

Introduction¹

1. A novel coronavirus emerged in Wuhan, China, began infecting humans, spread throughout the world and is known to have the potential to cause Coronavirus Disease-2019 (“COVID-19”) in humans. *See* Compl. ¶ 19.

2. In response to fear of the spread of COVID-19, the Pennsylvania Office of the Governor declared a disaster on March 6, 2020. *Id.* at ¶ 20.

3. Since the end of the 2020-2021 school year, the Commonwealth’s disaster declaration has ended. *Id.* at ¶ 21.

4. On August 31, 2021, after many schools had already been in session for several days, Respondent issued an Order titled “Order of the Acting Secretary of the Pennsylvania Department of Health Directing Face Coverings in School Entities.” *Id.* at ¶ 22.

5. The Order purports to require all “[e]ach teacher, child/student, staff, or visitor working, attending, or visiting a School Entity ... [to] wear a face covering indoors, regardless of vaccination status,” with limited exceptions. *Id.* at ¶ 23, Ex. A.

6. The Order purports to impact students in all counties, regardless of whether they reside in a county with its own health department. *Id.* at ¶ 24, Ex. A.

¹ Petitioners incorporate by reference their Petition for Review in the Nature of a Complaint (hereinafter, “Complaint”) as if fully set forth herein.

7. The Order does not allow for religious or philosophical objections to the masking mandate. *Id.* at ¶ 25, Ex. A.

8. The Order was issued outside the rulemaking procedures under the Commonwealth Documents Law, 45 P.S. § 1101 *et seq.*, and the Regulatory Review Act, 71 P.S. § 745.1 *et seq.*, and without allowing for notice or an opportunity to respond.

9. The Order purports to require all schools to enforce the requirement to wear face masks, regardless of whether a local school board adopted a contrary Health and Safety Plan. *Id.* at ¶ 27.

Argument

10. In Pennsylvania, a party must establish the following six prerequisites to obtain a preliminary injunction:

- 1) [The] injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages;
- 2) ...[G]reater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings;
- 3) [A] preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
- 4) [The] activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest,

or, in other words, must show that it is likely to prevail on the merits;

5) [The] injunction it seeks is reasonably suited to abate the offending activity; and,

6) [A] preliminary injunction will not adversely affect the public interest.

Warehime v. Warehime, 860 A.2d 41, 46-47 (Pa. 2004) (internal quotations and citations omitted); *see also All-Pak, Inc. v. Johnston*, 694 A.2d 347, 350 (Pa. Super. Ct. 1997) (the purpose of a preliminary injunction is “the avoidance of irreparable injury or gross injustice until the legality of the challenged action can be determined”).

11. Here, Petitioner can ably meet all six of those prerequisites.

The Injunction is Necessary to
Prevent Immediate and Irreparable Harm

12. In the absence of a preliminary injunction, students will be forced to wear masks in all School Entities (as defined in the August 31, 2021 Order from Respondent Acting Secretary of the Pennsylvania Department of Health, Allison Beam) across the Commonwealth, regardless of whether a School Entity is located within a county in which a health department is located and even though Respondent lacks the legal authority to require School Entities to force students to wear face coverings under the Disease Prevention and Control Law of 1955.

13. Students with religious or philosophical objections to face coverings will be forced to wear face coverings, despite the protection offered under Article I, Section 3 of the Pennsylvania Constitution.

14. A preliminary injunction is necessary to avoid immediate and irreparable injury that cannot be compensated for in damages.

15. For example, forcing children to wear face masks that interfere with their breathing is an ongoing statutory violation of the Child Protective Services Law. *See* 23 Pa.C.S. § 6301(b.1)(8)(v) (defining “child abuse” as “[i]nterfering with the breathing of a child”).

16. Additionally, forcing children with religious or philosophical objections to wear masks deprives students of their ability to exercise their rights under Article I, Section 3 of the Pennsylvania Constitution, their right under the Pennsylvania Constitution to receive a public education, and their right to “clean air” under Article I, Section 27 of the Pennsylvania Constitution.

17. As the Order constitutes a violation of constitutional rights and statutory violations of the Disease Prevention and Control Law and the Child Protective Services Law, injunctive relief is necessary. *See Wolk v. School District of Lower Merion*, 228 A.3d 595, 610 (Pa. Commw. 2020) (“For purposes of injunctive relief, statutory violations constitute irreparable harm *per se*”).

Greater Injury Would Result from Refusing the Injunction

18. Greater injury will result to the individual Petitioners than will be suffered by Respondent if the requested injunctive relief is granted.

19. Specifically, if an injunction is not granted, Petitioners will be forced to continue facing interference with their breathing, anxiety and other mental health issues, and risk a host of medical issues, including hypoxemia.

20. By contrast, Respondent will suffer no harm by the grant of an injunction.

The Preliminary Injunction Will
Maintain the Parties in Their Original Places

21. Granting an injunction will restore the *status quo* with respect to Petitioners' constitutional and statutory rights as they existed prior to Respondent's Order.

22. If the injunction is granted, individuals will again be permitted to make their own decisions. Those who want to wear masks can; those who are opposed to wearing masks for religious or philosophical reasons or who are unable to wear masks for health reasons are not forced to do so.

Petitioners Are Likely to Prevail on the Merits

23. Petitioners' right to relief is clear, and there is a reasonable likelihood of success on the merits, as set forth in more detail in the Petition.

The Injunction Is Reasonably Suited to the Offending Activity

24. As the offending activity here (the requirement to wear face masks) is purported to apply to all School Entities in the Commonwealth, injunctive relief staying the implementation and enforcement of the Order until this matter has been judicially determined is reasonably suited to address the offending activity.

The Public Will Not Be Adversely Affected by the Injunction

25. Respondent has control over the Pennsylvania Department of Health website. Posting a notice that Order is stayed during the pendency of this litigation is easy, inexpensive, immediate, wide-ranging and effective.

26. Moreover, the requested relief enables everyone to make decisions for themselves – those who want to wear masks can; those who are opposed to wearing masks or who are unable to wear masks for health reasons are not forced to do so.

WHEREFORE, Petitioners respectfully ask this Honorable Court to enter a Preliminary Injunction:

1. Staying the implementation and enforcement of the Order until the issues raised herein have been finally judicially determined;
2. Enjoining Respondent from issuing any further directives, guidance or communications requiring School Entities to force children to wear masks;
3. Directing Respondent to take all reasonable steps possible to notify all School Entities of the existence of this litigation and that the requirement

to force children to wear face masks in school is stayed pending the resolution of this matter; and

4. Entering such other relief as this Court deems just and proper.

LAW OFFICE OF TUCKER R. HULL, LLC

Date: September 13, 2021

By: /s. Tucker R. Hull, Esq.

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial Systems of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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