

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

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

Case No.: 2021 CA 001382

Plaintiffs,

v.

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

Defendants.

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COMPLAINT AND DEMAND FOR EMERGENCY INJUNCTIVE RELIEF

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

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

Venue and Jurisdiction

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

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

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

Common Allegations

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

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

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

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

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

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

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

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

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

Section 1. Public education.—

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

(Emphasis added.)

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

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

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

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

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

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

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

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

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

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

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

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

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

Against all Defendants

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1. Public education.—

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

(Emphasis added.)

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

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

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

COUNT VI: EMERGENCY INJUNCTIVE RELIEF
Against All Defendants

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

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

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

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

/s/ Charles R. Gallagher III
Charles R. Gallagher III, Esq.
Florida Bar No. 0510041
E-Mail: crg@attorneyoffices.org
Gallagher & Associates Law Firm, P.A.
5720 Central Avenue
St. Petersburg, FL 33707
Telephone: (727) 344-5297
Fax: (727) 344-6653
Service E-Mail: service@attorneyoffices.org
Secondary Service: fax@attorneyoffices.org
Co-Counsel for Plaintiffs

/s/ Joshua Sheridan

Joshua G. Sheridan, Esq.
Florida Bar No. 615536
Busciglio Sheridan Schoeb, PA
3302 N. Tampa Street
Tampa, Florida 33603
Phone. 813-225-2695
Fax. 813-868-3695
E-mail: josh@mytampafirm.com
Co-Counsel for Plaintiffs

/s/ Craig Whisenhunt

Craig A. Whisenhunt, Esq.
Florida Bar No: 81745
Ripley Whisenhunt, PLLC
8130 66th Street North, Suite 3
Pinellas Park, FL 33781
Phone: (727) 256-1660
Fax: (855) 215-3746
E-mail: craig@rwrlawfirm.com
Co-Counsel for Plaintiffs

/s/ Maria Pitelis

Maria G. Pitelis, Esq.
Wagstaff & Pitelis, P.A.
161 14th St. N. W.
Largo, Florida 33770
Phone (727) 584-8182
Fax (727) 581-0249
E-mail: maria@wagstafflawoffice.com
Co-Counsel for Plaintiffs

/s/ Mary Lou Miller Wagstaff

Mary Lou Miller Wagstaff, Esq.
Florida Bar No. 129986
Wagstaff & Pitelis, P.A.
161 14th St. N. W.
Largo, Florida 33770
Phone (727) 584-8182
Fax (727) 581-0249
E-mail: marylou@wagstafflawoffice.com
Co-Counsel for Plaintiffs

/s/ Erin Woolums

Erin E. Woolums, Esq.
Florida Bar No. 670804
Barnett Woolums P.A.
Florida Bar No. 670804
6501 1st Ave South
St Petersburg, FL 33707
Phone: 727-525-0200
Fax: 727-525-0211
E-mail: woolums@barnettwoolums.com
Co-Counsel for Plaintiffs

/s/ Erin Barnett

Erin K. Barnett, Esq.
Florida Bar No. 568961
Barnett Woolums P.A.
6501 1st Ave South
St Petersburg, FL 33707
Phone: 727-525-0200
Fax: 727-525-0211
E-mail: service@barnettwoolums.com
Barnett@barnettwoolums.com
Co-Counsel for Plaintiffs

/s/ Tracey Sticco

Tracey L. Sticco, Esq.
Florida Bar No. 0042513
4202 E. Fowler Avenue, SOC 107
Tampa, FL 33620
Phone: 352.262.0446
E-mail: tsticco@yahoo.com
Co-Counsel for Plaintiffs