is causing the child to feel that way. As a result, serious problems that are ailing the child -- like depression, anxiety, child neglect or abuse -- go undetected and unaddressed.
96. Learning and communication coupled with mask wearing is all the more problematic for children who have communication difficulties or social and pragmatic language delays or disorders.
97. With facial movements being so important to communication, some children are discouraged from voluntarily speaking given that the facial movements of their mouth are concealed.

98. This can especially affect children who suffer from autism, speaking or hearing impaired, are soft spoken or have other impairments or insecurities effecting their ability to speak.
99. Masks invariably create some degree of muffled speech. For children who suffer from certain disabilities or are naturally quieter or more introverted, this factor can result in discouraging the children from speaking.
100. The lack of non-verbal communication inhibits the ability to establish trust bonds with peers and this in turn inhibits the development of friendship.
101. This lack of friendship and bonding with friends leads to depression and alienation.
102. Depression and alienation result in an increased risk of anti-social behaviors, as well as episodes of self-harm and suicidality.
103. Overall, it is likely that masking exacerbates the chances that a child will experience anxiety and depression, which are already at pandemic levels themselves.
104. Reading facial cues is hard-wired into our species to determine friend-or-foe as an essential factor in our survival and safety.
105. Studies have shown the importance of “reading” faces to establish trust.
106. Face-to-face contact (where faces can be seen) is essential in establishing healthy bonds— both between students and teachers and children and parents.
107. This lack of bonding hurts the child emotionally and also inhibits open, honest and effective communication between student and teacher.
108. Absent this bonding, a profile of mistrust and fear is developed.
109. Studies also suggest that this increases depression and anxiety.
110. Psychologically, wearing a facemask fundamentally has negative effects on the wearer and the nearby person.

111. Basic human-to-human connectivity through facial expression is compromised and self-identity is somewhat eliminated.
112. The mask hides the uniqueness and individuality of the child wearing the facemask and results in the child feeling that their unique identity is being, at least in part, eliminated; this in turn negatively impacts the connectivity the children experience with others, including their peers and teachers.
113. Social connections and relationships are basic human needs, which are innately inherited in all people.
114. Reduced human-to-human connections are associated with poor mental and physical health causing isolation and loneliness, which are considered significant health related risk factors.
115. The current mental health metrics for our young people are the worst on record and show the highest rates of depression, anxiety and suicide.
116. These negative mental health outcomes are only augmented by the negative psychological impact of masks.
117. This psychological and developmental harm is greater than any potential harm that children may experience from Covid as they are not significant vectors of the Covid virus. Thus, when there is mandated mask-wearing for children, the so-called “cure” is worse than the potential harm of Covid.
118. The plaintiffs’ parents have seen many of these effects on their children.
119. Masks reduce the ability to receive information in other ways.

120. In normal conditions at the sea level, air contains 20.93% O₂ and 0.03% CO₂, providing partial pressures of 100 mmHg and 40 mmHg for these gases in the arterial blood, respectively.
121. These gas concentrations are significantly altered when breathing occurs through a facemask.
122. In mask wearing, trapped air remains between the mouth, nose and the facemask and is thus rebreathed repeatedly in and out of the body, containing low O₂ and high CO₂ concentrations.
123. In particular, children who wear masks experience an increase in carbon dioxide (CO₂) intake which corresponds to increased CO₂ levels in the children's blood.
124. This condition is called hypercapnia.
125. Concomitantly, children who wear masks experience a decrease in oxygen (O₂) intake which corresponds to decreased O₂ levels in the children's blood.
126. This condition is called hypoxemia.
127. This effect is greater and occurs more quickly the smaller the child because of the increased ratio of mask dead space to lung volume.
128. This has significant mental health and brain function side effects.
129. Raising the CO₂ level and lowering the O₂ level which activates the hippocampal-amygdala complex.
130. The activation of the hippocampal-amygdala complex will trigger in some children the fight or flight stress response.
131. This emergent-threat detection system of the brain restricts memory access, learning association, and depth of thought.

132. Lessons learned or improperly associated in childhood are not equally learnable later in life with the same stimulation, as they do not occur with the other original stimulations that must be learned with them.
133. Additionally, prolonged hypercapnia and hypoxia cause depression and anxiety in children.
134. The extended use of respiratory PPE (personal protective equipment) is not indicated without medical supervision.
135. Based on the scientific literature, individuals who are required to wear masks pursuant to a mandate have the known potential to suffer immediate injury, loss, and damage due to the overall possible resulting measurable drop in oxygen saturation of the blood on one hand and the increase in carbon dioxide on the other, which contributes to an increased noradrenergic stress response, with heart rate increase and respiratory rate increase and, in some cases, a significant blood pressure increase.

THE SCIENTIFIC FACTS INDICATE THAT COVID-19 CURRENTLY DOES NOT REPRESENT AN EMERGENCY OR ABNORMAL THREAT OR THAT MASKS ARE AN EFFECTIVE WAY TO STOP THE TRANSMISSION OF COVID-19 SUCH THAT A MASK MANDATE JUSTIFIES AN INFRINGEMENT UPON PLAINTIFFS' CONSTITUTIONAL RIGHTS.

136. The mortality danger from Covid-19 infection varies substantially by age and a few chronic disease indicators.
137. For a majority of the population, including the vast majority of children and young adults, Covid-19 infection poses less of a mortality risk than seasonal influenza.

138. The best evidence on the infection fatality rate from SARS-CoV-12 infection (that is, the fraction of infected people who die due to the infection) comes from seroprevalence studies. The definition of seroprevalence of Covid-19 is the fraction of people in a population who have specific antibodies against SARS-CoV-2 in their bloodstream.
139. Seroprevalence studies provide better evidence on the total number of people who have been infected than do case reports or a positive reverse transcriptase-polymerase chain reaction (RT-PCR) test counts. These both miss infected people who are not identified by the public health authorities or volunteer for RT-PCR testing. Because they ignore unreported cases in the denominator, fatality rate estimates based on case reports or positive test counts are substantially biased upwards.
140. A study of the seroprevalence of Covid-19 in Geneva, Switzerland (published in *The Lancet*) provides a detailed age breakdown of the infection survival rate in a preprint companion paper 99.9984% for patients 5 to 9 years old; 99.99968% for patients 10 to 19 and 94.6% for patients above 65.
141. The CDC estimates that the infection fatality rate for people ages 0-19 years is 0.003%, meaning infected children have a 99.997% survivability rate. The CDC's best estimate of the infection fatality rate for people ages 20-49 years is 0.02%, meaning that young adults have a 99.98% survivability rate. The CDC's best estimate of the infection fatality rate for people age 50-69 years is 0.5%, meaning this age group has a 99.5% survivability rate
142. The above estimates are all drawn from data before widespread vaccination in the U.S. and elsewhere.
143. Covid-19 is not a serious threat to schoolchildren, especially younger children—even if they contract the disease.

144. To begin, Covid-19 is rarely fatal for schoolchildren.
145. Indeed, the CDC estimates that compared to adults 40 to 49 years of age, children 5 to 17 years of age have 160 times lower risk of death from Covid-19 and 27 times lower risk of hospitalization from Covid-19.
146. Fewer than 350 children under 18 have died with a Covid-19 diagnosis code in their medical record.
147. The incidence of school-age children requiring hospitalizations due to Covid-19 is also rare.
148. The Covid-19 infection in children is generally characterized by mild illness. Only a minority of children require hospitalization.
149. The public health agency in the Netherlands similarly concluded that “Worldwide, relatively few children have been reported with Covid-19. Children become less seriously ill and almost never need to be hospitalized because of [Covid-19].”
150. Moreover, children are inefficient transmitters of Covid-19.
151. The overwhelming weight of scientific data suggests that the risk of transmission of the virus from children aged six and below to older people is negligible, and from children between 7 and 12 to older people is small relative to the risk of transmission from people older than 18 to others.
152. In sum, the medical and epidemiological literature has documented conclusively that children face a vanishingly small risk of mortality from Covid-19 infection relative to other risks that children routinely face.

153. Furthermore, the evidence also indicates that – even without masks—children are less efficient at spreading the virus to adults than adults are at spreading the virus to children or each other.
154. There is no high-quality evidence that requiring children to wear masks has any appreciable effect on the likelihood that teachers or other school staff will acquire the Covid-19 virus.
155. On the contrary, empirical evidence from Sweden and elsewhere where masks were not required shows that schools are low-risk environments of disease spread.
156. Covid is unlikely to be fatal to teachers who are vaccinated.
157. New York requires teachers to be vaccinated and are free to seek its alleged protection against serious illness and death.
158. By now, every teacher in America has been offered the vaccine; many were in the first priority group, even above vulnerable older people.
159. In addition to the numerous problems already mentioned, masks can cause a wide range of health problems.
160. These include: acne, scarring, rashes, pain, headaches and protrusion of the ears outward (“mouse ears”).
161. Some of the plaintiffs’ children have suffered from these problems but *all* of the children face the risk of developing these problems in the future if the mandate is not vacated.

MASKS ARE NOT EFFECTIVE IN PREVENTING THE TRANSMISSION OF COVID-19

162. On May 7, 2021, the Centers for Disease Control (CDC) updated its guidance, providing that the primary mechanism for transmission of Covid-19 is through airborne aerosols,

and not, as previously stated, by touching contaminated surfaces or through large respiratory droplets, as also stated during previous periods of the pandemic.

163. A recent University of Florida study capturing air samples within an enclosed automobile cabin occupied by a Covid-positive individual showed that the only culturable Covid-19 virus samples obtained were between 0.25 μ to 0.5 μ in size.
164. Very small particles do not fall by gravity in the same rate that larger particles do and can stay suspended in still air for a long time, even days to weeks.
165. Because these particles stay suspended in concentration in indoor air, very small particles can potentially accumulate and become more concentrated over time indoors if the ventilation is poor.
166. Very small airborne aerosols pose a particularly great risk of exposure and infection because, since they are so small, they easily reach deep into the lung. This explains in part why Covid-19 is so easily spread, and why so little Covid-19 is required for infection.
167. Exposure to airborne aerosols is a function of two primary parameters: concentration and time.
168. For many reasons, surgical and cloth masks are the least desirable way to protect people from very small airborne aerosols.
169. Moreover, masks are not considered PPE since they cannot be sealed and do not meet the provisions of the Occupational Safety and Health Administration (OSHA) Respiratory Protection Standard (RPS), namely 29 CFR 1910.134.

170. Surgical and cloth masks do not effectively protect individuals from exposure to very small airborne aerosols. A device referred to as a respirator is required to provide such protection.
171. Facial coverings are not comparable to respirators. Leakage occurs around the edges of ordinary facial coverings. Thus, ordinary facial coverings do not provide a reliable level of protection against inhalation of very small airborne particles and are not considered respiratory protection.
172. The AIHA, in its September 9, 2020 Guidance Document for Covid-19 noted that the acceptable relative risk reduction methods must be $\geq 90\%$.
173. On information and belief, surgical and cloth masks are only 10% and 5% effective, far below the required 90% level.
174. The effectiveness of ordinary facial coverings falls to zero when there is a 3% or more open area in the edges around the sides of the facial covering.
175. Most over-the-counter ordinary facial coverings including cloth and disposable surgical masks have edge gaps of 10% or more. When adult-sized facial coverings are used by children, edge gaps will usually greatly exceed 10%.
176. Moreover, Bassett's mandate allows exceptions for mask wearing during the day.
177. Indeed, Bassett's mask mandate provides that the children do not need to wear masks when eating, drinking, singing, or playing a wind instrument.
178. Even short breaks (e.g. to eat) expose individuals to Covid-19 aerosols in indoor spaces.
179. There are much better and more efficient ways to reduce the risk of Covid-19 transmission than wearing masks.

180. From an industrial hygiene (i.e., exposure control) standpoint, much better alternatives to controlling exposure are available (i.e., engineering controls of dilution – ventilation with increased fresh air flow) and should be used to minimize exposures as opposed to masks.
181. Mitigation of Covid-19 particles could be immediately achieved by: opening windows and using fans to draw outdoor air into indoor spaces (diluting the concentration of aerosols), setting fresh air dampers to maximum opening on HVAC systems, overriding HVAC energy controls, increasing the number of times indoor air is recycled, installing needlepoint ionization technology to HVAC intake fans, and installing inexpensive ultraviolet germicide devices into HVAC systems.
182. All of the above-referenced techniques are more effective and meet standard industrial hygiene hierarchy of controls (practices) for controlling exposures that have been in place for nearly 100 years.
183. The use of cloth facial coverings and surgical masks do not fit within these basic hierarchy of controls since masks are not PPE and cannot be sealed. There are no OSHA standards for facial coverings (masks) as respiratory protection.
184. The FDA determined that the efficacy of face coverings for reducing or preventing infection from SARS-CoV-2 is not established, and that it would be misleading to state that they are effective in preventing or reducing such infection.
185. The first and only randomized, controlled trial evaluating the impact of mask-wearing on the spread of SARS-CoV-2 in six thousand individuals concluded that there was no statistically significant difference among the masked and unmasked controls sufficient to show that masks are effective in reducing or preventing infection from SARS-CoV-2. Henning Bundgaard et al., Effectiveness of Adding a Mask Recommendation to Other

Public Health Measures to Prevent SARS-CoV-2 Infection in Danish Mask Wearers: A Randomized Controlled Trial: *Annals of Internal Medicine*: Vol 174, No 3, www.acpjournals.org/doi/pdf/10.7326/M20-6817.

186. At all times herein, the Defendants knew, or reasonably should have known, that their conduct violated the Plaintiffs 'clearly established constitutional rights to free speech, liberty, personal security, due process and to a republican form of government.
187. The Defendants acted with intent to violate, or with deliberate or reckless indifference to, the Plaintiffs 'clearly established First, Fourth, Fifth, Ninth and Fourteenth Amendment, Guarantee Clause and statutory rights.
188. At all times relevant herein, the Defendants were acting under color of state law.
189. As a direct result of the Defendants 'conduct, the Plaintiffs have suffered actual damages, attorneys' fees, and costs.

FIRST CAUSE OF ACTION—VIOLATION OF THE FIRST AMENDMENT

190. Defendants, by forcing plaintiffs to wear masks during the school day have violated their First Amendment right to freedom of speech and freedom of association.

SECOND CAUSE OF ACTION—VIOLATION OF PARENTS' RIGHT TO MAKE DECISIONS CONCERNING THE CARE, CUSTODY AND CONTROL OF THEIR CHILDREN

191. Plaintiff parents 'liberty interest in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by law. Almost a hundred years ago in *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923), the United States Supreme Court held that the "liberty" protected by the Due Process Clause includes the right of parents "to control the education of their [children]."

192. “[Indeed,] it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000).

193. The defendants’ mask mandates violate the plaintiff’s parental rights.

THIRD CAUSE OF ACTION—FOURTH AMENDMENT—UNLAWFUL SEIZURE

194. The defendants’ executive orders to wear a mask in public violate the plaintiffs’ rights under the Fourth and Fourteenth Amendments. The defendants’ actions violated the Plaintiffs’ clearly established rights to liberty and personal security as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

195. The requirement of wearing a mask for up to six hours a day is a massive intrusion into the security of persons and their physical integrity, dignity and health. See, *Schmerber v. California*, 384 U. S. 757 (1966).

FOURTH CAUSE OF ACTION—SUBSTANTIVE DUE PROCESS AND NINTH AMENDMENT—VIOLATION OF THE FIFTH, NINTH AND FOURTEENTH AMENDMENTS.

196. Both substantive due process under the Fifth and Fourteenth Amendments and the Ninth Amendment protect fundamental rights not specified in the remainder of the Bill of Rights, which the government may not violate.

197. Requiring healthy children to wear masks six hours a day, five days a week, ten months a year and indefinitely, and for the first time we are aware of in recorded history, without clear scientific proof that such an unprecedented mandate provides the children

themselves with a net health benefit, violates substantive due process and the unenumerated natural rights protected by the Ninth Amendment.

FIFTH CAUSE OF ACTION—GUARANTEE CLAUSE AND DUE PROCESS; FIFTH AND FOURTEENTH AMENDMENTS

198. All of the mask mandates complained of were issued by executive decree and without legislation. Rule by decree is the hallmark of dictatorship and antithetical to democracy. An unprecedented and drastic intervention into the lives of our young people must come, if at all, from the legislative branch of whichever level of government seeks to issue it.
199. Though defendants will no doubt claim that we are in a state of emergency, the state legislature, the school boards and county legislatures are still meeting and are able to consider such proposals.
200. Two separate and distinct provisions in the Constitution protect the right of the people not to be subject to arbitrary decrees issued without the significant procedural and political protections provided by the legislative process, the guarantee of republican government and substantive due process.
201. The Guarantee Clause states: "The United States shall guarantee to every State in this Union a Republican Form of Government. .. " Article IV. James Madison, the chief framer of the Guarantee Clause, defined a republic as follows in Federalist No. 39: "[W]e may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior."

202. Thus, the people, who are sovereign, delegate certain powers to the government by ratifying constitutions and the government may not exercise any greater powers, lest they cease being a republic.
203. In addition to limiting the government to the powers delegated to it by the people in the constitution, Madison also held that separation of powers is essential to republican government: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." Federalist No. 47.
204. The people of the State of New York delegated the legislative power to the Legislature only.
205. The Legislature's delegation to the executive branch of the power to issue directives exceeds that delegation and also destroys the separation of powers and thus violates the Guarantee Clause.
206. Due process has many familiar elements such as notice, an opportunity to be heard and an impartial tribunal. There is, however, another essential element of due process that is more obscure because it rarely needs to be invoked: jurisdiction to issue lawful orders.
207. The Legislature may not delegate its lawmaking powers to the executive branch since that power was not delegated to the Legislature by the People. The People retain that power, subject to a future amendment of the state constitution (which has exactly zero chance of being ratified). Thus, the executive orders as complained of herein, were void ab initio, have no force of law and should be enjoined by this Court.

SIXTH CAUSE OF ACTION VIOLATION OF FEDERAL

PREEMPTION/SUPREMACY CLAUSE

208. Masks are regulated by the FDA when used for a medical purpose such as preventing the spread of communicable disease.
209. None of the currently available face coverings for Covid-19 (ie. surgical and cloth masks), other than NIOSH- approved N95 particulate filtering face-piece respirators (when used in specific settings), is approved or licensed by the federal government; they are authorized under Emergency Use Authorization (“EUA”) only and may not be mandated.
210. None of the currently available face coverings for Covid-19 (ie. surgical and cloth masks), other than NIOSH- approved N95 particulate filtering face-piece respirators (when used in specific settings), have received final approval from the FDA as having been adequately tested to establish safety or effectiveness.
211. Rather, surgical and cloth masks are unapproved products that have been authorized only for emergency use.
212. In fact, the FDA defines them as such and has labeled masks as experimental devices requiring, inter alia, that the person using the unapproved experimental device be advised of his or her right to refuse administration of the product. See 21 U.S.C. § 360bbb-3(e)(1)(A) (“Section 360bbb-3”).
213. Further, the Mask EUA states that the product must not be labeled in such a manner that would misrepresent the product’s intended use; for example, the labeling must not state or imply that the product is intended for antimicrobial or antiviral protection or related uses or is for use such as infection prevention or reduction.

214. The NYSDOH Mask Mandate not only misleads the public by implying that masks can be used for antiviral protection and to stop the spread of COVID-19, but conflicts with the EUA's terms and is preempted under the Supremacy Clause.
215. Scientific consensus on the short-term and long-term medical and psychological impact on the public from large scale forced prolonged use of face coverings does not exist.
216. It is by now well-settled that medical experiments, better known in modern parlance as clinical research, may not be performed on human subjects without the prior, free, and informed consent of the individual.
217. Federal laws and regulations governing the approval and administration of medical products such as vaccines or masks completely preempt any and all contrary or inconsistent laws of the States and/or local governments.
218. The New York State Mask Mandate is patently contrary to United States law, and thus preempted and invalid.
219. Title 21 United States Code, Section 360bbb-3(e)(1)(A)(ii), and regulations and internal protocols of the United States Food and Drug Administration promulgated thereunder, provide in relevant part that all individuals to whom an investigational product is to be administered under an Emergency Use Authorization be informed "of the option to accept or refuse administration of the product."
220. Because the masks in this mandate are investigational products, only permitted for use under an Emergency Use Authorization, the laws and regulations of the United States prohibit state and local governments from requiring them for any person who does not consent to their administration, including plaintiffs.
221. Plaintiffs do not consent to being required to wear masks.

222. Title 21, Part 50 of the Code of Federal Regulations governs the protection of human subjects in the conduct of all clinical investigations regulated by the U.S. Food and Drug Administration.
223. 21 C.F.R. § 50.20 provides that, “[e]xcept as provided in §§ 50.23 and 50.24, no investigator may involve a human being as a subject in research covered by these regulations unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative.”
224. Under the EUA, the mask remains in the clinical investigation stage.
225. Accordingly, the New York State Mask Mandate also violates federal law and regulations governing the administration of experimental medicine and is thus preempted.
226. Defendants’ mask mandates violate plaintiff parents’ right to protect their children from an unhealthy, dangerous, ineffective learning environment and forced medical experiments.
227. As a direct result of the Defendants’ conduct, the Plaintiffs have suffered actual damages, attorneys’ fees, and costs.
228. The Court should issue full declaratory and injunctive relief to halt the unconstitutional acts of the defendants and to prevent any further damage to the People of New York State.

WHEREFORE, the plaintiffs respectfully request that the Court:

1. Assume jurisdiction of this action;
2. Enter judgment against the Defendants and in favor of the Plaintiffs;

3. Enter a declaratory judgment that any and all of the defendants 'mask mandates are unconstitutional;
4. Enter a declaratory judgment that the actions of the defendants described herein infringe on the rights of the plaintiffs in violation of the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution, Guarantee Clause and other federal laws and regulations and that all such orders are unconstitutional, null and void.
5. Issue preliminary and permanent injunctions enjoining the defendants and their officers, agents, and employees from administration and enforcement of the orders alleged herein to violate the United States Constitution.
6. Award each Plaintiff compensatory damages, including prejudgment interest on any out of pocket damages;
7. Impose punitive damages against each individual defendant;
8. Award Plaintiffs all costs and disbursements incurred in the prosecution of this action, including reasonable attorneys' fees under 42 U.S.C. §1988; and
9. Grant such other and further relief as may be proper.

Dated: _____, 2022
[CITY AND STATE]

[PRO SE PLAINTIFF OR ATTORNEY]
[ADDRESS, PHONE AND EMAIL]