

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

RICHARD SOUTHWELL; JONATHAN BARRETT; :
JULIE AND PAUL MCKENNEY; :
AIMEE SAYERS; MELISSA FITZGERALD; :
THOMAS BOYLAN; JESSICA LEBLANC; :
CAROLYN MORETTI; AMY MILLER; :
BILL CONNELL, JR; EDWARD QUATTRINI, :
ORLANDO BRAXTON; DANIELLE FERGUSON; :
and CHERYL AND GREATHOUSE :

Plaintiffs; :

vs. :

DANIEL J. MCKEE, in his official capacity as the :
Governor of the State of Rhode Island :

Defendant. :

C.A. No. PC2021-

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This complaint seeks an order from this Court in the nature of a Declaratory Judgment against the Defendant, Governor Daniel J. McKee’s Executive Orders numbered 21-86 and 21-87 as *ultra vires* and void; and injunctive relief prohibiting the enforcement of those orders and any state action taken pursuant thereto.

Many of the issues in this case raise other potential legal issues. Separation of powers, non-delegation and fundamental rights arguments are all implicated as a result of the Governor taking unto himself the power to legislate health and safety issues to the detriment of individual freedoms. Such questions may be avoided, however, as the Governor’s actions in this case are so clearly in violation of the State Constitution and General Laws as to obviate the need to address those concerns.

PARTIES

1. Plaintiff, Richard Southwell, is a resident of Gloucester, Rhode Island. The reasons for his bringing this lawsuit are as follows:

I have a 12 year old son - 7th grader. Last year we decided to homeschool our then 6th grader because of concerns that we had about learning loss and general quality of life in the school building due to Covid-19 restrictions. For 2021-22, mask mandates were the issue in deciding whether to re-enroll our son in public school. My wife and I feel very strongly that wearing a mask for prolonged periods of time is unhealthy for our son. To us, the brain's constant need for oxygen is pretty compelling science and we are puzzled as to why it is being ignored. We attended both Foster-Glocester Regional and Gloucester school committee meetings to see how face coverings were going to be handled. We felt good enough after the August 23rd Gloucester meeting to re-enroll our son and so we did. He was absolutely thrilled to be going back to school with his friends and was looking forward to his first year at Ponaganset Middle School after staying home for 6th grade. When the state of Rhode Island stepped in with its universal masking mandate, we withdrew our son from PMS and notified FG Regional of our intent to homeschool for the 2021-22 school year. It was very difficult to explain the decision to our son. He's aware that the world is kind of a mess right now and he took the news well. The disappointment was written all over his face though. All he wants is to go back to school with his friends and live a normal, 12 year old life. Not a big ask at all. How many more school years are we going to ruin for him and his classmates?

2. Plaintiff, Jonathan Barrett, is a resident of Gloucester, Rhode Island. The reasons for his bringing this lawsuit are as follows:

I have witnessed the deterioration and decline in my daughter's interest in going to school and doing her best work while these mask mandates have been occurring. This is the third school year in a row that has been interrupted by pandemic. Distance learning, while not optimal, at least allowed her to breathe freely. Still, the loneliness and isolation of distance learning took an emotional toll on my daughter that was observable in attitude and increased moodiness confirmed by her pediatrician as being beyond what would be expected for her age and maturity. My daughter, age 11 and in 6th grade, has always been bright and curious. From the time she hit preschool, she was the first to run over to a new kid in class and invite them to play. Vivacious and charming, witty yet diplomatic, she excelled in school and always participated in extracurricular activities such our local Talent Show, Student Council, Girl Scouts, and many more. This is the kind of kid who would beg to go school shopping for new

notebooks etc. barely a week after school let out for the summer. When the pandemic first hit, she adapted and took things in stride. The first school year was challenging because of distance learning, but she bounced back pretty quickly once summer 2020 hit and she was able to visit her friends in person. There were also group video calls and many giggles among her pals as they planned outdoor activities, etc. The second school year (Grade 5) she attended in-person, wearing a mask. She never (rarely) saw her teacher's face, and experienced some difficulty communicating with her friends and her teacher through the required masking. With so much still unknown about the virus and how it was transmitted, she was resilient and mostly happy to be back in school despite the challenges of never leaving the classroom or seeing any of her other friends during school hours. Over the course of the year, I could see her interest in school waning. Although still doing exceedingly well in school, her love of learning was beginning to wane. While still scoring above grade level in the majority of areas, she had lost her excitement and enthusiasm for school. The toll of isolation started impacting her friendships, and slowly she started drawing her circle of friends smaller. She started to lose her interest in people. Things started getting better for her during summer of 2021. She was aware that the General Assembly limited the Governor's State of Emergency and was cheered by it. While now in the habit of being somewhat withdrawn, she again started to enjoy visiting with friends and new places. Things were looking up! She was less excited to go shopping for new school supplies than in prior years, this time waiting over two weeks before asking for new notebooks etc., but we were making forward progress and learning about her new school building now that she was entering 6th grade. Then came the new Executive Order from Gov. Dan McKee specific to the Delta Variant, and subsequent mask mandates which, in her view, has ruined things again. She's asking why it's OK for her to visit with her friends and have an ice cream at a restaurant without a mask, but they both need to be masked up when sitting together at school. She feels that some of her teachers treat her and other students like proper wearing of a mask is more important than whatever lesson it is that is supposed to be taught. She struggles to breathe through the mask, and it's distracting her from focusing on the material at school. She'd like to experience Band, but is anxious about trying to play a wind instrument through a mask she already struggles to breathe through while at rest. She is growing more and more frustrated, angry, moody, and withdrawn about wearing a mask based on a State of Emergency that she knows wasn't supposed to be extended because of the General Assembly's vote to end it. She is again losing her excitement and enthusiasm for school. Again, she's becoming more withdrawn from her friends and not wanting to participate in extracurricular activities simply because she doesn't want to wear a mask for even more hours of the day. She is willing to miss her first Dance, a rite of passage, simply because she doesn't want to wear a mask for more hours in the day. Please, help my little girl by ending this and granting the injunction. This is her third school year that's been impacted, and it needs to stop. We need to find a way to live with this virus, and the way forward is not for little kids to have impaired breathing for 8 hours a day 5 days a week. It's not fair that the brunt of the impact of Gov. McKee's decision is borne

by our children having to wear a mask for hours on end. She lives for the weekend when she can relax without a mask. It's hard to get her out of the house to go shopping or visit a museum because she doesn't want to wear a mask. Even the lure of a new outfit isn't compelling enough to make her want to go out. This has all gone way too far. On her 2nd day of school, my daughter was subjected to a mask tyrant teacher who lined all children up outside in the hallway and subjected them to a "mask inspection." This teacher, who was confirmed by her school's principal to have no medical certification, capriciously deemed my daughter's mask "insufficient." As a result, my daughter was named, shamed, singled out, traumatized, and embarrassed and forced to change her mask to a school-supplied one meant for an adult, or else she was denied entry into the classroom. This kind of behavior is intolerable, it goes directly against RIDE's guidance, and it is the catalyst for the decision to join this lawsuit.

3. Plaintiffs, Julie and Paul McKenney are residents of the Town of Gloucester. The reasons for their bringing this lawsuit are as follows:

We have two children. Our daughter began sixth grade, and our son began fourth grade this year. We feel strongly that the choice for our children to wear a facemask or not, should be a family decision, not a mandate. We believe any policies made in our school systems should be least restrictive for the benefit of our children's mental health and physical well-being. We believe the social and emotional effects covid restrictions (masking, socially distancing) have had on our children far outweigh any health risks from the virus itself. Over the past 19 months our children have been required to wear a mask for over 6 hours a day while in school. Our son, who is soft spoken, has found it difficult to be heard and understood through the mask. In the beginning he would attempt to repeat himself in hopes of being heard but mostly failed. He began to answer questions less often as the weeks turned into months, and the months into years – what was the point in trying to participate when no one can hear him anyways and trying to be heard made him feel embarrassed. The focus the school staff has on the masks and the staffs never-ending reminders of mask wearing has adversely affected our children's mental health and overall confidence. During snack time they are told to "hurry up", "face forward", "not to talk" – all making our children feel like they are doing something wrong, that they are going to "get in trouble". Our children have reported that it is difficult to breathe in the masks while sitting and nearly impossible while playing sports. We believe in the public education system; we believe it is the best place for our children to learn and grow but not with all these restrictions. We need the leaders of our schools and the leaders of Rhode Island to stand up for our children! We need to get these kids back to the business of being educated in a comfortable, NORMAL environment.

4. Plaintiff, Aimee Sayers, is a resident of Gloucester, Rhode Island. The reasons for her bringing this lawsuit are as follows:

We have a 4 year old and 10 year old. We decided to homeschool for the 2020-2021 school year and continue to do so. We made this decision as a direct result of the covid-19 mitigation policies implemented in our schools. We do not support these policies for a virus with a 99% survival rate. Children are not a vulnerable group and adults in schools have had the opportunity to be vaccinated. Our child prefers to be in public school with her friends. However, we as parents draw the line. I will not send my child to an establishment being run like a prison. I don't understand why we are basically back at square one with restrictions in schools. I suspect it has something to do with covid relief funding and the mass hysteria that the media has created. The impact that this has had on our family is as follows. We are homeschooling our oldest. We will not send our youngest to preschool, as they have implemented mask wearing for students, which was not a requirement for them last year. We have incurred financial cost for supplies, curriculum and instructors associated with homeschooling. The social emotional impact has also been profound for all in our household. As I stated my oldest would prefer to go back to school. She frequently asks if she thinks we'll be able to go back for middle school. I tell her the truth, "I don't know." I would love to say "yes" but I have little faith that things will change soon, if at all. My youngest is afraid of meeting new people. We have not taken him out to stores or events frequently because of the mask requirements. I am constantly frustrated with the insanity that is going on around me. It makes me sick to think the same people that are suggesting we should all wear masks outside are setting policy for the masses. We are in year two of two weeks to flatten the curve. Not a single pediatric death in the state and we are continuing to place restrictions on the least affected group.

5. Plaintiff, Melissa Fitzgerald, is a resident of Gloucester, Rhode Island. The reasons for her bringing this lawsuit are as follows:

My child is 10 years old and in grade 5. My child has frequently complained of headaches and being "exhausted", after school, which never happened before the mask wearing. She never has this problem on the weekends when we are mask free wherever we go. This is a huge red flag to me. She has lost her desire to be in school and be the happy student she was until last year. Her grades have gone down, her attention span in school has been lackluster and the excitement and drive that she had previously, is just not there anymore. When she should be most involved and active at school, she is sitting in a classroom all day long with a mask on and having "recorded specials". This is not even including the bus ride to and from school. (IN TOTAL CLOSE TO 8 HOURS-only breaks are snack-approx.5-10 minutes, lunch-approx. 20 minutes, and recess-if you aren't encouraged to wear a mask during that as well). I often hear that she doesn't understand why she can go to a restaurant and sit close to someone not wearing a mask while eating, drinking, laughing and talking but can't do it in school with a small group of students. I wish I had a good answer for her but there just isn't a logical explanation. One of my biggest concerns is the long term effects of these

masks. How will this affect her health, her mental well-being and even her decision making and critical thinking when she doesn't have a choice? It hurts me deeply to watch my child have these issues and not be able to help her. As a parent, it is my job to protect her and help her be the best she can be. When I can't do that because freedoms are being taken away it makes me angry, depressed, feel helpless and just want to cry for her future.

6. Plaintiff, Thomas Boylan, is a resident of Gloucester, Rhode Island. The reasons for his bringing this lawsuit are as follows:

My name is Thomas Boylan and I live in Chepachet with my wife and our daughter. I grew up in Foster, my wife in Gloucester and I graduated from Ponaganset. We have both lived in Foster-Glocester for the majority of our lives. Layla is now in the fifth grade at West Gloucester Elementary School. Her 6th year technically with kindergarten. This year is especially important because it's her last year in elementary school. She's been very excited to go. We honestly didn't believe there would be a mask mandate again this year after first hearing the governor say it himself and then after appearing at the school committee meeting where it had been voted on that we would add the "conscientious" exemption to the reopening strategy. It was devastating to tell Layla that she would have to wear it again due to the executive order. For us, our daughter is still young enough to where she's polite, she's sweet and she will sit there and do what she's told. When asked, she replies "I hate the masks. They're itchy, they're annoying and I can't breathe cus it's too hot." The normal reasons why anyone would not want to wear a mask. Layla experiences some mild cases of noticeable depression and apprehension for attending class and having to abide by all of the restrictions. She's definitely not getting the best possible experience at school that she deserves."

7. Plaintiff, Jessica LeBlanc, is a resident of Smithfield, RI. The reasons for her bringing this lawsuit are as follows:

Our child was always very happy and excited to go to school. She enjoyed her teachers and spending time with her friends. The classroom allowed for independence to learn and grow. She truly was a typical happy child. When the pandemic hit understandably things changed moving to remote learning there were challenges as one would expect. Classwork became harder to understand and complete, her personal connections were severed and exchanged for brief interactions on video. When it was announced that the children would be returning to in person learning again our child was excited once more. In the beginning it seemed as though a bit of normalcy would return. Our child would once again be able to connect with her peers and teachers. It wasn't long before we began to notice changes in her disposition. She began to make excuses to not go to school when generally it was hard to keep her from it. She was clearly more

anxious, triggers that once would only get a mild reaction like bugs would cause full on panic. Clear signs of depression were setting in like no longer wanting to do things she once enjoyed, lethargy, etc. We did our best to try and understand what was bothering her and after many conversations it seemed as school was a driving factor. Having to wear a mask all day, not being able to converse with who she wanted as she was not allowed to turn around. Barely having time to eat etc. We spoke to her teacher and they agreed to move her desk closer to some friends, but only a little. Our child who once enjoyed her teachers now fears them. Whenever we tell her to reach out if she is having issues understanding or breathing with the mask she responds with "I'll get in trouble". I fear that once this is over she like many other children will require therapy due to the fear these last two years have instilled in our youth. We are not naive to the need to take precautions to protect everyone, but the schools have taken these precautions to extreme levels hiding behind the shield of mandates even though many were leaning that way prior. The cure is worse than the disease due to the lasting impacts the actions adults in authority have on this generation. The decisions made are clearly not for the benefits of the children or data but rather other factors such as money, personal biases, and need for control.

8. Plaintiff, Carolyn Moretti, is a resident of Smithfield, RI. The reasons for her bringing this lawsuit are as follows:

My grandchildren have struggled wearing masks. They have both had difficulty breathing wearing them in school and in sports. My granddaughter, age 11, struggles with anxiety and Covid and masks have just exacerbated her issues. She already had Covid in January 2021 so questions why she still would be at risk. She also knows her symptoms of Covid were very minimal and feels this is a huge overreaction. My grandson, age 10, also likely had Covid at the same time, if it is as contagious as they say. He experienced no symptoms of Covid, however. He experiences allergies regularly with nasal congestion and has increased trouble breathing when needing to wear a mask. He also has suffered from dermatitis on his face, as a result, including eczema and impetigo, as these masks are dirty and being worn all day. He also has a minor speech issue which has appeared to worsen since Covid and has trouble with "th" and "s". Masks are harmful as he cannot see teachers lips and teeth involved with making these letters. As the masks also cause him to sound more mumbled in general, these issues cannot be picked up on as quickly and dealt with by teachers. Children are not getting this disease and when they are, there are very minimal symptoms. To put children through all of this torture is unnecessary. There are other risks to wearing masks that are not being measured or studied, such as those I mentioned, that I feel are even more of a risk than Covid to children. Children need oxygen for healthy brain development. As a retired nurse of almost 40 years, we keep hearing that we are "following the science".

9. Plaintiff, Amy Miller, is a resident of Warwick, RI. The reasons for her bringing this lawsuit are as follows:

I have two children, a freshman and a junior, that attend Ponaganset High School, they are out of district students (we live in Warwick). My freshman has allergy induced asthma, this is actually the worst time of year for him, and wearing a mask for 6.5 hours while at school and 2 hours for the bus ride (1 hour to school and 1 hour home) is detrimental to his health. Although my junior does not *yet* have any diagnosed health issues, it is absolute insanity for her or any kids for that matter to be masked for 8.5 hours a day, 1/3 of their day is spent breathing in their own carbon dioxide.

10. Plaintiff, Bill Connell, Jr, is a resident of Smithfield, RI. The reasons for his bringing this lawsuit are as follows:

“I have 2 girls (10 and 6) in 5th and 1st grade. Last year, these kids took the precautions and wore these masks all year. The reason given was around the teachers and their inability to get the vaccine. Here we are, in a time where those vaccines are readily available, and our children still are being forced to wear these masks. Of course, the teachers are nowhere to be found to stand up for these kids. After bearing the brunt of this last year, now our kids are being asked to do this again all in the name of funding. Our personal story is around the ability to breathe. My little one has the hardest time and has told us time and again that she cannot breathe in the mask and that she has to "take little sips" of her water to allow for some relief. My oldest had a teacher last year that was flexible with the mask break and did not struggle as much. This looks to be changing this year. On their first day, both of my girls broke down in tears as soon as they got into the car. They were told their masks were "not approved" and that they needed to go to the principal to get new masks. Later in the day, my oldest was not able to breathe and pulled the mask down for a few moments only to get spoken to in front of her peers embarrassing her.”

11. Plaintiff, Edward Quattrini is a resident of Smithfield, RI. The reasons for his bringing this lawsuit are as follows:

My oldest is 12 and has severe allergies; he would come home with facial rashes and severe chapped lips. His mask would also be filled with boogers because they would not let him remove or change his mask while in school. We ended up taking him to the pediatrician for cream for his face and lips. He would also complain of always being tired when he came home from school, I questioned the carbon dioxide levels but had no way to test what they were. I have 9 year old twins a boy and a girl. My son would be fatigued and his anxiety and depression got so bad we send him to counseling for his anxiety. He didn't want to return to

school this year if he was forced to wear a mask, he also wanted to know why he couldn't play with his friends or eat lunch with them. He struggled when he was forced to quarantine when the kid who tested positive wasn't actually sick. My daughter complained of fatigue and had daily headaches. She would also get facial rashes as well. This has been extremely hard on our family because my 9 year old started having tantrums and his anxiety is bad, my wife doesn't like making waves but I feel that they don't have to wear these masks so we have had arguments about this. We also have to make sure that my son always has a safe place to retreat to because his behavior and depression got that bad.

12. Plaintiff, Orlando Braxton, is resident of Glocester, RI. The reasons for his bringing this lawsuit are as follows:

We have four children:

Age 14/Grade 9, Age 10/Grade 5, Age 9/Grade 4, Age 7/Grade 2

Last school year the kids wore masks throughout the whole year. Our 14 year old had the toughest time. He started out the year with the hybrid model to decrease the amount of time in school with a mask. But he had trouble keeping his grades up so he went back to school in person full time. We heard many stories of the teachers yelling at the students to stay 6 feet apart when they approached each other to talk. The assistant principal even walked around with a pool noodle to enforce this. They would be told to put their mask back up if they put it down for a break to get some air or if they tried to take a drink of water. By the end of the year he became depressed and made it clear he was not to return to school if masks were required. Our 9 year old loves soccer and they would play outside but would not be allowed to take their mask down. She would tell me that she would get out of breath and by the end of the year she didn't want to play soccer at recess anymore she would just sit. They would not be allowed to talk to each other during lunch. They would have to look straight ahead and the teachers would put on a movie for them to watch while they ate. Overall, our children did not enjoy their time at school last year. Aside from them hating to wear masks, most days they would come home with wet dirty masks, either from sweat, water and food. This is not sanitary or safe. We were excited to send our children to school this year when we were assured that it would be the parent's choice to send them with a mask. They had a great mask free summer and we traveled quite a bit. We contracted Covid as a family back in May and we all recovered without issues. Upon the governor's mask mandate we pulled them all from school and will be homeschooling this year. We will not send them back until they are able to be mask free and live a normal life.

13. Plaintiff, Danielle Ferguson, is a resident of North Smithfield, RI. The reasons for his bringing this lawsuit are as follows:

I have a 15-year-old son in North Smithfield High School. Last year, my family and I, amongst every American in the United States, did what was necessary to get through the year 2020 with the understanding that what we were doing then, would help us to discover more about Covid 19, stop the spread and give everyone an opportunity to keep their families safe. When it comes to my son, he and his group of friends have attended numerous large gatherings including sleepovers with 10+ kids and nobody has had to be quarantined for doing so. The kids, as well as everyone else in our State have been able to go to restaurants, concert venues, parties, clubs, sports events, Walmart, etc., where there are large groupings of people in every one of those settings, and everyone is healthy. They go to school, and they have to mask up. They leave school and hang out with each other, sometimes more than 20 kids at a time and everyone is healthy. They go to school, and they have to mask up. They eat lunch at school and can only have 4 kids to a school lunch table. They frequent a local restaurant they like to gather at after school without a mask on, with a group of 10+ kids shoulder to shoulder, in the same setting with the general public and they are all healthy. They go to school, and they have to mask up. The point is, that the vulnerable in every household has the opportunity to get vaccinated and wear a mask if they choose to. If the vulnerable person in your house is vaccinated and took the precautions necessary to keep themselves safe; because we are all responsible for ourselves and our children, everyone will remain healthy. Instead, our kids are taking on the responsibility of the vulnerable and themselves. That makes no sense. We don't raise a child teaching them to be responsible for themselves and everyone else. This is not to be confused with the practice of teaching a child to care about other people in general and always help those in need. This is sending a mixed message and undermining parents who are trying to teach our children responsibility. The lesson is, take care of yourself, you are responsible for yourself, and you are responsible for your children, until they are old enough to take care of themselves. That's the lesson. Growing up, my mother always told me that when I become a parent, that eating dinner together as a family every night was one of the most important things I could do for my kids and myself. The reason being, that if there were any changes in my children, because I speak to them every night and let them weigh in on the thoughts of the day whether they be good or bad, if anything changed, I'd know right away. The reason I am so passionate about the mask mandate being removed is because sadly, I have seen that change. Praise to my mother. That has been one of the most significant tips and practices in my life as a parent, but now what do I do? A boy, whom I'm grooming to be a man someday who will inevitably live his life without me, who has goals of going to college, who enjoys his school age years with his friends, has dreams of playing basketball all year round, sets goals for himself regularly, a boy who loves his friends, harvests strong relations with responsible people and a boy who typically has a positive outlook on life, is now experiencing an attitude change that I have not seen until now. The first day of school, I saw that change. He couldn't believe the adjustments that had been made in the school with regards to how the teachers engaged students. He had anticipated some changes, but last year we knew much less about Covid 19, and he assumed this year would be similar to last year. He

was wrong. The overall moral as the week went on, was low. He explained that the amount of time exerted by the teachers during an entire class period disciplining students for not wearing their masks correctly, or not at all, was astounding. As a note, mask wearing is never done correctly by most kids and this is widely known, but here we are. The masks in a school setting are not protecting anyone. How could this year be any different? It was. It was no longer a learning environment, but rather, without exaggeration, military school. The teachers stand outside their classrooms waiting for a student to take their mask down below their nose, students frequently sent down to the principal's office, including my own son on a weekly basis since he has started school. He's a good kid. I'm biased, I know, but he actually is. He's a respectful person but doesn't feel he's getting the same respect in return. It's like being guilty before being proven innocent, even though it's supposed to be the other way around. I am hearing things I have never heard out of his mouth before which include, "I don't even want to get out of your car this morning" or "Can we just not go tomorrow and have a day off?" He literally says, "I hate school & I don't want to go back if it's going to be like this". Now he's asking me questions about how low of a grade can you get before they no longer accept you into college. During the week he seems unhappy, less tolerable and moody, which is not typical of him. Thank God for weekends. I'm being told that he and some of the other boys are being threatened with sports being taken away from them to get them to comply. If I am not mistaken, that is against school laws to take sports away from any child. They know how much sports mean to them, so they use this as ammunition to gain compliance. The stress he feels is written all over his face. He gets headaches almost daily and he's always telling me he's lightheaded. This happened last year, but last year if I'm being honest, I told him to wear the mask below his nose whenever he could. I cannot have him being sick in school every day from a mask that is supposedly preventing him from getting sick. That is literally exchanging one problem for another. He did this last year and the teachers were much more lenient, and many said nothing. This year, he can't get a break without the mask on. I can see this for myself. I cannot let this go on.

14. Plaintiffs, Cheryl and Zachary Greathouse, are residents of the Town of Gloucester. The reasons for their bringing this lawsuit are as follows:

We are te grandmother and father of a boy who attends West Gloucester school. He complained of having difficulty breathing while wearing a mask and always feeling hot, sweaty and uncomfortable. The mask became wet as the day progressed. He thought that wearing the used wet mask 6 hours a day was unhealthy for him while being aware of the lack of oxygen and the toxic intake of carbon dioxide he had to breathe every day in school. He sometimes got headaches and wasn't able to focus because of the distraction of the mask. The only time he was able to remove the mask was when he was eating. During this time if he chose to or had to speak he had to put the mask back on even though there was sufficient space between students and the teacher. Wearing of the masks

interfered in his ability to hear and sometimes understand the lessons being taught. Ethan always looked forward to going to school although during this mask mandate he has lost interest and expresses daily that he doesn't want to go to school.

15. Defendant Daniel J. McKee is the Governor of the State of Rhode Island and is sued in his official capacity.

STATEMENT OF FACTS

A. HISTORY OF EXECUTIVE ORDERS

16. On March 9, 2020, then Governor Gina Raimondo issued Executive Order 20-02, declaring a state of emergency based upon the World Health Organization's designation of the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern. (Exh. A).
17. The legal authorization cited by Governor Raimondo for her emergency declaration was Article IX of the Rhode Island Constitution, and Title 30, chapter 15 of the Rhode Island General Laws (the "Rhode Island Emergency Management Act", or RIEMA).
18. Through July 2, 2021, Governor Raimondo, and her successor, Governor Daniel McKee, have issued one hundred and seventy-eight executive orders relating to COVID-19, all based upon the initial Executive Order 20-02 from March 9, 2020.
19. On July 6, 2021, the General Assembly passed legislative bill 2021-H 6122Aaa ("Appropriations Act") which contained Article 3, Section 3, amending R.I. Gen Laws § 30-15-9. (Exh. B)
20. By that amendment, the General Assembly terminated the power of the Governor to issue executive orders related to COVID-19.
21. Pursuant to that amendment, Governor McKee issued executive order 21-76, terminating all outstanding executive orders related to COVID-19 on July 6, 2021. (Exh. C)

22. The executive orders declaring a state of emergency related to COVID-19 began on March 9, 2020, and lasted until July 6, 2021, a period of 487 days.
23. On August 19, 2021, Governor McKee issued Executive Orders 21-86 and 21-27. (Exhs. D & E) As authority for both orders, the Governor cited Article IX of the Rhode Island Constitution and the Rhode Island General Laws, including, but not limited to, Title 30, Chapter 15, and Title 23, Chapter 8.
24. Executive Order 21-86 purports to address the “Delta Variant” of COVID-19: “A new state of emergency is declared for the State of Rhode Island due to the dangers to health and life posed by the Delta Variant and other emerging variants and the state disaster emergency plan is activated to deal with this specific threat.”
25. Executive Order 21-87, requires public schools in the state “to abide by a universal indoor masking protocol developed by the Rhode Island Department of Health (RIDOH). The RIDOH protocol shall require universal indoor masking by all students (age 2 and older), staff, teachers, and visitors to K-12 schools.”
26. RIDOH has developed a protocol requiring all public school students to wear a mask “when entering and while within” school, with the only exemption being for medical reasons based upon a disability. (Exh. F)

B. MASKING IN PUBLIC SCHOOLS

27. When Governor Raimondo declared the state of emergency in March of 2020, she also closed all public and private schools for the remainder of the school year through June of 2020.
28. When schools opened in September of 2020, various mitigation measures were required involving cleaning, ventilation, testing, quarantining and the wearing of face coverings.

Also, in many circumstances students were taught by distance learning and not allowed to attend in person classes.

29. On June 29, 2021, the Rhode Island Department of Education (RIDE), in conjunction with the RIDOH and the Governor, issued a press release, announcing back to school guidance for the coming school year in September, and well as for summer school activities. (Exh. G)
30. As part of this guidance, RIDE required local school districts to adopt a back to school plan, which included a section on masks. As was stated to schools:

The LEA Back-to-School Planning Template along with a substantially approvable LEA ESSER III Funding Application are the two required components for LEAs to receive their ESSER III allocation from RIDE, and although neither requires the adoption of a universal masking policy, assurances are required that the LEA will: “Inform students, staff, and visitors of the recommendation for mask use indoors regardless of vaccination status, and in crowded outdoor settings for individuals who are not fully vaccinated.”

31. As part of its guidance, RIDE made clear to local school districts that the decision to mandate masks was a local concern, and that RIDE could not and would not require school districts to adopt a mandatory mask policy.
32. As a result of this guidance from RIDE, many school districts chose to adopt a policy of “strongly recommending” but not mandating masks.
33. For example, the Gloucester School Committee adopted a policy at its August 10, 2021 public meeting, strongly recommending but not mandating masks be worn in school when it reopened.
34. Throughout the summer of 2021, students were allowed to attend summer school activities without the necessity of wearing a mask.

35. Since May of 2021, the Governor lifted any mandate on the operation of a business requiring masks. As of today, no person is required to wear a mask in any restaurant, retail establishment or entertainment venue.
36. Upon the expiration of the prior executive order 20-02 declaring a state of emergency, Governor McKee has made many public statements that he did not believe he had the power or any reason to issue another emergency order based upon the COVID-19 pandemic.
37. Notwithstanding these public statements, on August 19, 2021 issued executive order 21-86, declaring a new state of emergency based upon the “Delta Variant”
38. In his executive order, the Governor references a number of factual assertions in the “WHEREAS” clauses, such as declaring that the Delta Variant is the dominant strand of SARS CoV-2; that it “may have” viral loads and may be more contagious than the “original” strain of SARS-Cov-2; and that community transmission, new cases, hospitalizations, and long-term care facilities have seen increases in infections of COVID-19 without specifically stating that these increases are due to the Delta Variant.
39. The Governor also references modeling data from RIDOH suggesting that by early September, the number of people in RI hospitals will exceed hospital capacity.
40. The Governor claims that Rhode Island is seeing more cases of children getting COVID-19, without stating whether those children are having adverse reaction to the disease.
41. The Governor states that “modeling team of statisticians and public health professionals reports that, based on its statistical analysis, without continued and improved mitigation measures, the Delta Variant may cause an increase in the rate of deaths by the end of September 2021.”

42. The Governor makes these assertions in his executive order without providing any evidence to the public of this modeling or other health data he purports to rely upon.
43. In fact, since the beginning of March 2020, no child under the age of 18 has died of COVID-19 in the State of Rhode Island.
44. In his Executive Order 21-87, the Governor states that the American Association of Pediatrics (AAP) and the Centers for Disease Control (CDC), recommend universal indoor masking of all children attending schools.
45. Based upon these recommendations only, the Governor issued his executive order mandating masks in all public schools.

C. THE SCIENCE OF MASKING CHILDREN IN SCHOOLS

46. As evidence to support the Executive Orders in this case, the Governor's office cited three sets of material: CDC guidance, AAP recommendation; and RI COVID data. None of these materials presents evidence for the efficacy of masking children in school, or the potential harm caused by doing so.
47. In a letter to school districts dated August 18, 2021, the Director of Health for the Rhode Island Department of Health asked districts to adopt a mandatory mask policy. (Exh. H)

She cites two authorities:

- a. Lindsley WG, Derk RC, Coyle JP, et al. Efficacy of Portable Air Cleaners and Masking for Reducing Indoor Exposure to Simulated Exhaled SARS-CoV-2 Aerosols — United States, 2021. This is not a study on whether masks work in a school setting. It used manikins which remained immobile in a conference room. From the study:

“The findings in this report are subject to at least five limitations. First, the dispersion of aerosols in a room depends upon air currents, which are unique to each setting. In this study, the conference room air was well mixed, which helped transport aerosols to the air cleaners. In rooms with poor air mixing and potential stagnation zones, air cleaners might be less effective. Airflow patterns in real-world settings such as classrooms will vary among buildings and rooms, and

rooms of different dimensions and with different ventilation rates will also have different airflow patterns. Second, the aerosol source manikin in this study was kept in one fixed location. In reality, potentially infectious occupants could be anywhere in the room and might move around the room occasionally. Third, this study only used one source manikin and three receiver manikins; additional sources and receivers could change the dynamics of aerosol dispersion within a room. Fourth, the study was limited to aerosol particles of 0.3 μm to 3 μm in size, which are small enough to remain airborne for an extended time but large enough to carry pathogens. However, particles outside this size range would behave differently. Finally, the study only assessed aerosol exposure; it did not directly examine disease transmission. Although the study provides useful information about the dynamics of respiratory aerosol particles and the effects of HEPA air cleaners and universal masking, many other factors are also important for disease transmission, including the amount of virus in the particles, how long the virus survives in air, and the vaccination status of the room occupants.”

- b. The other reference is to the CDC website:
<https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html> That page admits there are no studies about mask effectiveness in schools:

“Human Studies of Masking and SARS-CoV-2 Transmission Data regarding the “real-world” effectiveness of community masking are limited to observational and epidemiological studies.”

Basically, unscientific anecdotal stories - “observational”; and studies that “investigate the factors that determine the presence or absence of diseases and disorders, how many people have a disease or disorder, if those numbers are changing, and how the disorder affects our society and our economy” - “epidemiology”. These are not traditional peer-reviewed double blind studies. None studies masks on children in schools.

48. One study cited by the CDC involved a Facebook survey by Justin Lessler and cites its own limitations:

However, much remains unknown. We were unable to measure the risk posed by in-person schooling to the students themselves, nor were we able to specifically assess how different policies affect teachers and other school staff. . . This study also provides limited insight into the mechanisms by which in-person schooling increases risk, and it remains possible that classroom transmission plays a minor role and other school-related activities drive risk.

This study has limitations. Measures of association between COVID-19 outcomes and key exposures may be biased if confounding factors were not fully accounted for. Though we adjust for several county-level measures of socioeconomic status, these data were not available at the individual level and are known to be associated with COVID-19 risk and attitudes about in-person schooling. Analyses stratified on urbanization, background COVID-19 risk, and propensity for in-person schooling (table S5) did not reveal substantial sensitivity to the levels of factors investigated, nor did examining alternative measures of individual and household COVID-19 occurrence (figs. S20 to S22), which alleviates some of these concerns. **Still, more formal studies that span schools with multiple policies and approaches would enhance insights into these questions.**

Additionally, **cross-sectional internet-based surveys have limitations and are subject to response biases.** Although results are qualitatively consistent across COVID-19 outcomes [symptoms-based, test-based, and among those tested, self-report has numerous limitations—for example, we cannot robustly assess asymptomatic spread. We were also unable to evaluate compliance with or investment in reported mitigation measures, and there is potential for mitigation measures to be reported inaccurately on the survey. Survey respondents may not be representative of the full US population, and although survey weights help account for nonresponse and coverage biases, weights calculated on the basis of the Facebook user base were adjusted for representativeness of the wider population on the basis of only age and gender—thus, these weights may not ensure representativeness across all covariates.

49. Another study cited by the CDC is by Thomas Doyle, et al., “COVID-19 in Primary and Secondary School Settings During the First Semester of School Reopening — Florida, August–December 2020.” He states:

The findings in this report are subject to at least six limitations. First, because data on the number of teachers and staff members statewide or by county were not available, rates of total school-related cases could not be calculated; instead, the number of student cases per 100,000 registered students was used. Second, screening testing was generally not done in most schools, therefore, asymptomatic infections might have been underascertained. Third, classification of school-related cases, contacts, and outbreaks was dependent on thorough case interviews and might have been incomplete, relative to the overall number of cases in school-aged children. Fourth, although the operational definition used for school-related cases was likely sensitive, it does not ensure that all persons with school-related cases acquired infection in the school setting because infections might have been acquired elsewhere. **Fifth, limited data were available at the school district level on some mitigation measures, such as mask use in schools, so these mitigation measures could not be fully assessed.** Finally, results should be interpreted with caution because most students in the largest school districts did not resume in-person education for the first part of the analysis period.

50. Dr. Marty Makary, a professor at Johns Hopkins University, recently wrote in the Wall Street Journal on August 8, 2021, that not a single study has been commissioned by the National Institute of Health to determine whether requiring children to wear masks in school prevents the spread of COVID-19. (Exh. J) He has a reasoned response to every claim that masks on children work and are not harmful. For example, he notes that many countries, such as Ireland, will not mandate masks in schools because they “may exacerbate anxiety or breathing difficulties for some students.”
51. In a New York Magazine article from August 21, 2021, by David Zweig, “The Science of Masking Kids at School Remains Uncertain”, the author notes that the studies reference by the CDC do not show evidence that masking children in schools works. (Exh. K) To the contrary, the only study referenced by the CDC of masks in a school setting was published in May of 2021, and covered more than 90,000 elementary-school students in 169 Georgia schools from November 16 to December 11 and was, according to the CDC, the first of its kind to compare COVID-19 incidence in schools with certain mitigation measures in place to other schools without those measures. It found: “Distancing, hybrid models, classroom barriers, HEPA filters, and, most notably, requiring student masking were each found to not have a statistically significant benefit. In other words, these measures could not be said to be effective.” That study has been ignored by the CDC it is guidance to schools.
52. Also, Mr. Zweig noted that many European countries, “along with the World Health Organization, whose child masking guidance differs substantially from the CDC’s recommendations, have explicitly recognized that the decision to mask students carries

with its potential academic and social harms for children and may lack a clear benefit. To date, the highly transmissible Delta variant has not led them to change this calculus.”

53. Mr. Zweig attempted to contact both the CDC and the AAP asking for the underlying evidence for their guidance, and never received a response. So instead, he wrote:

“Over the course of several weeks, I also corresponded with many experts — epidemiologists, infectious-disease specialists, an immunologist, pediatricians, and a physician publicly active in matters relating to COVID — asking for the best evidence they were aware of that mask requirements on students were effective. Nobody was able to find a data set as robust as the Georgia results — that is, a large cohort study directly looking at the effects of a mask requirement. (The closest is a study published in *Science*, based on a Facebook survey, that was suggestive but not conclusive of a marginal benefit of student masking.)”

54. Later Mr. Zweig noted:

“Though the CDC says that layered mitigation in schools is effective, without studying each of the layers individually, it cannot know which of those measures work, and to what degree, and which don’t. For example, several experts told me, it’s entirely possible that open windows or fresh-air ventilation accounts for nearly all the mitigation benefit in a classroom and other “layered” interventions may contribute only a marginal benefit or none at all.”

55. The evidence supporting the AAP recommendation for masking children is similarly non-existent. In a letter to local school districts on August 8, 2021, the Rhode Island chapter of the AAP (RIAAP) wrote in support of universal masking of all students and staff in schools. (Exh. D) As justification for this recommendation it cited three facts, all of which are easily disproven:

- a. Its first glaring error is the quote: “Let us also be clear, wearing a mask does not represent a medical or psychological threat to any of our children.” This is in direct conflict with RIDOH guidance that medical accommodations must be made for some students who may be harmed if they are forced to wear a mask. Other medical groups oppose masking children: The Association of American

Physicians and Surgeons (AAPS), says it opposes masking of schoolchildren entirely. According to the group:

“There is no evidence that schools are the source of outbreaks. There is no evidence that mask mandates have any effect on disease spread. Masking children is harmful. Masks are quickly contaminated with all manner of pathogens. They prevent normal communication and social interaction, impair learning of language skills, and cause anxiety, headaches, and other symptoms. Several teenagers have died or lost consciousness when exercising vigorously outdoors while wearing a mask.”

- b. Next, the only study cited by the RIAAP in its letter is one from a recent Lancet article that “reports that nearly 5% of COVID infected children, especially school-aged children, have lingering symptoms such as MIS-C, fatigue, and brain fog, more than 4 weeks after their symptoms started which results in additional missed school and learning loss.” Others found that study to be quite positive. For example, the University of Minnesota, Center for Infectious Disease Research and Policy, put it thus: “Less than 1 in 20 children with COVID-19 have symptoms lasting longer than 4 weeks, and by 8 weeks, almost all have recovered, according to a study yesterday in The Lancet Child & Adolescent Health.”
- c. Lastly, the letter warns: “In southern states such as North Carolina, Florida and Texas, where the academic year has already started without a mask mandate, COVID exposures and infections have already forced classrooms and schools to close.” That is another curious statement because as of the date of the letter, August 8, no schools had yet opened to students in those states.

56. Simply put, if this the best evidence that the RIAAP can muster to support its call for universal mask mandates, it is little wonder it was signed by only five of the 19 doctors on the Board of the RIAAP.

57. Lastly, the RIDOH database contains no information on the effectiveness of masks. While there is data to suggest a slight uptick in hospitalizations in August of this year, the most current data shows decreased hospitalizations since the beginning of September. As for fatalities, the data confirms that there has not been one COVID-19 fatality in this state under the age of 25.

D. PLAINTIFF PARENTS' CONCERNS REGARDING THE GOVERNOR'S MANDATE THAT THEIR CHILDREN WEAR MASKS IN SCHOOL

58. In the stories as told by the parents, there are serious and long-lasting concerns for their children's physical and emotional well-being by requiring them to wear masks for 6 to 7 hours per day.

59. Despite COVID-19 being around for some 18 months, no studies have been done to determine the effectiveness of mask mandates in schools, and whether the harm caused by such mask mandates is outweighed by any potential benefit.

60. In fact, the weight of scientific evidence is that masking children in schools has little to no effect on the spread of COVID-19.

61. Moreover, most countries recognize the harm to children in requiring masks in school, and have not allowed it.

62. Often, it appears that those at highest risk for the effects of COVID-19, the elderly, the obese, and those with multiple comorbidities, are willing to force the young and healthy, who are little effected by COVID-19, to suffer these irreparable harms on unproven science. Masks were no longer required in public establishments like restaurants and entertainment venues, vaccines and other therapeutic interventions such as monoclonal treatments were available to protect vulnerable populations, and the evidence over the

course of a year was that children seldom get sick from COVID-19, and none have died in this state.

63. The legitimate concerns of these parents are often dismissed or worse, ridiculed. There are numerous parents who can share similar stories and concerns for their children, but do not for fear of retaliation in their work and community. These plaintiffs are aware of hundreds more parents who have shared similar stories and concerns, but who are reluctant to come forward.
64. These plaintiffs are aware that they will be attacked for their speaking out on this issue, by the press and the public, but have chosen to take a brave stand against what they perceive as collective group-think which has infected this debate. They do so because they feel that their children's very future is at stake.
65. If no action is taken to stop these continuous executive actions, these parents fear that there will be no end to these mandates. Some decision makers have suggested that wearing masks could become a common practice in schools, a thought which should horrify any honest thinking person on this issue.

COUNT I
DECLARATORY JUDGMENT
PURSUANT TO RI GEN. LAWS 9-30-1

66. Plaintiffs repeat and incorporate by reference the allegations contained in all of the paragraphs of the complaint.
67. The Governor exceeded his statutory and constitutional powers when he issued Executive Orders 21-86 and 21-87.

68. The Governor relied upon only three bases for issuing these orders: Article IX of the Rhode Island Constitution and the Rhode Island General Laws, including, but not limited to, Title 30, Chapter 15, and Title 23, Chapter 8.
69. The Governor has no Constitutional authority to issue an executive order. The Courts of this State have consistently held that the only power that the Governor has pursuant to the Rhode Island Constitution is to execute valid laws as enacted by the General Assembly. The Governor has no inherent police power under Rhode Island law, and is delegated only such powers by statute.
70. Likewise, there is nothing in Title 23, Chapter 8, which could give the power to the Governor to issue an executive order mandating mask wearing.
71. The only possible power to issue executive orders comes from R.I. Gen. Laws § 30-15-9, although the Governor does not cite that particular statute in his executive orders.
72. That the Governor's only power to issue an emergency order is supported by the previous Governor's own actions, in the only case brought to this Court involving the prior Executive Order. In that case involving a gym facility known as "Rhode Island Department of Health v. Seventh Maxx Warren LLC", the State relied only upon the Governor's powers under R.I. Gen. Laws § 30-15-9, and not on the Governor's alleged powers under the R.I. Constitution.
73. In passing the legislative bill 2021-H 6122Aaa ("Appropriations Act") which contained Article 3, Section 3, amending RI Gen Laws § 30-15-9, the General Assembly terminated the Governor's statutory right to issue any further executive order or proclamations of disaster emergency related COVID-19.
74. As of September 11, 2021, the CDC has stated:

- a. Genetic variants of SARS-CoV-2 have been emerging and circulating around the world throughout the COVID-19 pandemic.
 - b. Viral mutations and variants in the United States are routinely monitored through sequence-based surveillance, laboratory studies, and epidemiological investigations.
 - c. The US government SARS-CoV-2 Interagency Group (SIG) developed a Variant Classification scheme that defines three classes of SARS-CoV-2 variants:
 - i. Variant of Interest
 - ii. Variant of Concern
 - iii. Variant of High Consequence
 - d. The Alpha (B.1.1.7), Beta (B.1.351, B.1.351.2, B.1.351.3), Delta (B.1.617.2, AY.1, AY.2, AY.3), and Gamma (P.1, P.1.1, P.1.2) variants circulating in the United States are classified as variants of concern.
 - e. To date, no variants of high consequence have been identified in the United States.
75. The Governor’s attempt to classify the “Delta Variant” as a new pandemic or disaster emergency if not supported by the facts or science.
76. In his public statement announcing the promulgation of the Executive Orders 21-86 and 21-87, the Governor recognized that he was not acting within his statutory authority, as he publically called for the General Assembly to reconvene to enact legislation authorizing his actions.
77. To date, the General Assembly has not reconvened in to session.
78. The actions of the Governor in this matter warrant this Court’s exercise of its powers under the Uniform Declaratory Judgments Acts pursuant to RI Gen. Laws § 9-30-1.

WHEREFORE, the Plaintiffs request that this Honorable Court issue a declaratory judgment that the actions of Defendant Governor Daniel J. McKee are in violation of the laws and Constitution of the State of Rhode Island.

COUNT II
REQUEST FOR TEMPORARY RESTRAINING ORDER, AND
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

79. Plaintiffs repeat and incorporate by reference the allegations contained in all of the paragraphs of the complaint.
80. The actions of the Governor in issuing the Executive Orders 21-86 and 21-87, are so manifestly illegal that Plaintiffs are likely to succeed on the merits of their case.
81. Plaintiffs suffer and will continue to suffer irreparable harm if the Executive Orders are allowed to remain in effect.
82. The balancing of equities and public interest weigh heavily in favor of the Plaintiffs to ensure that they are not subject to unlawful orders of the Governor.

WHEREFORE, the Plaintiffs requests this Honorable Court to issue a temporary restraining order, and preliminary and permanent injunctive relief, ordering that Defendant Governor Daniel J, McKee be restrained or otherwise prohibited from issuing any further executive orders related to COVID-19, that Executive Orders 21-86 and 21-87 be declared ultra vires and void, and that any and all actions of any state agency pursuant to said executive orders be declared void and unenforceable.

Plaintiffs,
By their Attorneys,

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