

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; CHERYL and ZACHARY GREATHOUSE; :  
SCOT BELFORD; DARYL EVANS; JEFFREY and :  
REBECCA DISTEFANO; CARISSA MOGLIA; :  
MEREDITH FORTUNE; PETER LAWRENCE; LORI :  
WYCALL; DANIEL MEDEIROS; DANIEL and :  
RACHEL PENENGO; JILL DIGIGLIO; PETER PHELPS; :  
KIELA DALEY; MADDALENA CIRIGNOTTA; :  
SHANLEY SWAIN; ANA ROQUE; LENIX RAMOS; :  
CHRISTINA GEREMIA; SUSAN GRAHAM; ELLEN :  
SCHAFFER; and :  
CHARLES and BETHANY CHATTERLEY :

Plaintiffs

vs.

C.A. No. PC2021-05915

DANIEL J. MCKEE, in his official capacity as the :  
Governor of the State of Rhode Island; and :  
NICOLE ALEXANDER-SCOTT, in her official capacity :  
as the Director of the Rhode Island Department of Health :

Defendants

**AMENDED VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

As no responsive pleading has yet been file, and pursuant to R.I. Super. Ct. Rule 15(a),  
Plaintiffs filed this amended complaint to add additional parties plaintiff, and to add a Count  
against the Rhode Island Department of Health seeking a declaration that its recently enacted  
Emergency Rule on Masking in Schools be declared *ultra vires* and void.

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 as 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 Glocester, 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 Glocester, 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 Glocester 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 Glocester 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, want to 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 Glocester. The reasons for their bringing this lawsuit are as follows:

We are the grandmother and father of a boy who attends West Glocester 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. Plaintiff, Scot Belford, is a resident of Glocester, Rhode Island. The reasons for his bringing this lawsuit are as follows:

My son Scot Belford Jr is a freshman at Ponaganset High School. We are deeply disappointed in the Governor's decision to mask our children again. Scotty has a history of pulmonary issues. He had severe asthma while growing up, constantly having to use both inhalers and his nebulizer machine. He even ended up in Hasbro with a collapsed lung. It is our fear that the masks will assist with the return of his asthma. I've directed him to keep the mask under his nose and to take frequent bathroom breaks to remove his mask. All parents should be concerned with the long term effects from our children and their still-developing lungs from breathing their own carbon dioxide. Both of his parents work so we are not able to keep him home for home schooling. He is also an only child so school is his main source of interaction with other kids. He doesn't understand how they were able to spend the summer with friends at cookouts and sleepovers with no issues yet when it comes to school, the masks must be worn. Yet the Rhode Island governor can spend hours at Twin River Casino without a mask on.

16. Plaintiff, Daryl Evans, is a resident of Smithfield, Rhode Island. The reasons for his bringing this lawsuit are as follows:

The mask mandates are awful. Many public schools are NOT air conditioned. In the months of September, May and June my kids tell me how hot the buildings are. Wearing masks makes it brutally hard to breathe. Common complaints among my children all year are they can't breathe, it's too hot, their throat is sore, their faces is always wet, lots of headaches, they couldn't hear their teachers and they couldn't be heard. My children said they never had mask breaks throughout the day and would be yelled at if their mask was below their nose. Last year in the middle school the kids had to eat in silence. If they wanted to talk to a friend they had to have their mask up, which meant they couldn't eat. They had to choose between eating or talking to a friend. Since they were not allowed to talk any other time during the day, my child didn't eat all day and came home starving daily. My children hated school for the first time and it was a nightmare to get them up and go to school everyday.

17. Plaintiffs, Jeffrey and Rebecca DiStefano, are residents of the City of East Providence,

RI. The reasons for their bringing this lawsuit are as follows:

"It's just a mask." We have heard that time and time again, and so have our children. Our children are 15 and 13 and have gone through incredibly hard times in the last year and a half. As parents, we have taught them to step back, critically think and assess situations before making judgments. None of this has made sense since last year and it is even more convoluted now. We lobbied our school committee and the governor's office all summer for mask choice. We feel it is up to the parents to decide what is best for their children. We were pacified, placated and lied to. Our children were not happy they had to wear masks but they also really wanted to go back to school. Children overall have been robbed of so much over the course of the last year and a half and it is criminal to keep taking their freedoms and choices away. Masks dehumanize, separate and divide. My children have witnessed teachers being so obsessed with "mask up! mask up!" that we do not know how much teaching is actually going on. It is mentally and physically exhausting. The overall mandates have put children's mental health in jeopardy and our children are no exception. Anxiety, depression and an overall sense of the unknown affect developing brains and it is so. The past year or so has been difficult for many people, especially our children. High school is supposed to be a great time, the last chance to be a kid. For my son, most of his high school experience was impacted by this pandemic. Not being able to socialize with friends was especially difficult. He also struggled with the distance learning. It seemed like we had gotten through it back in the summer when gathering and mask mandates were lifted. Then right before school, masks were made mandatory again. Now my son has to continue to come home after school, complaining of headaches. It has even gone as far as when he had 3 fire drills in one day and had to walk up and down multiple flights of stairs but was reprimanded for taking his mask down to catch his breath. It is heartbreaking for me as a mother to hear this, knowing that he has exercise-induced asthma. We don't know where to turn for help. Our pediatricians are too scared of losing their licenses to write any exemptions. Our

school boards will not listen to us. In my town of East Providence, we were completely shut out of a School Committee meeting open forum because we wanted to discuss the agenda item on masks. The injustices being done to us and our children is criminal and must stop now. It is simply unfair to put them through this. We are here to protect them, they are not here to protect us. We cannot get this year and a half back. It is gone and it has been fraught with fear mongering, bullying, manipulation at the highest levels and more. Our children, all children, deserve better.

18. Plaintiff, Carissa Moglia, is a resident of East Providence, RI. The reasons for her bringing this lawsuit are as follows:

The past year or so has been difficult for many people, especially our children. High school is supposed to be a great time, the last chance to be a kid. For my son, most of his high school experience was impacted by this pandemic. Not being able to socialize with friends was especially difficult. He also struggled with the distance learning. It seemed like we had gotten through it back in the summer when gathering and mask mandates were lifted. Then right before school, masks were made mandatory again. Now my son has to continue to come home after school, complaining of headaches. It has even gone as far as when he had 3 fire drills in one day and had to walk up and down multiple flights of stairs but was reprimanded for taking his mask down to catch his breath. It is heartbreaking for me as a mother to hear this, knowing that he has exercise-induced asthma. We don't know where to turn for help. Our pediatricians are too scared of losing their licenses to write any exemptions.

19. Plaintiff, Meredith Fortune, is a resident of West Greenwich, Rhode Island. The reasons for her bringing this lawsuit are as follows:

I have a 7-year-old son in the 2nd grade. I, as a parent, feel strongly that it is our choice whether our child should wear a mask or not and should not be a mandate. I feel strongly that this mask mandate is not in the best interest of my child and his mental health state. This year, my son has already been dealing with anxiety issues over the wearing of the mask. My son, who is very shy and soft-spoken now has a difficult time listening in class and focusing with the mask on. His teacher has described him as "walking in circles", and I believe this is due to these masks, seeing he's never had problems like that before. My son had a boy kick him in the stomach at recess for absolutely no reason and his teacher said she didn't even know it happened and she didn't notice if he was sad. Well, how would she even know that if she can't see his expression? My son constantly complains about wearing the mask. He says he can't breathe, and it makes him dizzy. The first week of school he was asked to write the answer to a few questions: One was, "I wish we could..." His response was, "not wear masks." (Pardon the spelling, he is only 2nd grade) When people say "oh, these kids are

used to it!” Well, NO, THEY ARE NOT!! My child constantly asks, “Mommy, why is it we have to wear these masks in school but nowhere else?” We’ve attended sports arenas, summer camps, karate classes, festivals, and where are the masks?? Nowhere! But our children need to mask up in school? This is wrong on so many levels. Children need oxygen for healthy brain development. We need the leaders in our state to stand up for our children. Our children need to be taught in the most comfortable, normal environment and these masks are causing more harm than good!

20. Plaintiff, Peter Lawrence, is a resident of Smithfield, Rhode Island. The reasons for his bringing this lawsuit are as follows:

My 9 year old is now in 4th grade and already struggling with the return to school. She doesn’t love school to begin with and masks have been another obstacle for her to thrive in school. The mask has essentially muzzled her very talkative personality and made her regress in class participation. She does the bare minimum to pass the time and then we assist her with homework at night. I think the masks have eliminated facial human expression that is critical to accompany speech and establish effective communication between student and pupil. A warm smile or look of affirmation from an adult underscores positive feedback and encouragement to participate. My daughter also eats lunch like she is in a controlled prison environment, which is also very detrimental to the social development of young children.

21. Plaintiff, Lori Wycall, is a resident of Westerly, Rhode Island. The reasons for her bringing this lawsuit are as follows:

We have two children in the Westerly Public Schools, one in the high school and one in the middle school. I feel strongly that mandating masks in school is wrong and should not continue. Wearing a mask makes the children act differently. They don't interact, they don't socialize, there is minimal excitement. It's like they truly are wearing a muzzle. I am a substitute teacher in our district. I have seen first hand how the masks negatively affect the children. I can go through a lesson plan and when I ask the students a question, they will type their answers into google chat, nobody will answer my questions out loud. My children hardly speak when they're wearing a mask. It has been heartwrenching to watch my kids dread going to school because of the discomfort and anxiety surrounding the masks.

22. Plaintiff, Daniel Medeiros, is a resident of Glocester, Rhode Island. The reasons for his bringing this lawsuit are as follows:

I am writing this letter as a concerned parent. I have two children in the Foster-Glocester regional school district. Both of my boys have complained of having

hard time breathing with the mask on, specifically when doing high energy activity, feeling nauseous while at desks, unable to focus affecting their productivity and learning experience. My youngest can't understand why we can sit down in a restaurant with no plastic dividers and no masks, constantly talking and eating and interacting yet at school it is not allowed." Why Daddy?" He asks. He is nine years old and I simply have no response. My oldest, who already suffers from ADHD, struggles with focus, yet is made to wear this muzzle. Recently he came home and complained that his teacher wasn't wearing a mask yet commands the students in her class to wear the mask. When she was asked why she could take her mask off and they couldn't, she responded with, "I'm an adult and I'm Vaccinated, that's why." As someone who is employed at a prominent hospital in the state, who has been on the front lines throughout the pandemic, through all the convoluted information, there isn't information scientific or medical that justifies that statement.

23. Plaintiffs, Daniel and Rachel Penengo, are residents of the Towns of Westerly and Barrington, respectively. The reasons for their bringing this lawsuit are as follows:

Our daughter never wore a mask in preschool during the pandemic, nor in the home, outside the home, nor with friends or family and neighbors inside or outside. We kept a mask for her only for public transport. Throughout this time, as normal children get a cold or runny nose, mild fever, she was no different. She is an active, healthy, intelligent, independent, and creative being. Whenever she was forced to wear a mask, she suffered from fatigue, anxiety onset, and confusion. By mid summer, we enrolled her in the Barrington public school system because it was our understanding that there would be no universal mask mandate and that we would have a voice as to the health and well-being of our child. Prior to the Governor of Rhode Island making the choice to reverse previous comments about no universal masking and sent out an executive order for universal masking, we received emails from Barrington Public Schools dating August 11 that children would be masked in school.

At this point we made the decision to move our daughter out of the public school system in Barrington and entered her into the Westerly public school system where we thought she stood a better chance with less total time being forced to mask for extended periods of time. In fact the breaks and time where she would go unmasked at Westerly public schools is more than that of Barrington school but this is not enough. She is still required to mask for 6+ hours.

Prior to going to school the first week we had to have a long conversation trying to prepare her for the fact that she would be forced to mask completely against anything that was natural and normal to her. We explained to her that at any moment, should she want to take her mask off so she can breathe naturally, she should do so.

She repeatedly said, "I don't want to wear a mask in school. Why do I have to?"

During this time we began an email correspondence with the principal, the nurse, and teacher at her school. Emails to the superintendent had previously gone without a return response.

During these correspondences we made clear that the CDC and RIDOH guidance as to where it says that anyone who has difficulty breathing does not need to wear a mask. We let them know that she cannot breathe naturally with a mask on therefore this would constitute the difficulty of breathing as stated in those guidelines.

At this point the principal made it clear that she would have to follow masking protocols at all times regardless of our concerns and that only through medical intervention of a doctor could we then look to document her for a disability under the 504.

Our daughter does not have a disability. The mask, the wearing of a mask, and the forcing of a five-year-old to wear a mask is what is disabling. It is the mask that disables her from breathing naturally and freely as she was designed by nature to do and as a living, breathing, and healthy human being chooses to do.

When I asked the teacher how she had done with the masking against her will, the teacher said that she did fine and that since everyone is wearing masks the children know that it simply becomes part of the routine and expectations.

After a just three days she broke down at night crying that the mask makes it difficult to breathe and that she doesn't want to wear one.

At this point I emailed the principal once more and let her know that this is exactly what concerned us most. That she would be coerced to please the teacher and others to mask because everyone else is masked. This is what this mandate does it coerces obedience while disregarding any free and conscious choice from individuals and families.

24. Plaintiff, Jill DiGiglio, is a resident of North Kingstown, Rhode Island. The reasons for her bringing this lawsuit are as follows:

My son is supposed to be an 11th grader at NKHS attending in person, however he is now enrolled in an accredited homeschool program at my personal expense due to the mask mandate . The last school year (20/21) my son did not go back in the spring in person because masks gave him a headache, sometimes accompanied with nausea and blurred vision, even if worn for a short amount of time since breathing in one's own carbon dioxide significantly drops the oxygen level in the blood. He would completely lose focus & concentration as well, because another side effect of wearing masks is tiredness. My son's headaches were not treatable with Advil or Tylenol since he also suffers from a sensitive stomach issue, having had a bleeding ulcer requiring two blood transfusions several years back in middle school.

25. Plaintiff, Peter Phelps, is a resident of South Kingstown, Rhode Island. The reasons for his bringing this lawsuit are as follows:

I have one son in 5th grade. Due to the mask mandate, he has suffered physically and emotionally. He has always been a very brave and active boy. His school life has been invaded by a culture of fear, isolation and loneliness. I've noticed how this culture of fear has affected him. He wakes up at night asking about the likely hood of plane crashes, tsunamis and other very unlikely risks to him. The mask mandate teaches children to fear other students. This will have devastating effects on his social development. Continued isolation and fear could lead to depression and even suicide. My son has also complained about wearing a mask in school. He has a very hard time concentrating in school wearing the masks. This makes it exceedingly difficult for him to learn the material being presented. Everyday after school he has a headache from wearing the mask. He often notes that he is dizzy during the day. This is especially true at gym and other physically demanding times but also when he is sitting at his desk. This detriment to his learning will have long lasting effects on his school career.

26. Plaintiff, Kiela Daley, is a resident of Barrington, Rhode Island. The reasons for her bringing this lawsuit are as follows:

I have 5 kids. Each one is unique in their makeup and personality. Each one is different in how masking, Social distancing, fear mongering and now the threat of vaccine mandates have and are affecting them. Each one has physically complained of headaches, belly aches , dry bloody noses, and the inability to breathe from wearing a mask. My 9 year old complained almost everyday to the nurse of a headache. They only complained of such ailments in a consistent basis when wearing a mask in school. But what was more alarming than the physical side effects was the mental side effects. Withdrawal , the light gone in their eyes, the fear , the anxiety , the depression, the lack of motivation. No talking at lunch. Recess was inside a chalk made box on the playground you couldn't leave. Alone. By yourself with a single toy. Lunch was silent. Classrooms/desks bare and far apart from one another.

27. Plaintiff, Maddalena Cirignotta, is a resident of South Kingstown, Rhode Island. The reasons for her bringing this lawsuit are as follows:

Last year, my son, just starting school as a kindergartener, and my daughter, a second grader, were forced to wear face coverings that restricted their breathing seven hours a day, five days a week, for the entire 10 months of school. We had no representation in the matter and were given no recourse in order to exercise our children's right to in-person public education. My husband and I had extremely strong reservations about the mandates. Our primary concern was that our children would suffer lowered blood oxygen saturation due to extended masking each day. It was obvious from our own experience that masking impedes normal breathing and increases exposure to exhaled carbon dioxide. We knew the role of oxygen in the body was vitally important and we wondered how universal all-day

masking would affect their brain development and immune function. The long term health of our children would be directly impacted by the quality of their physiological development in their youth, so sub-optimal conditions were of great concern.

Both of my children would come home from school in grumpy moods, acting lethargic and complaining of headaches on a regular basis. In November, the state removed all indoor mask breaks, just as it became too cold to learn outside. My children were also subjected to silent lunches from November through mid-June. My son had daily interactions with a particularly strict staff member who had a zero tolerance for any of the flexibility that a normal six-year-old might need to successfully adapt to such a restrictive environment. State and school leadership seemed to have forgotten that our students are just children. It now haunts me that this was forced on them.

A secondary concern that developed through the school year was that our son became increasingly terrified of being scolded by adults for putting his mask down, even to give himself a momentary break. He was afraid to put his mask down during recess. I grew concerned when he expressed fear of putting his mask down outside of school, even while he was with me. He would panic and grab his shirt or use his hands to cover his nose and mouth if I did not immediately hand him a mask when entering a store or when getting up from a table in a restaurant. I could see that he no longer felt as though I could shield him. This worsened throughout the school year then improved markedly when our son was no longer in school.

Once the school year ended, my husband and I were able to strengthen and fortify his sense of worthiness and encourage his bravery to self-advocate. He's come a long way this summer. In fact, he spoke at two South Kingstown School Committee meetings this summer to inform committee members that he does not want to ever have to wear a mask again and to implore them not to require masks. Throughout the entire year, my husband and I looked at the published literature regarding the safety, efficacy, and significance of universal masking on developing children. The published literature was both lacking and uncertain. We repeatedly reached out to the Governor's Office, the RI Department of Health, the RI Department of Education and district leadership for answers to our questions: How has the safety of all-day, long-term mandatory masking for children been assessed? What impact does mandatory masking have on the social, emotional, and mental health of school age children? What impact does universal masking in school have on educational outcomes?

Unfortunately, we have yet to receive any adequate answers to our questions. The published literature has expanded since we first began looking a year ago, but it is still lacking, especially relevant safety data. Furthermore, growing evidence has pointed to the ineffectiveness and potential health hazards of masking students at school.

Out of desperation for answers, I eventually submitted an APRA request to the Governor, to RIDE, and to DOH for the safety data used to justify school mask mandates. I specifically asked how many school children were assessed to determine that blood oxygen saturation remains constant while wearing a mask.

The Governor's office wanted \$550 to respond to my APRA request and reserved the right to redact information at their discretion. RIDE immediately acknowledged that the agency used no safety data but rather, exclusively relied on DOH's recommendations to craft their guidelines. DOH produced one study from Italy that included a total of 47 children who only wore a mask for 30 minutes. This single, small study seems to be the entirety of their preponderance of evidence that children can safely wear a mask for 7-hour school days for months on end. They apparently did not measure the blood oxygen levels of any masked children, which is reckless. Oximeters are affordable, non-invasive and could be offered in schools as an optional service. It stands to reason that DOH would be eager to reassure parents that masks don't reduce blood oxygen saturation by providing supporting evidence.

Why did DOH chose not to ensure that prolonged mask use is harmless to children? Why aren't DOH or the Governor balancing the cost in educational, social, emotional, developmental, linguistic, and other impairments against the risk of Covid in children?

Considering the lack of safety data from DOH, the Governor, RIDE and our school department, and the negative impact we observed from the mandatory masking of our children last year, my husband and I did not comply with school mask mandates this year. We sent our children to school on the first day without masks. They reported a much more positive experience and lacked any of the physiological symptoms we had observed with masking the previous school year. On the fifth day of school, our children were barred from entering their school building without a mask. Our children, who are still enrolled in the district, are being denied the free and adequate public education that is supposedly guaranteed to them. In fact, they aren't being provided with any necessary education materials to continue their education outside the school building.

28. Plaintiff, Shanley Swain, is a resident of the Town of Burrillville. The reasons for her bringing this lawsuit are as follows:

We have an 11 year son who was entering into 6th grade this school year. He was very excited to go and see his friends and make new ones. Starting a new journey into middle school was something they all talked about over the summer, he joined band and cross country, school was going to be normal and fun.

Unfortunately, I anticipated this mandate and the variant, because before last year ended the covid fear mongering variant talk reared its head. A group of moms in Burrillville got together and fought all summer long to ensure mask choice for the upcoming year. We attended town hall and school committee meetings and provided fact based evidence and personal stories, and we won. Then McKee pulled the rug out just in the nick of time for everyone to say sorry out of our hands. It has been frustrating and exhausting. The last 2 years of school have been a horrible and challenging for our family. My son was diagnosed with anxiety and ADHA at 8 years old. As a result he has a 504 and academically school has been a struggle for him. We made it through the end of 4th grade

distance learning okay, then 5th grade started with DL and it was bad. He cannot learn in front of a computer screen all day, we spent endless hours in tears and incredibly frustrated, he was falling behind at a rapid pace and began to really hate school. When they were finally allowed back in the building 4 days a week, he was excited and would wear the mask so he could be in school. But the draconian measures, 6 hours of mask wearing, one way hallways, pods of 3 kids, not being allowed to socialize or eat lunch with friends, masked at gym and outside if they were even allowed out, and so much more, was way too much for him. The psychological and physical impact was devastating as well. He had a headache every day when I picked him, he was nauseous and sad, and got more and more irritable and distant. He learned nothing, and his 504 plan was mainly ignored, because they couldn't move from class to class. The only thing he learned was that children are germs, and teachers are mean. He was even punished for horsing around with a boy in his pod in the hallway because he broke covid protocol by touching another child. They kept him in from recess for that violation, yes the boy who has a 504 instructing he needs extra movement to help him focus was denied that, oh and of course that was an addition 20 minutes in a mask when he should have had a break. Everyday I dropped him at that prison I cried, and I will never do it again. So we have pulled him out and are homeschooling. This is not ideal as we have incurred extra costs in doing so to hire educators to help get him back on track. He was very sad about it, but did not want a repeat of last year. The impact of this will last years for these kids, and our State/Government could care less.

29. Plaintiff, Ana Roque, is a resident of the City of East Providence. The reasons for her bringing this lawsuit are as follows:

My name is Ana Roque and I have a Junior that attends Blackstone Academy Charter School in Pawtucket and I have a freshmen that attends East Providence High School. 3 weeks prior to school starting, masks were optional in Rhode Island then they were made mandatory. I was in the process of pulling them out, I already have my letter of intent. But both my boys really wanted to go back seeing they had been distant learning for the last 18 months not due to being scared of the virus but me refusing to send them to school muzzled. This year we do not have that option and my boys had a serious conversation with me and asked me to please just give it a chance with them going back to school even if they had to wear a mask. This broke my heart to a million pieces because I did not want to cave to everything we had been standing by. But I agreed to let them go back. I just want to be able to make my own decisions when it comes to my kid's health. No one should have authority to do that over me. Masks should be optional. Why are we favoring just one side. There are plenty of parents that believe that all kids should wear masks in order to attend school, but let's not disregard that there are plenty of parents that think wearing masks should be made optional.

30. Plaintiff, Lenix Ramos, is a resident of the Town of North Smithfield. The reasons for his bringing this lawsuit are as follows:

We have a 3 year old, who we had enrolled in the North Smithfield Public School's preschool program. We were initially informed the School Committee was allowing parents to decide on masking for their children, only to reverse this decision only days later regardless of the majority of constituent support to keep masking optional, and then receive McKee's mask mandate across the state. We were given guidelines from the school from the RI DOH stating that in order to attend school, all our kids will have to be masked. Because a 3 year old doesn't have the ability to don and doff a mask properly, in the sterile manner they are intended for in a medical facility setting, masking for hours everyday not only poses a high risk of pathogen self-inoculation, but also respiratory acidosis, and or hypercapnia due to increased levels of carbon dioxide from extended mask wearing. This poses a health risk far greater to a 3 year old with a developing body, than COVID-19 (which he had in Nov of 2020), and has statistically a 0% risk of severe infection from. Because the school refused to allow our kids to attend without masks, we decided to pull him out of the preschool program for this year.

31. Plaintiff, Christina Geremia, is a resident of the City of Cranston. The reasons for her bringing this lawsuit are as follows:

I have two children with my husband in Grades 1 and 4 attending the Cranston Public School System. Last school year 2020-2021 my children both attended school full time with masks on for 6 hours a day. My 4th grader would come home with headaches constantly and never want to go back to school the next day due to the social impact of mask wearing and not being able to communicate with peers, as well as feelings of isolation. My 1st grader came home almost everyday and needed to lay down with constant fatigue, which is not the norm for him as he usually is bursting with energy. Both of my children have communicated to me an impact on their ability to fall asleep at night, my daughter is very irritable and suffers anxiety, while my son would mention to me "his brain is foggy" and he simply could not fall asleep when bedtime came around. When school was finished and the summer started, I saw a notable change in my children's behavior which led me to investigate and document further to now. Both of my children were happier, slept better, and did not exert "mental foginess". My son's energy resumed to normal and he enjoyed every water slide park in the North East with laughter, energy, and a good night rest. Furthermore, I feel the most impactful yet ignored topic to bring attention to is the lack of trust school aged students have developed for their teachers and administrators. For example, as school approached session and the Governor last minute decided to mandate mask wearing, my son said to me "Mommy why do schools want to keep us safe but no other place did over the summer?" All summer long my children went to the

beach, friend's houses, played sports, water slide parks, went to Florida and never wore a mask and in turn never got sick and actually lived a happier and healthier life. I struggle with the rationale in explaining the mask mandate in school, and explaining how it can spread in class, but in recess they do not need to wear a mask. Let me repeat, I asked the principal last Friday, why is it that kids have to wear a mask in class, but at recess they do not? It is the same children. As a result, I cannot reason this to explain to my children, and they cannot reason or justify these mandates either which in turn has led to my children lack of trust on the judgement of all school administrators and staff. This is irreplaceable damage psychologically because how can my children trust anything they are to be learning coming out of their mouths as true and real education? They cannot. I find my children questioning most of what they learn, and I find them anxious with the thought of school. My daughter has gone to the nurse 3 times since school started, and they have called me to let me know she is having anxiety attacks, and needs to take more "mask breaks". The science does not justify or back this mandate, the logic and reasoning does not either. One thing I can attest too is the psychological down fall of my children wearing masks and seeing this agenda play out in front of them, as well as the physical harms done to their brain, sleep, and energy levels in which I can only support through good nutrition, but cannot reverse damage done, and damage that continues to be done.

32. Plaintiff, Susan Graham, is a resident of the City of Warwick. The reasons for her bringing this lawsuit are as follows:

Last year my children were very depressed and my son developed an overeating issue to cope with depression from lack of socialization and the cruelty of rules promoted by masking and not allowing children to talk even during lunch time. He told me several times students would get in trouble if caught talking (it happened to him) and even this year he was very nervous about possibly being isolated if he took his mask down to breathe as this is what happened last year. He was put in a room with no one else. My daughter had such anxiety from the masks and how they were affecting teachers and students she would come home from high school stressed and crying for hours. High school teachers once kind were segregating, and telling students they weren't allowed to speak. My daughter was not able to make 1 friend and felt no one was listening when she spoke. Kids were quiet and depressed at school with no/little eye contact with one another. This greatly affected my daughter giving me no choice but to homeschool her this year. I am very concerned for my children's physical, emotional and social well-being including schooling. My daughter was accepted into the N.K.H.S. business and finance college credit program doing very well and now had to drop out to homeschool because of the masks.

33. Plaintiff, Ellen Schaffer, is a resident of the Town of Barrington. The reasons for her bringing this lawsuit are as follows:

My 8yr old daughter suffers ongoing harm from continual disappointment, sadness, and rejection for been excluded from school by the Governor's mask mandate. She's been having a very positive homeschooling experience for several years, but because our in-person learning and social resources were so restricted in 2020, and with age and curiosity due to neighboring friends attending public school, she now wants to try it but knows wearing a mask is not an option for her. Her medical history, which my husband and I must keep private, heightens our awareness of symptoms of hers which demonstrate that it is physically dangerous to her body to obstruct her airways and socially and emotionally dangerous to her mental health for us to constantly marry her growth and learning to clinical pathology and the medical intervention of masking. She is a very sensitive and often cautious child, showing emotional stress from the frustration and intimidation of trying to meet and socialize with other children who she can't see and therefore can't hear properly, nor read the important facial cues necessary for children who are learning basic human interaction and the value of interpersonal relationships. This happy child who wants to play has cried due to confrontation from masked children on playgrounds who don't know how to properly interact from behind a mask. At times her frustration has turned from sadness to mood swings and outbursts. As parents, it breaks our hearts to see our daughter drum up her courage to try something new, only to suffer rejection by being excluded before she even has a chance. We want so very much to provide an opportunity for our child to satisfy her curiosity about school, but this bright, creative child has had her enthusiasm stolen by the Governor's mask mandate.

34. Plaintiffs, Claudia and Christopher Cox are residents of the Town of Smithfield, RI. The reasons for their bringing this lawsuit are as follows:

Our family has been living in Greenville for six years now. We have two children: a son and daughter. Our daughter turned five in February, and we registered her to begin Kindergarten at Pleasant View Elementary this fall. As parents, we were extremely excited to watch our daughter begin her academic journey in the Smithfield public school system. We've thought about her taking a school bus by herself, making new friends, learning so much about the life ahead of her. Five is such a crucial stage of development. It is at this transitional time when children figure out how to interact/ socialize with peers, and respect new authority figures other than their parents. It is the age most children begin sounding out words, learn to spell, recognize sight words, read, and write full sentences. So much of their future ability to communicate, understand expressions and nuances, as well as their maturing overall is dependent upon Kindergarten academics—which is only a portion of the skills children learn and use for life while in school. It is our strong contention and belief, separated from politics and with personal and scientific evidence gathered from exhaustive research, that the negative effects of masking school-aged children significantly outweigh any potential benefits, including overall public health and safety. For these reasons, we will not be a part of any school system that requires masks for children. We were under the

impression masks would be optional this year for our district. As this was a major concern of ours, we contacted our superintendent and attended school committee meetings. We trusted our political leaders when they told us every school district would be able to make their own decision in regard to this matter. Everything changed however when RIDE, governor McKee and then the RIDOH decided to take the public's democratic abilities away by suddenly creating mask mandates for K-12 public school students, threatening to deprive public schools of funding if they did not comply. We were appalled and devastated to say the least. We have listened to heart-breaking stories about the problems masks caused last year. But the tears and the voices of parents and students remain ignored. We continue to hear nothing but horror stories from friends, family, and medical experts in regard to children's experiences with masking all day in school. We have heard stories of children complaining of difficulty breathing, verbal and physical bullying, impaired academic skill sets even those previously learned, inability to make friends, anxiety and mental health problems, children struggling with concentration, headaches, light-headedness, rashes, facial acne and dental problems, high rates of anger/sadness/depression AND disturbingly high rates of suicide among even the youngest school-aged children, and more! Masks are a tangible center of activity for collecting and spreading bacteria and viruses. Moreover masks are continuously handled, sneezed and coughed into, chewed on, played with and facilitate facial touching. The majority of masks are not surgical or medical grade, and are made of materials that do not prevent the spread of viruses as they can easily penetrate large pores. The ineffectiveness of cloth and disposable masks is so widely prevalent in other countries they are banned. In fact, according to infection prevention specialist Eli Perencevich, MD, a professor of medicine and epidemiology at the University of Iowa's College of Medicine, "There's no evidence that wearing masks on healthy people will protect them. They wear them incorrectly, and they can increase the risk of infection because they're touching their face more often." Mask breaks are not allowed for students at many schools, but they can be earned as "extra credit" while teachers freely lower their masks to sip their water or coffee while teaching. Children must choose to have a silent lunch, or continue wearing a mask to be able to talk to their friends; there are even 'guards' on duty for lunch armed with whistles for anyone who breaks the silent lunch rule. The inconsistencies are mind boggling. All of these things are deplorable, and highlight just a portion of the harm masks are causing many children, and thus their families. Frankly it is nothing short of child abuse. Children being forced to wear masks all day at school doesn't just negatively affect them right now, but will cause them psychological damage for years to come.

Masking in general has made our daughter fearful and worried. She is anxious of what could happen to her or to others. She has even gone as far as saying wearing a mask, and seeing others wear masks, makes her feel unsafe. She wonders if the air is even safe to breathe. When she sees children going to school with masks on she questions their safety in their classrooms.

Thank goodness we are blessed to be a part of a wonderful private school, where our daughter is attending Kindergarten, and where masking is not required!

Knowing that she can comfortably go to school without wearing a mask, where she can sit and interact normally with her friends, and see their faces, and chat while eating lunch, is priceless. She knows that she is safe and that we would never put her anywhere that would ever make her feel otherwise. She is well-adjusted, ahead socially and academically of many of her peers in schools requiring masks, and most importantly, we know she is safe and she is happy. But this does not come without a price. Our family has been burdened with exorbitant tuition costs and expenses. We were depending on our town's public school system. Frankly we can't afford to send our children to private school, but we are doing it. We are doing everything in our power to work as hard and as smart as possible to be able to provide mask-free schooling for our children, because we have seen firsthand the irreparable trauma, pain, and harm masking can cause an otherwise happy go lucky child. We don't know what next year will bring. Will masking still be an issue? Where will we send our daughter if these absurd mandates continue? The Rhode Island Department of Education, Governor McKee, and The Rhode Island Department of Health have failed us, and so many other families. The majority of families cannot afford to pay for private schooling, and in an effort to protect their children from forced masking, more families than ever are homeschooling.

35. Plaintiffs, Charles and Bethany Chatterley, are residents of the Town of Coventry. The reasons for their bringing this lawsuit are as follows:

My name is Charles Chatterley Jr. My wife, Bethany Chatterley, and I are parents to two young girls. Each of these young ladies were born premature, and with medical issues. Our oldest is a ten year old fifth grader who has always excelled in school. However, the issues that she has experienced have been nothing short of intolerable. She suffers from reactive airway disorder (RAD), which on a normal day, without masks, can make it difficult for her to breathe at times. She consistently reports that her mask makes her feel unable to breathe and it feels as if she is breathing in dust despite changing her mask frequently. This irritation to her airway has resulted in the resurgence of a nightly croup like cough, which is indicative of her airways being irritated. As a parent who has had to call 911 on more than one occasion due to respiratory distress, the sound of waking up in the night to your child gasping for air is not anything I would wish on my worst enemy. In addition, she frequently complains of becoming fatigued, experiencing headaches, and exposed to constant discussions and reminders about mask wearing, quarantine, and exposure. It is discouraging when you ask your child about their day and the first thing they want to tell you is that their day is consumed with discussions related to mask wearing, instead of what they are learning, projects they are working on, or games they played with their friends. Our youngest who is a five year old Kindergartner with an IEP, suffered a severe stroke while in utero, which resulted in significant brain damage on her right side. The result of which has left her with left sided weakness, global delays, speech delay, fine and gross motor delays, and cerebral palsy. In addition, she

experiences difficulties with normal bodily functions, such as controlling her saliva and regulating her body temperature. On her first day of school, she was beaming with excitement and was so proud to finally ride the big yellow bus with her sister. However, the problems started almost immediately. The masks being mandated are not only making it more difficult for her to learn, and communicate, it is making it harder for her to live a healthy life. She has experienced nosebleeds due to overheating. Additionally, her appetite has decreased, and she has been coming home stating she did not feel well at school. It is not until the mask is removed and she has time to rest that she feels well enough to eat again. As a child who was previously diagnosed with failure to thrive and struggled to gain weight this is alarming. Then we found out that our child would receive speech therapy as her and her teacher were masked. This seemed completely illogical and a situation where my daughter was surely set up to fail. As the days went on, our daughter had another nosebleed but this one was so severe that it soaked her shirt and resulted in my wife needing to pick her up from school as it did not seem appropriate to put her on the bus in that condition. When my wife arrived at school, she found my daughter overheated and red in the face due to wearing the mask. She immediately removed the mask, and my daughter was able to cool down and feel better. Despite this being out of our daughter's control and certainly not her fault, the poor kid could not stop apologizing. The next day, when she woke up, Bethany noticed that she was developing a rash around her mouth and jaw, which were sore-like in size and appearance. This was because she cannot control her saliva and her mask was becoming wet. Despite her classroom teacher being extremely diligent and changing her mask as frequently as needed, a painful rash still developed. When her pediatrician and neurologist were consulted, each of them stated verbally and provided a letter that she should not be wearing a mask at any time, due to her numerous medical impairments. However, these letters and medical opinions are not enough to combat the mandates. We are asking as parents, to please rule in the favor of parental choice which allows us to make decisions on what is needed to protect our own children.

36. Plaintiffs are aware of many more parents of children in the public schools of Rhode Island. They all have similar stories they wish to share, but are afraid to do so; fearing retaliation at work and the loss of a job, bullying against their children at school by both students and staff, abuse from the public and the press. Here is a sample:
  - a. I have a 2nd grader and 4th grader in East Bay school. My 2nd grader has been in speech therapy since the age of 3. He was in Kindergarten when the pandemic started, and he went to virtual learning in March 2020. We had his IEP meeting Spring of 2020, after the pandemic started, and it was recommended to me that his services be reduced from 2 days to 1, because he had improved so much. In September of 2021, he went back to school, masked. In December of 2020 my husband and I noticed a considerable regression in his speech, as did his older

sister, and she had always been the one to understand him very well. I sent emails to his speech therapist explaining the decline, and we did meet multiple times, but they swept my concerns aside. I asked if he could get speech services delivered unmasked, they said no. We tried clear masks, but they fog up and restrict the movement of his lips. This year, I have asked for speech unmasked and they agreed to a face shield, which as we know, does nothing. We are now engaging in health theater in order to “check the box” and satisfy the mask mandate, when in many cases it is not making an impact on the safety of our children in classrooms. The mask mandate is affecting children like my son, who are in a key developmental stage when they are learning the mechanics and nuanced expression of language, learning how to read, and learning how to socialize. The impacts of this may never be recovered, and the negative impacts are not being appropriately addressed. I am aware that in our elementary school, almost half of each classroom required tier 2 or tier 3 intervention for reading last year, and I also know several other parents with children who have speech IEPs that have expressed the same concerns to the school to no avail. In addition I've found that schools are not providing mask breaks and individual schools across our country are not interpreting the RIDE guidance unanimously. Some middle schools are using lockers, some are not. Some schools are having lunch in lunch rooms, some are not. Some students are allowed to speak during lunch, some are not. The guidance has not been clear, and so children are aware that friends from surrounding towns are having different experiences than them, leaving them to wonder why they are being punished more than their peers. The state has offered no end and no metrics to justify their mandate. Information is readily available (vis the HHS website) showing RI adult hospital admissions due to Covid is hovering around 4% of inpatient beds, and 15% of ICU beds. Children's hospitals are seeing more and more mental health cases, and not many Covid cases, this is also not being addressed. In addition over 77% of adults are fully vaccinated, and over 85% are partially vaccinated in RI. Children remain low risk, even with delta, and in RI we have exceeded expectations for vaccination coverage of high risk populations. Restaurants and bars are open unrestricted, children deserve the same. They are suffering the consequences of 18 months of learning loss and lack of proper socialization, fear and uncertainty, and just as adults have, they have earned a step forward towards normalcy before the impacts to their development and mental health are not recoverable. Parents have been provided no justification for this continued mandate.

- b. We are a mother and father of three children. I have a Masters in Elementary education and sub part time in a public school district. Some of my concerns have been on the removal of masks breaks, limited PE, restrictions at recess, and rotating recess playground schedule. As I subbed in the district I saw firsthand how the schools handled things differently some school better than others. This raised questions as my children seemed to be at the school with the most restrictions. Causing the kids to feel like they were in trouble, not allowed to talk to anyone and limited outlet to release energy.

The past school year my children have complained on a regular basis of headaches, stomach aches, fear, loneliness, bellyaches. My youngest was sent home a few times and was not able to return without negative covid test. My pediatrician did not want to administer the covid test since the symptoms were clearly mental and not physical. But in order for her to go back to school she had to have the test and signed note. We now have a note on file from my doctor saying going forward measurable symptoms need to take place in order to send her home from school. My children have been bullied from peers and school staff on masking as well as pressured to get a shot so we can take the mask off for the fall (this current school year). As a Mother I am concerned, sad, hurt, worried, nervous to see my children struggle this way the mental health is starting to develop in anxiety, shyness and nerves for my children whom did not have this prior to March 2020

As a sub in the district I see withdrawal, anxiety, fear, depression, shyness when teaching and working with the kids. I noticed a big difference from the beginning of the year and then a few months later. These children were once strong and now they are reserved.

- c. I have an 8 year child who has been negatively affected by wearing a mask all day while in school. During the first two months of the 2020-2021 school year, my child developed a sore in the corner of their lip that would not go away with over-the-counter treatment. I had to seek medical attention from our pediatrician for a prescription. When I mentioned that I thought the sore was from the mask, the pediatrician stated that it could be a possibility. During this same school year, my child was evaluated in reading and it was discovered they were behind by a year and a half. Because of this delay, my child was placed on an IEP. During my child's special education sessions, they still have to wear a mask while learning how to read!! Numerous occasions my child would come home from school upset because they could not hear the teacher well and it made it hard from them to understand what instructions/lessons were being taught. Compile that with a lack of reading ability, it made for a very challenging day. My second child started kindergarten this school year (2021-2022). Prior to this, my child never had a to wear a mask while attending daycare. The first few weeks of elementary school were a challenge for my child. At one point, my child came home upset "Mommy, I pulled my mask down because I could not breath, but my teacher made me pull it back up." Imagine that. A child clearly expressing they cannot BREATH and tried to take a mask break but was told to pull the mask back up instead of being allowed to take the break they clearly needed. This is INHUMANE!!

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

38. Defendant Nicole Alexander-Scott, is the Director of the Rhode Island Department of Health, and is sued in her official capacity.

**STATEMENT OF FACTS**  
**A. HISTORY OF EXECUTIVE ORDERS**

39. 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).
40. 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).
41. 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.
42. 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)
43. By that amendment, the General Assembly terminated the power of the Governor to issue executive orders related to COVID-19.
44. 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)
45. 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.

46. 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.
47. 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.”
48. 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.”
49. 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**

50. 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.
51. 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.

52. 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)

53. 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.”

54. 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.

55. As a result of this guidance from RIDE, many school districts chose to adopt a policy of “strongly recommending” but not mandating masks.

56. 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.

57. Throughout the summer of 2021, students were allowed to attend summer school activities without the necessity of wearing a mask.

58. 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.

59. 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.
60. Notwithstanding these public statements, on August 19, 2021 issued executive order 21-86, declaring a new state of emergency based upon the “Delta Variant”
61. 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.
62. The Governor also references modeling data from RIDOH suggesting that by early September, the number of people in RI hospitals will exceed hospital capacity.
63. 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.
64. 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.”
65. 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.

66. 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.
67. 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.
68. 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**

69. 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.
70. 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  $\mu\text{m}$  to 3  $\mu\text{m}$  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.

71. 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.

72. 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.

73. 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.”

74. 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.

75. 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 it 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.”

76. 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.)”

77. 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.”

78. 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. I) 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.
79. 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.
80. 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**

81. 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.
82. 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.
83. In fact, the weight of scientific evidence is that masking children in schools has little to no effect on the spread of COVID-19.
84. Moreover, most countries recognize the harm to children in requiring masks in school, and have not allowed it.
85. 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.
86. 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.

87. 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.
88. 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**

89. Plaintiffs repeat and incorporate by reference the allegations contained in all of the paragraphs of the complaint.
90. The Governor exceeded his statutory and constitutional powers when he issued Executive Orders 21-86 and 21-87.
91. 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.
92. 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.

93. 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.
94. 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.
95. 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.
96. 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.
97. 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.

- 98. The Governor's attempt to classify the "Delta Variant" as a new pandemic or disaster emergency if not supported by the facts or science.
- 99. 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.
- 100. To date, the General Assembly has not reconvened in to session.
- 101. 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**

- 102. Plaintiffs repeat and incorporate by reference the allegations contained in all of the paragraphs of the complaint.
- 103. 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.
- 104. Plaintiffs suffer and will continue to suffer irreparable harm if the Executive Orders are allowed to remain in effect.

105. 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 request 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.

**COUNT III**  
**REQUEST FOR INJUNCTIVE RELIEF**  
**AGAINST THE RHODE ISLAND DEPARTMENT OF HEALTH**

106. Plaintiffs repeat and incorporate by reference the allegations contained in all of the paragraphs of the complaint.

107. After the filing of this lawsuit on September 16, 2021, on September 23, 2021, the RIDOH issued Emergency Regulation 216-RICR-20-10-7, “Masking in Schools” (“Emergency Regulation”).

108. RIDOH purported to issue this regulation under its general statutory authority conferred to it under R.I. Gen. Laws §§ 23-1-1, 23-1-17 and 23-1-18(4).

109. Furthermore, RIDOH circumvented the normal regulatory procedure for issuing school health regulations, instead issuing the regulation pursuant to the Emergency Rule provisions of R.I. Gen. Laws § 42-35-2.10, which provides:

If an agency finds that an imminent peril to the public health, safety, or welfare or the loss of federal funding for an agency program requires the immediate promulgation of an emergency rule and publishes in a record with the secretary of state and on its agency website reasons for that finding, the agency, without prior notice or hearing or on any abbreviated notice and hearing that it finds practicable, may promulgate an emergency rule without complying with §§ 42-

35-2.7 through 42-35-2.9. The agency head and the governor, or the governor's designee, must sign the emergency rule to become effective. The emergency rule may be effective for not longer than one hundred twenty (120) days renewable once for a period not exceeding sixty (60) days.

110. By using the Emergency Rule statute, RIDOH was able to avoid the notice and comment provisions of Administrative Procedures Act (APA).
111. For example under § 42-35-2.6, the agency must give a concise explanatory statement of the reasons for creation of the rule, including the agency's reasons for not accepting arguments made in testimony and comments.
112. Under § 42-35-2.7, at least thirty (30) days before the filing of a final rule with the secretary of state, an agency shall publish the notice of the proposed rulemaking on the agency's website and with the secretary of state. The notice must also be published in a newspaper or newspapers having aggregate general circulation throughout the state.
113. Moreover, the notice must include, *inter alia*, “Where, when, and how a person may comment on the proposed rule and request a hearing, including the beginning and end dates of the public comment period.” And “a citation to each scientific or statistical study, report, or analysis that served as a basis for the proposed rule, together with an indication of how the full text of the study, report, or analysis may be obtained.”
114. Under § 42-35-2.8, the agency must provide for a 30 day public comment period, and must provide for an opportunity for a hearing “if a request is received by twenty-five (25) persons, or by a governmental agency, or by an association having not less than twenty-five (25) members within ten (10) days of a notice posted in accordance with subsection (a) of this section. A hearing must be open to the public, recorded, and held at least five (5) days before the end of the public comment period.”

115. The proposed rule must also contain a “Regulatory Analysis” under § 42-35-2.9, which requires:
- a. An analysis of the benefits and costs of a reasonable range of regulatory alternatives reflecting the scope of discretion provided by the statute authorizing the proposed rule;
  - b. Demonstration that there is no alternative approach among the alternatives considered during the rulemaking proceeding which would be as effective and less burdensome to affected private persons as another regulation. This standard requires that an agency proposing to write any new regulation must identify any other state regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication; and
  - c. A determination whether: The benefits of the proposed rule justify the costs of the proposed rule; and that the proposed rule will achieve the objectives of the authorizing statute in a more cost-effective manner, or with greater net benefits, than other regulatory alternatives.

116. Pursuant R.I. Gen. Laws § 42-35-7, “Declaratory judgment on validity or applicability of rules”:

The validity or applicability of any rule may be determined in an action for declaratory judgment in the superior court of Providence County, when it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

117. Plaintiffs’ legal rights and privileges are impaired and threatened by the Emergency Regulation, and they have standing to bring this within action for declaratory judgment.
118. The Emergency Regulation exceeds RIDOH’s statutory authority as follows:
- a. First, there is no statutory basis which authorizes RIDOH to issue a public school mask mandate, or otherwise requiring children in schools to wear a medical devise as a condition of attendance in a public school.

- b. Second, there is no “imminent peril” which justifies RIDOH’s circumvention of the normal procedures for issue a regulation, including notice and public comment, balancing of costs and benefits, or for each scientific or statistical study, report, or analysis that served as a basis for the proposed rule, together with an indication of how the full text of the study, report, or analysis may be obtained.
119. RIDOH has been aware of the emergence of the “Delta variant” since at least the early summer. Nevertheless, RIDOH agreed on June 29, 2021, when it joined in the press release with RIDE and the Governor (Exh. G), that there was no basis to issue an emergency rule mandating masks in public schools.
120. As further evidence of RIDOH’s lack of evidence of imminent peril, RIDOH waited for over one month after the Governor’s issuance of his executive order, and the filing of this lawsuit, to issue the Emergency Regulation.
121. The Emergency Rule is also internally contradictory, as it states it is in effect for 45 days, but is listed on the Secretary of State’s website as lasting until January 20, 2022, or a total of 120 days.
122. RIDOH also failed “to publishes in a record with the secretary of state and on its agency website reasons for that finding.” There has been no public statement, press release or any other information published by RIDOH which comparts with this requirement of R.I. Gen. Laws § 42-35-2.10.

WHEREFORE, the Plaintiffs request that this Honorable Court declare Emergency Regulation 216-RICR-20-10-7, “Masking in Schools” ultra vires and void; and further order that Defendant Rhode Island Department of Health be restrained or otherwise prohibited enforcing the Emergency Rule.

Plaintiffs,  
By their Attorneys,

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**CERTIFICATION**

I hereby certify that I served this document through the electronic filing system on the following attorneys of record:

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